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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2026

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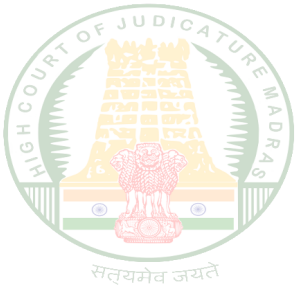
**THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR**

CMA No. 2567 of 2022

The Divisional Manager
Royal Sundaram General Insurance Company Ltd.,
Pondicherry. ... Appellant/2nd Respondent

Vs

1. Padmavathy
W/o. Sivasubramanian
 2. Sri Nilaveni
D/o. Sivasubramanian ...Respondents/Petitioners
 3. Vedhasya
D/o. Sivasubramanian
 4. Jayabalan
S/o. Jayabalan
- (minors rep. by their mother/next friend
1st respondent herein)
5. J.Purushothaman
S/o. Sri Jayaraman ... Respondent / Respondent-1
 6. Natarajan ... Respondent / Respondent-3
 7. The Divisional Manager



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National Insurance Company Ltd.,
Puducherry.

... Respondent / Respondent-4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.01.2018 made in M.C.O.P.No. 28 of 2016 on the file of Motor Accident Claims Tribunal (II Additional District Court) Puducherry.

For Appellant : Mr. Elveera Antionette Ravindran

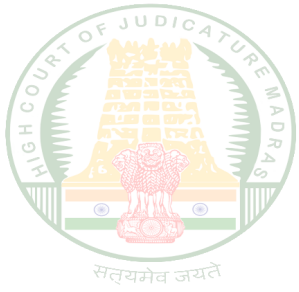
For RR 1 to 4 : Mr. r.Sreedhar

For 7th Respondent : Mr.S.Arunkumar

J U D G M E N T

(Order of the Court was made by **K.RAJASEKAR, J.**)

This Appeal has been filed by the second respondent /Insurance Company in M.C.O.P.No. 28 of 2016 challenging the Judgment and Decree dated 23.01.2018, wherein the Tribunal has held that the second respondent shall indemnify the owner of Tempo traveller and pay entire compensation and rejected the contentions of the second respondent that the accident was taken place due to the negligent act of driver of respondent No.4.

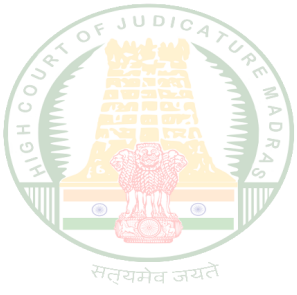


2. For convenience, the parties are referred to by their litigant status

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3. The facts of the case are that on 05.07.2008, at about 10:30 p.m., the deceased Mr.Sivasubramanian, and others were traveling from Pondicherry to Chennai Airport in a Tempo Traveller with registration number TN 32 C 9663. Near Molasur on the Pandy-Tindivanam National Highway, the driver of the Tempo Traveller drove it rashly and negligently, dashed with a lorry bearing registration number TN 32 B 1459, which was parked on the left side of the road. The accident resulted in injuries to two passengers and also the driver of the Tempo Traveller. Subsequently, both passengers succumbed to their injuries. Two separate claim petitions have been filed by the respective defendants under Section 166 of the Motor Vehicles Act.

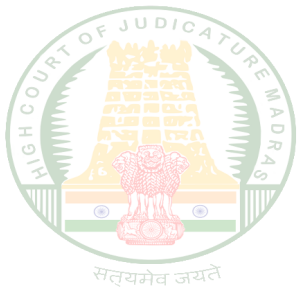
4. In the claim petition, originally the claimants sought compensation only from the owner and insurer of the Tempo Traveller. Subsequently, after the Insurance Company filed its counter, the owner and insurer of the lorry were also impleaded as parties.



WEB COPY 5. The second respondent has filed an counter and additional counter stating that the lorry was improperly parked in the middle of the road and that adequate precautions were not taken, leading to the accident. Therefore, the driver of Lorry is responsible for the accident and the insurer of Tempo traveller is not liable to pay compensation.

6. The second respondent/Insurance Company also contested the quantum of compensation claimed under the various headings, stating it is excessive.

7. The owners of both vehicle have not contested the claim. The fifth respondent, the insurance company of the lorry, has filed a counter, submitting that a criminal case was registered only against the driver of the Tempo Traveller and the final report filed confirming his negligence. Furthermore, the lorry was parked on the left side of the road with due care and caution and that the driver of the Tempo Traveller negligently drove the same at high speed, resulting in the accident. Therefore, the insurer of the lorry is not liable to pay compensation.



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8. Before the Tribunal, the claimants examined PW-1 to PW-3, and Exhibits P-1 to P-15 were marked. On the side of respondents' No.2, RW-1 and RW-2, were examined.

9. After considering the evidence, the Tribunal has ruled that the driver of Tempo Traveller acted negligently and caused the accident. Consequently, held that the second respondent as insurer shall pay compensation quantified as Rs. 13,54,600/- and to indemnify the first respondent.

10. Aggrieved over the fixing negligence on the driver of the Tempo Traveller to the extent of 100%, the Insurance Company of the Tempo Traveller filed this appeal challenging both the negligence and the quantum of compensation.

11. The learned counsel for the appellant/second respondent submitted that there is ample and clear evidence on record to show that the lorry was parked recklessly on the left side of the road without proper safety measures. This fact alone is sufficient to show that the lorry driver acted negligently and caused the accident. The Tribunal has not properly appreciated this aspect or the manner in which the accident occurred. The



Tribunal ought to have taken into account and accordingly, the negligence shall be fixed on the driver of the lorry. He further relied on the evidence of the person who traveled in the Tempo Traveller PW-1 and the person witnessed the occurrence- PW-2, and also the driver of the Tempo Traveller RW-2 to substantiate his case that the lorry driver also contributed to the accident. He also submitted that the compensation awarded is excessive. Hence, prays to modify the award.

12. Per contra, the learned counsel for the fifth respondent/Insurance Company of the lorry submitted that the overall sequence of the accident must be considered. He relied on the pleadings made in the claim petition and contended that the claimants made no allegation in the claim petition that the lorry was parked recklessly or on the wrong side. In the absence of any such pleading or evidence, the failure to examine the lorry driver is not a fatal as far as the case of the fifth respondent is concerned. The Tribunal, after appreciating the entire evidence, more particularly the evidence of eyewitness to the effect that the lorry driver took safety measures, rightly attributed the negligence to the Tempo Traveller. He further submitted that there was sufficient space available on the road to allow vehicles to pass in both directions. In such circumstances, there is no



reason for the Tribunal to fix / or apportion any negligence on the lorry driver.

13. The learned counsel for the claimants submitted that, their case is, the driver of the Tempo Traveller drove the vehicle at high speed. They have filed the claim petition seeking compensation solely from the owner and insurer of Tempo Traveller, and further submit that they are entitled to the compensation as claimed, that there is no infirmity in the order passed by the Tribunal and accordingly, prays to confirm the award passed by the Tribunal.

14. We have considered the submissions on both sides and perused the materials available on record.

15. The core issue before this Court is whether the accident occurred due to the negligent act of the driver of Tempo Traveller or the lorry driver or is there any contributory negligence on the part of the lorry driver or not?

16. Admittedly, in this case, the passenger in the Tempo Traveller,



testified as PW-1. He stated in his chief examination that he and the others including deceased Subramanian and Sundari Ramesh were traveling in the Tempo Traveller. The deceased were seated next to the driver when the vehicle, traveling at high speed, approached Molasur. Because it was night time, the driver was unable to see a parked lorry and dashed into its rear, resulting in fatal injuries to the deceased. Although they were taken to the hospital, both the injured died. The driver of the Tempo Traveller also sustained injuries.

17. During cross-examination, it was elicited that the driver of Tempo Traveller drove the vehicle rashly and negligently. It was also elicited that there were parking lights to indicate the lorry's parked status. He further reiterated that the only the Tempo Traveller driver was at fault. Similarly, PW-2, an eyewitness, was examined. According to him, he was traveling in a vehicle just opposite to the accident site, and as he was passing the lorry, he saw the Tempo Traveller approaching at high speed and colliding with the rear side of the lorry.

18. The second respondent, the Insurance Company of the Tempo Traveller, examined the driver of the Tempo Traveller as RW-2. He stated



that although he drove the vehicle with care and caution, he could not see the lorry parked on the left side of the road due to the darkness. The lorry was carrying casuarina poles, and despite his attempts to avoid an accident, he was unable to avert it and hit the rear side. He argued that if the vehicle had been parked carefully and cautiously with illuminating parking lights the accident would not have occurred.

19. The fifth respondent, the Lorry's Insurance Company, argue that they had no occasion to refute the allegations in the claim petition, nor were there any other pleadings that required them to deny the contentions raised by the Tempo Traveller's Insurance Company, hence, they did not choose to examine the driver of Lorry and the non-examination of the driver of the lorry shall not lead to any adverse inference.

20. We unable to agree with the said contention since it is admitted case of the fifth respondent that though at the initial stage, no claim was made against the fifth respondent ie., Insurance Company of the lorry, subsequently by way of filing additional counter, the second respodnent has taken the stand that their driver is not responsible for the accident and that only the driver of the lorry is responsible for the accident. This



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pleading should have been addressed by the fifth respondent, insurance company of Lorry.

21. We have perused the fifth respondent's response, which indicates that they rightly contested the allegations of negligence against the lorry driver made by the second respondent. This demonstrates the fifth respondent was aware of counter-allegations against the lorry driver. Although PW-1 and PW-2 supported the claimants' case that the driver of Tempo Traveller was responsible for the accident, the examination of RW-2, the Tempo Traveller driver, placed contra evidence of PW-1 and PW-2. Notably, evidence was presented implicating the lorry driver as being responsible for the accident. Admittedly implicating evidence was placed on record, even though the claimants did not file a claim against Lorry driver. When there is implicating evidence placed on record against a party then the adversary party is expected to present appropriate evidence to dispel the implicating evidence against him.

22. In this case, there is a categorical evidence placed on record by the driver of the Tempo Traveller that the lorry driver is responsible for the accident. In such a situation, the non examination of the driver of the lorry



raises adverse inference against the driver of lorry if the evidence of RW-2 is supported by any corroborated evidence.

23. Be that as it may, the evidence presented by PW-1 and PW-2 before the Tribunal indicates that the driver of the Tempo Traveller RW-2 had driven the vehicle in rash and negligent manner and responsible for the accident. The RW-2/s defense is that the lorry was parked recklessly in the middle of the road, causing the accident. At this point, we would like to cite the relevant rules and regulations pertaining to vehicle parking on roads, streets, highways, etc. And the observation made by the Apex Court in this regard.

24. In *[Sushma Vs. Nitin Ganapati Rangole and Others]* (2024 *SCC Online SC 2584*) outlines the statutory provisions applicable to situations involving vehicle parking in the following manner:

“25. Common sense requires that no vehicle can be left parked and unattended in the middle of the road as it would definitely be a traffic hazard posing risk to



the other road users.

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26. We shall briefly refer to the statutory provisions applicable to the situation at hand.

27. A highway or a road is a public place as defined in Section 2(34) of the Act: -

“2(34) “public place” means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;”

28. Section 121 of the Act provides that the driver of a motor vehicle shall make such signals and, on such occasions, as may be prescribed by the Central Government.

29. Section 122 of the Act provides that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any “public place” in such a position or in such a condition or in such circumstances so as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

30. Section 126 of the Act provides that no person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place.

31. Section 127(2) of the Act provides that where any abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the public place, or its physical appearance is causing the impediment to the traffic, its immediate removal from the public place by a towing service may be authorised by a police officer having jurisdiction.



32. Regulation 15 of the Rules of Road Regulation, 1989 which were prevailing on the date of the incident provides that every driver of a motor vehicle shall park the vehicle in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users. It casts a duty on the drivers of a motor vehicle stating that the vehicle shall not be parked at or near a road crossing or in a main road.

33. These legal provisions leave no room for doubt that the person in control of the offending truck acted in sheer violation of law while abandoning the vehicle in the middle of the road and that too without taking precautionary measures like switching on the parking lights, reflectors or any other appropriate steps to warn the other vehicles travelling on the highway. Had the accident taken place during the daytime or if the place of accident was well illuminated, then perhaps, the car driver could have been held equally responsible for the accident by applying the rule of last opportunity. But the fact remains that there was no illumination at the accident site either natural or artificial. Since the offending truck was left abandoned in the middle of the road in clear violation of the applicable rules and regulations, the burden to prove that the placement of the said vehicle as such was beyond human control and that appropriate precautionary measures taken while leaving the vehicle in that position were essentially on the person in control of the offending truck. However, no evidence was led by the person having control over the said truck in this regard. Thus, the entire responsibility for the negligence leading to the accident was of the truck owner/driver.

34. In view of the above discussion, the view expressed by the High Court that if the driver of the car had been vigilant and would have driven the vehicle carefully by following the traffic rules, the accident may have been avoided is presumptuous on the face of the record as the same is based purely on conjectures and surmises.



Nothing on record indicates that the car was being driven at an excessively high speed or that the driver failed to follow the traffic rules. The High Court recorded an incongruous finding that if the offending truck had not been parked on the highway, the accident would not have happened even if the car was being driven at a very high speed. Therefore, the reasoning of the High Court on the issue of contributory negligence is riddled with inherent contradictions and is paradoxical.

35. The Courts below erred in concluding that it is a case of contributory negligence, because in order to establish contributory negligence, some act or omission which materially contributed to the accident or damage should be attributed to the person against whom it is alleged.

*36. In the case of **Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak**, this Court while referring to a decision of the High Court of Australia in *Astley v. Austrust Ltd.*⁷, went on to hold that: -*

*“... where, by his negligence, if one party places another in a situation of danger which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which, with the benefit of hindsight is shown not to have been the best way out of the difficulty.” (2002) 6 SCC 455 (1999) 73 ALJR 403. In the very same judgment, this Court also referred to and approved the view taken in *Swadling v. Cooper*⁸, as below: -*

“Mere failure to avoid the collision by taking some extra ordinary precaution, does not in itself constitute negligence.” (emphasis supplied)”

25. In *Shammi Sharma & Others Vs. Ran-- Singh and Others*



arising out of SLP (C) No.21699 of 2018, the very same provision of Motor Vehicles Act and Motor Vehicles Rules have made out.

“14.2 A perusal of the above provisions would clearly indicate that no vehicle can be left in a dangerous position or abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers. The aforesaid rules also mandate that two (2) red parking lights, one on each side in the rear is to be provided and it should remain lit even when the vehicle is kept stationery on the road. Such rear lamps/lights which is required to be lit is to be visible from a distance of 155 meters. Thus, above provisions make it explicitly clear that a driver of such vehicle who intends to park the vehicle is expected to take all possible care and caution to prevent any untoward incident occurring apart from the parking lights being lit, so that other users of road would be able to clearly see the parked vehicle and accordingly they can manoeuvre their vehicle. ”

26. In this case, a rough sketch of the road indicating the place of occurrence was presented before the Tribunal. We have also seen the rough



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sketch, marked as Exhibit R-3, which indicates that the width of the road, is 24 feet, though it is termed a National Highway. New road construction is also underway adjacent to the existing road. Since the road is 24 feet wide, only 12 feet is available on each side commutation of vehicles. The lorry carrying the casuarina poles is reportedly 8 feet wide. This shows that the lorry, parked on the road, occupied most of one side. Although evidence suggested the lorry had parking lights illuminated, its parking location clearly posed a danger to vehicles traveling from Pondicherry to Dindivanam, south to north. The incident occurred at 10:00 p.m. The Tempo Traveller driver's evidence shows that, while he drove cautiously (according to PW-1 and PW-2, he was also driving at high speed) and admitted that he had seen the lorry blocking the road at a short distance and was unable to avoid the accident.

27. We are of the view that the lorry, which has 8 feet wide, was parked on the left side of a road, which is 12 feet of space for on going vehicles, clearly posed a threat to vehicles traveling at high speeds. Overtaking the lorry is relatively possible if no vehicles are approaching from the opposite direction. However, if a driver spots a vehicle coming on the opposite side, it may not be possible to safely overtake the lorry parked



on the highway, especially when the on going vehicle is traveling at high speed. The place where the lorry is parked clearly indicates that with full knowledge of possibility of posing danger to the commuting vehicles, the driver of the lorry acted negligently.

28. We are of the view that considering the aforementioned point, negligence should be assigned to both drivers and they are equally responsible for the accident resulting in death of two individuals ie., in the ratio of 50:50. Therefore, both insurance companies are equally liable to compensate the dependents of the deceased families.

29. The Tribunal, having considered the evidence presented by PW-3, determined the monthly income as Rs.6,000/- per month. Even in the absence of evidence of PW-3, income fixed by the Tribunal fall within the norms fixed by this Court for arriving notional income. Further, after adding 40% for future prospects and applying the appropriate multiplier, the Tribunal awarded compensation after deducting personal expenses, which we also deem reasonable. However, the Tribunal granted consortium to the wife and awarded compensation for loss of love and affection to the children and father. As per the dictum of Apex Court in ***United India Insurance Co.***



Ltd., Vs. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 scc

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780], loss of consortium encompasses love and affection. Therefore, the compensation awarded for loss of love and affection is cancelled, and claimants are each entitled to Rs.40,000/- as loss of consortium. The remaining compensation under conventional heads awarded is hereby affirmed. Accordingly the compensation payable is given below:-

<i>Loss of income:</i> <i>Rs.6,000/- + Rs.2,400/- (40% future prospects)</i> <i>= Rs.8,400/- - Rs.2,100/- (¼ personal expenses)</i> <i>=Rs.6,300/- x 12 (months) x 16 (multiplier)</i>	<i>Rs.12,09,600/-</i>
Loss of Consortium to the claimants Rs. 40.000/- x 4 each	Rs. 1,60,000/-
Towards Funeral expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Total	Rs.13,99,600/-

30. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,54,600/- is hereby enhanced to Rs.13,99,600/- together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. Both the Insurance Companies directed



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to deposit 50% each of compensation now awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.28 of 2016 on the file of the II Additional District Court, Puducherry. On such deposit, the appellants are permitted to withdraw the amount now determined by this Court along with interest and costs, less the amount already withdrawn, if any, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

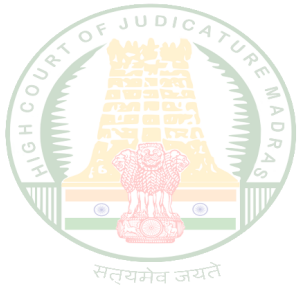
(C.V.K.,J.) (K.R.S.,J.)
29-04-2026

Index: Yes / No
Speaking / Non-Speaking order
vsg

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To

II Additional District Court,
Motor Accidents Claims Tribunal, Puducherry.



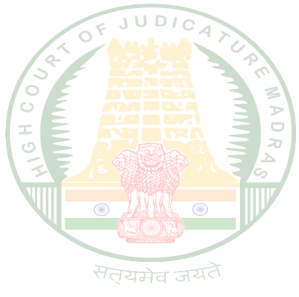
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C.V.KARTHIKEYAN, J.
And
K.RAJASEKAR, J.

vsg

CMA No. 2567 of 2022



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