

CMA(MD)No.491 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	25.07.2025
Pronounced on	30.07.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**CMA(MD)No.491 of 2022
and
CMP(MD)No.4273 of 2022**

The Branch Manager,
ICICI Lombard General Insurance Company,
7, A A Road, Arasaradi,
Madurai Nagar,
Madurai District.

... Appellant

vs.

1. C.Amsavalli
2. C.Thenmozhi
3. Minor C.Tamilmozhi
4. Minor C.Malarvizhi
5. Minor C.Veerapandi
(3 to 5 Minor Respondents represented through their next friend and Guardian of 1st Respondent/Mother)
6. O.Periyakaruppi
7. S.Muniammal
8. The Managing Director,
Tamil Nadu Transport Corporation Limited,
Salem.

... Respondents



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PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.03.2019 in MCOP.No.31 of 2013 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Devakottai.

For Appellant : Mr.C.Lakshmanan for Mr.V.Muthukamatchi
For R1 to R5 : Mr.J.Anand Kumar
For R8 : Mr.K.Sudalaiyandi
For R6 & R7 : No appearance

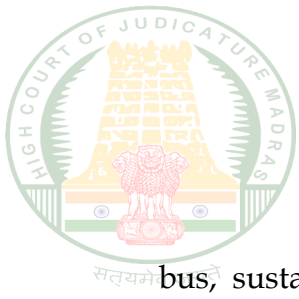
JUDGMENT

[Judgment of the Court was made by **A.D.JAGADISH CHANDIRA, J.**]

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 12.03.2019 made in MCOP.No.31 of 2013 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Devakottai.

2. The case of the claimants as averred in the claim petition is as follows:

On 16.11.2012, one Chinniah, wife of the 1st respondent/claimant, father of the respondents 2 to 5/claimants and son of the 6th respondent/claimant travelled in a bus bearing registration No.TN-29-N-2192 belonging to the 8th respondent transport corporation, from Trichy to Thiruppathur. When the Bus was coming on Madurai-Trichy road, near Pallapatti Motal at about 04.00 a.m., a lorry bearing registration No.TM-48-E-7508 insured with the appellant insurance company, was parked on the left side of the road without any parking lights, as a result, the bus dashed against the rear side of the Lorry, in which, the said Chinniah who sat in the left side of the

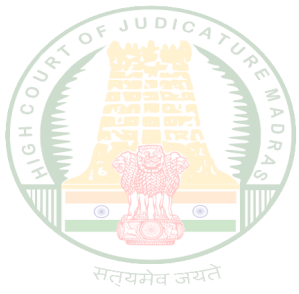


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bus, sustained grievous injuries over his head, chest, legs and died on the spot. Postmortem was done at Government Hospital, Melur. Contending that the accident had occurred due to the negligence on the part of the driver of the lorry in parking the same without any signal, the claimants filed a claim petition in M.C.O.P.No.31 of 2013 before the Motor Accident Claims Tribunal/Subordinate Judge, Devakottai, claiming compensation of Rs.12 Lakhs. They further contended that the deceased was aged 45 years and was hale and healthy at the time of accident. Further, he owned 3 acres of Coconut grove and was doing coconut business. He also worked in Singapore for 9 years and thereafter at Dubai as a Labour. While he was returning after renewing his passport to go to foreign country, the alleged accident had occurred. The family had lost its breadwinner. With the above averments, the claimants claimed compensation of Rs.12 Lakhs.

3. The appellant insurance company filed counter affidavit contending that the driver of the transport corporation bus did not follow the traffic rules and drove the bus in a rash and negligent manner and dashed against the rear side of the lorry insured with the appellant. The FIR was also filed against the driver of the bus. They further contended that the driver of the lorry was not holding valid and effective driving licence at the time of accident. Without prejudice to the above, the appellant also disputed the income of the deceased and the compensation claimed by the claimants under various heads.



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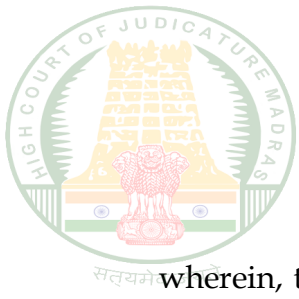
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4. Before the Tribunal, the wife of the deceased examined herself as PW1.

One Pandi, working as Special Sub Inspector of Police, Kottampatti, was examined as PW2 and one Manimaran, a co-passenger of the bus was examined as PW3. Exs.P1 to P7 were marked on the side of the claimants. On behalf of the appellant, one Umasankar, working as a Manager in the Legal Wing of the appellant company, was examined as RW1 and one Karthi, Law Officer of the appellant insurance company, was examined as RW2 and Exs.R1 to R3 were marked on the side of the appellant.

5. Upon consideration of the oral and documentary evidence adduced on either side, the Tribunal holding that the negligent act of both the drivers of the bus as well as the lorry had caused the accident resulting in death of two persons and injuries to several others, fixed contributory negligence on both the drivers of the vehicles and awarded compensation of Rs.24,32,416/- with 7.5% interest per annum from the date of claim petition till the date of deposit. Aggrieved by the said award passed by the Tribunal, the insurer of lorry has filed this appeal questioning negligence.

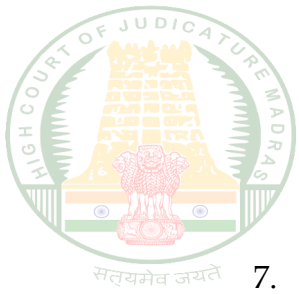
6. Assailing the finding of the Tribunal regarding negligence, learned counsel for the appellant would submit that the Tribunal has failed to consider Ex.R3 which is the copy of the award passed in MCOP.No.239 of 2014 dated 10.02.2019,



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wherein, the Tribunal while dealing with a similar claim petition filed arising out of the same accident, by the conductor of the bus, had fixed the entire negligence on the driver of the bus, based on the statement of RW1, who is none other than the Manager of the 8th respondent transport corporation, where, he has deposed that through the bus lights, any vehicle stationed at a distance of 50 meters, could be seen. Therefore, the learned counsel would submit that had the driver of the bus seen the stationed lorry in the road, he could have averted the accident. However, without appreciating the said award, the Tribunal in this case has erroneously fixed the contributory negligence. Learned counsel for the appellant would further contend that the Tribunal ought to have rejected the evidence of PW3, who is a chance witness, since his presence in the bus on the date of accident itself was not proved. Even in his cross examination, PW3 has deposed that he lost the bus ticket through which he travelled as a passenger in the 8th respondent bus and therefore, he cannot be said to be a chance witness. Consequently, the entire testimony of PW3 is liable to be disbelieved. Hence, the learned counsel would submit that the accident had occurred solely due to the negligence of the 8th respondent bus driver and the entire negligence shall be fixed on the driver of the Bus. Consequently, the 8th respondent shall be fastened with the liability to pay the entire compensation and the appellant shall be totally exonerated from its liability. Thus, he would pray for setting aside the findings of the Tribunal regarding contributory negligence.



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7. Per contra, learned counsel for the respondents 1 to 5/claimants would submit that the award made in MCOP.No.239 of 2014 dated 10.02.2019 though was passed in a claim petition arising out of the same accident, the same cannot be made applicable to the present case, for the simple reason that only due to the non examination of the driver of the bus, the Tribunal therein accepted the version of the claimants therein and also RW1/Manager of the 8th respondent transport corporation who had deposed that through the lights of the bus, any vehicle stationed at a distance of 50 meters could be seen and accordingly, the bus can be stopped and accident could be averted. Even in the very same judgment, the Tribunal therein had categorically observed that the best person who can narrate the manner of accident is the driver of the bus, who had not been examined. Even in the present claim petition also, the bus driver was not examined. However, taking note of the evidence of the eye witness namely, PW3 that the Lorry was parked without any parking lights, the Tribunal has held that both the drivers are responsible for the accident. In the earlier claim petition, the Tribunal therein had completely lost sight of the fact that the lorry stationed without any parking lights also contributed to the accident. The said vital fact cannot be ruled out since the accident had occurred in the dark hours at 04.00 a.m. However, the Tribunal in the present claim petition has appreciated the said fact and has rightly fixed contributory negligence. The learned counsel would further submit that Section 122 of the Motor Vehicles Act, 1988, mandates that two red parking lights, one on each side in the rear is to be provided and it should remain

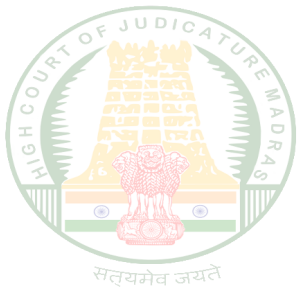


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lit even when the vehicle is kept stationery on the road. Such rear lamps/lights shall be visible from a distance of 155 meters. The said provision clearly shows that the driver of a vehicle who intends to park the same, shall take all possible care and caution to prevent any untoward incident occurring apart from the parking lights being lit, so that other vehicle drivers could clearly see the parked vehicle. Therefore, the learned counsel would submit that had the driver of the lorry parked the same with blinking parking lights, certainly, accident could have been averted. In support of the said contention, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court in *Shammi Sharma and others vs. Randhir Singh and others* [SLP(C)No.21699 of 2018, dated 31.01.2025]. Thus, the learned counsel would submit that the finding of the Tribunal regarding negligence does not warrant interference.

8. Heard both sides.

9. The only question to be considered in this appeal is whether the contributory negligence fixed by the Tribunal is required to be interfered with and entire negligence is to be fixed on the 8th respondent bus driver as fixed in the earlier claim petition or not.



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10. Though the appellant insurance company contended that entire negligence has to be fixed on the bus driver as fixed in the earlier claim petition and that the evidence of PW3 should not be relied upon since his presence in the scene of occurrence itself was not proved, as rightly held by the Tribunal in the earlier claim petition as well as in the present claim petition, the drivers of both the Lorry and the Bus were not examined, who are the best witnesses to speak about the manner of accident. As per the evidence of PW3, at the time of accident, both the driver and cleaner of the lorry were not present in the scene of occurrence and that the lorry was punctured and parked without any signal. Absolutely, no contra evidence was let in on the side of the appellant to disprove the version of PW3. Even though the appellant contended that the evidence of PW3 ought to have been disbelieved by the Tribunal since his presence at the time of accident was not proved, *de hors* the evidence of PW3, there was no evidence adduced by the appellant to prove that the lorry was parked with parking lights. Except PW3, no eye witness was examined. The evidence of PW2 and PW3 shows that both the drivers negligently acted in causing the accident. As rightly contended by the learned counsel for the respondents/claimants, as per Section 122 of the Motor Vehicles Act, 1988 and Rule 109 of the Motor Vehicles Act read along with sub Rule(2) of Rule 105 and the lorry driver who stationed the lorry in the road should have taken all possible care and caution to prevent any untoward incident including parking lights, which is essential



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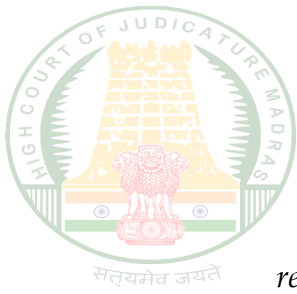
for the oncoming vehicles to see that a vehicle is stationed on the road. In this regard in the case of Shammi Sharma and others .v. Randhir singh and others the Hon'ble Apex Court (Arising out of SLP(C) No.21699 of 2018) has held as follows:

14) The owner of the offending vehicle who had filed statement of objections to the claim petition had denied the fact of truck having been parked without any light signal but had failed to examine her employee namely, the driver of the truck, to establish that the lorry which had been parked in the middle of the National Highway had complied with the mandate of the Motor Vehicles Act, 1988 and Rules made thereunder.

14.1 It would be apposite to note that Section 122 of the then Motor Vehicles Act, 1988, would mandate that no person in-charge of a Motor Vehicle can allow the vehicle to be abandoned which is likely to cause danger to other users of the public place or to the passengers. It reads thus:

“122. Leaving vehicle in dangerous position.- 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 as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.” Rule 109 of the Motor Vehicles Rules requires to be read along with Sub-Rule (2) of Rule 105 and they read as under:

109. Parking light.- Every construction equipment vehicle, combine harvester and motor vehicle other than motor cycles and three wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two



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red parking lights one on each side in the rear shall be provided.

The front and rear parking lights shall remain lit even when the vehicle is kept stationery on the road:

Provided that these rear lamps can be the same as the rear lamps referred to in the rule 105 sub-rule (2):

Provided also that x x x on the road.

105. Lamps.- [(1) Save as hereinafter provided, every motor vehicle, while being driven in a public place, during the period half an hour after sunset and at any time when there is no sufficient light, shall be lit with the following lamps which shall render clearly discernible persons and vehicles on the road at a distance of one hundred and fifty five meters ahead:-

(a) in the case of x x x head lamps;

(b) in the case of x x x head lamps.

[(bb) every two x x x running:

Provided that x x x running:

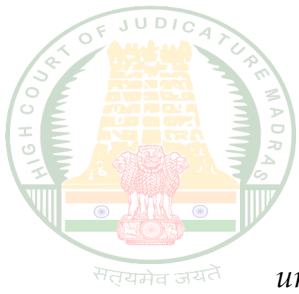
Provided further x x x is switched on:]

Sub Rule (2) Every such motor vehicle other than a three wheeler shall also carry-

(i) [two lamps (hereinafter referred to as the rear lamp) showing to t he rear a red light visible in the rear from a distance of one hundred and fifty-five metres; and in the case of a motor cycle one lamp showing the red light to the rear visible from a distance of seventy-five metres-; and

(ii) Lamp, which x x x x metres to the rear:

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



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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.

11. In the instant case, the lorry was parked without any parking lights which paved way for the accident. While the fact remains that had the driver of the lorry parked the same with parking lights, the accident could have been averted, the fact that had the driver of the bus drove the same with utmost care, he could have seen the stationed lorry and could have averted the accident, also cannot be ruled out. Taking note of the same, the Tribunal has rightly fixed contributory negligence. We do not find any perversity in the said finding. Hence, the said finding of the Tribunal is confirmed. The quantum of compensation is not assailed by the appellant.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant as well as the 8th respondent are directed to deposit the entire award



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amount with interest and costs as awarded by the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, if not deposited already.

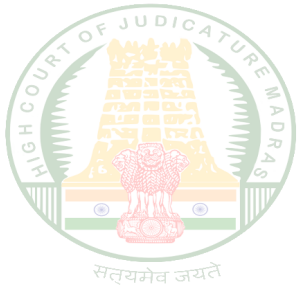
The withdrawal of the award amount by the major claimants and the deposit of the minors' share in the Bank, shall be as per the directives in the impugned judgment of the Tribunal. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] [R.P., J.]
30.07.2025

Index : Yes / No
Neutral Citation : Yes / No
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To:

The Subordinate Judge,
Motor Accident Claims Tribunal,
Devakottai.



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A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

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PRE-DELIVERY JUDGMENT MADE IN
CMA(MD)No.491 of 2022

DATED : 30.07.2025