

**Rose Lynd E.T. and anr. Vs. Lekha Alias Lekha Krishnakumar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/726704](http://sooperkanoon.com/726704)

**Court :** Kerala

**Decided On :** Sep-17-2008

**Reported in :** 2008(3)KLJ293

**Judge :** C.N. Ramachandran Nair and; Harun-UI-Rashid, JJ.

**Acts :** [Motor Vehicles Act, 1988](#) - Sections 118; Rules of Road Regulations, 1989 - Rule 15(2); Traffic Regulations

**Appeal No. :** MFA No. 66 of 2003

**Appellant :** Rose Lynd E.T. and anr.

**Respondent :** Lekha Alias Lekha Krishnakumar and ors.

**Advocate for Def. :** Nagaraj Narayanan,; Nair Ajay Krishnan,; Rajan Velloth

**Advocate for Pet/Ap. :** V. Chitambaresh, Sr. Adv.,; T.C. Suresh Menon and; Princ

**Judgement :**

**C.N. Ramachandran Nair, J.**

1. Since we propose to issue some general directions to the State, State of Kerala, represented by Chief Secretary to Government, Secretariat, Trivandrum is made additional respondent. Even though Government Pleader requested for time to get views of Government, we do not think opinion of Government is required in the

matter, because the directions being issued by us are essentially to enforce Traffic Regulations to prevent road accidents. We therefore proceed to issue orders.

2. The appellants are registered owner and driver respectively of a motorcycle challenging the award passed by the MACT directing appellants to pay 75% of the compensation awarded for the death of the pillion rider of the bike in the accident based on the finding that driver of the motorcycle namely, the second appellant contributed more to the accident on account of his negligence. The accident occurred on 7.45 in the night on the National Highway (NH 47) at a place called Chellakkadu off Palakkad when the motorcycle driven by the second appellant hit behind a parked container lorry causing death of the pillion rider. While the case of the appellants is that accident was purely on account of negligence of the driver of the container truck who parked the container lorry on the National Highway without any burning indicator light or even reflector and the second appellant could not notice the parked vehicle which led to the accident, the contention of the insurance Company is that the accident was caused on account of negligence of the second appellant who without noticing the parked truck rammed into it. Counsel for the Insurance Company referred to the observation of the MACT in the award that the driver of the motor bike namely, the second appellant was drunk at the time of the accident as stated in evidence by the claimants in the claim petition. Even though no clear finding is rendered by the MACT about drunken driving at the time of accident by the second appellant, the MACT directed 75% of the compensation to be recovered from the registered owner and driver of the motorbike on account of contributory negligence in as much as the accident was caused by the driver of the motorbike hitting behind a parked truck. 25% of the compensation was ordered to be paid by the Insurance Company because the MACT found that driver of the container truck by parking the truck on the National Highway contributed to the accident upto 25%.

3. After hearing counsel appearing for both sides and on going through the award, we feel the finding of the MACT that contributory negligence on the part of the truck driver is only 25% cannot be sustained. Admittedly the container truck was parked in the National Highway in the same direction in which the motorbike was going at the time of accident and but for the parking of the truck on the Highway in

the night, this accident probably would not have taken place at all. There is nothing to indicate that the truck had lighted indicators or danger lamps or reflectors in the rear or on the side. Besides this, NH 47 is probably the busiest road passing through Kerala and it is sufficiently wide and has parking space atleast at some places on the road side. Parking of vehicles on main road or on roads carrying fast traffic is expressly prohibited under Rule 15(2)(iv) of the Rules of Road Regulations, 1989 prescribed by Central Government under Section 118 of the [Motor Vehicles Act, 1988](#). The National Highway is fairly straight and smooth and vehicles driver on the same maintain steady and high speed. In the normal course a driver cannot expect vehicles remaining parked in, the night on the Highway and he expects clearance of the road. Though parked vehicles will be visible during day time, drivers may not notice vehicles parked on road in the night if such vehicles do not have proper reflectors or burning indicators and the same will invariably lead no accidents. Though there is allegation that the driver of the bike was under influence of alcohol at the time of accident, there is no evidence or finding in this regard by the MACT. There is nothing to indicate that the truck parked in the road had proper reflectors or lighted indicators in the rear or in the side. Most of the container trucks seen on road are not fitted with proper indicators and the containers with their dull colours may not be visible from distance, more so in the night.

4. The circumstances borne out by the mahazar in this case clearly indicate that the accident was caused on account of parking of the container lorry on the road without lighted indicators and in clear violation of the Regulation stated above. Even though we find substantial negligence on the part of the driver of the container truck in parking the vehicle in the night on the National Highway without keeping indicator lamps on, we feel there is negligence on the part of the motorbike driver namely, the second appellant also because if he was driving at moderate speed, he would have noticed the truck atleast when the bike reached very close to it and could have turned the vehicle to the right and possible avoided the accident or in any case by applying brake reduced the impact of the accident. In the course of accident, the pillion rider was thrown off from the bike which proves beyond doubt that the motor bike was driven fairly at a high speed and so much so, there is contributory negligence on the second appellant also.

Considering all these we allow the appeal in part by modifying the award of the MACT holding that accident was caused more on account of negligence of driver of the insured lorry, which we fix at 75%. Accordingly, there will be direction to the Insurance Company to deposit 75% of the award amount with interest thereon and appellants 1 and 2 to deposit balance 25% with interest thereon and the MACT will ensure that the amount is recovered and paid to the claimants as stated above.

5. Similar accidents of the kind stated above are reported in this State on a regular basis when vehicles driven in the night hit behind vehicles remaining parked on road. Even though Rule 15(2)(iv) of the Rules of Road Regulations, 1989 prescribed by the Government of India under Section 118 of the [Motor Vehicles Act, 1988](#) prohibits parking of vehicles on main road or on roads carrying fast traffic, it is common practice that vehicles are seen parked during day time and during whole night on National Highways, State Highways and important roads. Such parking of vehicles, particularly in the night, cause accidents leading to death, injury and loss of property. In spite of repeated accidents, no steps are seen taken by the Police or Motor Vehicle authorities to seize or remove such parked vehicles from roads which can prevent accidents. In order to prevent accidents, and thereby to save life and property of people, we feel specific direction should be issued to the Government. Accordingly, we issue the following directions to the Government for immediate compliance:

1) We direct the Government to issue instruction to the Police particularly handling Traffic and the Motor Vehicles Department to seize and remove vehicles seen parked on National Highways, State Highways and other important roads, whether during day time or during night, and release such vehicles only on collecting heavy fine in accordance with law besides prosecuting the drivers.

2) The Government should direct Police and Motor Vehicles Department to ensure that goods vehicles particularly, container lorries with unusual dimensions are operated on road with proper indicator lights, reflectors, etc. on all sides during day time and night so that drivers of other vehicles get an idea about the size and dimension of such vehicles and the care they have to take to avoid accidents. In fact, having regard to the unusual size of container trucks, the Government should

consider roads in which they can be permitted to operate and narrow single line roads where they should not be permitted and orders should be issued and enforced restraining their movement.

3) Large number of accidents take place on account of stopping/parking of stage carriages on road for taking and releasing passengers. This should be prohibited by constructing Bus Bays in Bus stops so that stage carriages go out of the road and take passengers and release them only on bus bays without affecting road traffic. Since this requires time, and expenditure, we direct the Government to take steps at the earliest and complete construction of Bus Bays on all road-sides in the State through which stage carriage operation is permitted, within one year from now.

4) Since accidents commonly take place in road crossing, there will be direction to the Government to instruct PWD and local authorities in charge of the road, to construct hump with zebra marking on the less important roads on all road crossings and also provide sign boards wherever required under the Rules, which should also be done within a period of one year from now.

5) Since parking of vehicles on road is prohibited by the Rule, the enforcement of which is directed above, there will be direction to the Government to provide sufficient parking space for vehicles on road side, if required by acquiring land, which should also be done within a timeframe, even though we do not fix any specific time for this.

6. In order to ensure that the above directions are complied with, Registry will post this case in every three months for the Government to report periodical steps taken for compliance. Govt. will file first report on 1.1.2009. Post the matter on that date.

Issue copy to Government Pleader also.