



C.M.A.(MD)Nos.1173 to 1175 of 2012, 443 and 1136 of 2016

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Reserved on : 07.09.2023

Pronounced on : 29.09.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)Nos.1173, 1174 and 1175 of 2012,
443 of 2016 and 1136 of 2016
and
C.M.P.(MD)Nos.10214 of 2016 and 10075 of 2017

C.M.A.(MD)No.1173 of 2012

M/s.Royal Sundaram Alliance Insurance
Company Ltd.,
Division Manager
37, TVS Cooperative Stores Building
Krishna Rao Tank Street
Madurai 625 001.

...Appellant/
Respondent No.2

Vs.

1. Poolraj

...Respondent/
Petitioner

2. Narayanan

3. Ravi



C.M.A.(MD)Nos.1173 to 1175 of 2012, 443 and 1136 of 2016

4. The United India Insurance Co. Ltd.,
Divisional Manager
Divisional Office
Railway Feeder Road
Virudhunagar.

...Respondents/
Respondents 1, 3
and 4

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R3 : No appearance

For R4 : Mr.I.Robert Chandra Kumar

C.M.A.(MD)No.1174 of 2012

M/s.Royal Sundaram Alliance Insurance
Company Ltd.,
Division Manager
37, TVS Cooperative Stores Building
Krishna Rao Tank Street
Madurai 625 001.

...Appellant/
Respondent No.2

Vs.

1. Gomathi

...Respondent/
Petitioner

2. Narayanan

3. Ravi



C.M.A.(MD)Nos.1173 to 1175 of 2012, 443 and 1136 of 2016

4. The United India Insurance Co. Ltd.,
Divisional Manager
Divisional Office
Railway Feeder Road
Virudhunagar.

...Respondents/
Respondents 1, 3
and 4

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R3 : No appearance

C.M.A.(MD)No.1175 of 2012

M/s.Royal Sundaram Alliance Insurance
Company Ltd.,
Divisional Manager
37, TVS Cooperative Stores Building
Krishna Rao Tank Street
Madurai 625 001.

...Appellant/
Respondent No.2

Vs.

Susila (died)

1. Ramani

2. Renukadevi

3. Kannan

...Respondents/
Petitioners

4. Narayanan



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5. Ravi

...Respondents/
Respondents 1&3

6. The United India Insurance Co. Ltd.,
Divisional Manager
Divisional Office
Railway Feeder Road
Virudhunagar.

...Respondent/
Respondent No.4

For Appellant	: Mr.S.Srinivasa Raghavan
For R1 to R3	: Mr.D.Shanmugaraja Sethupathy
For R4 & R5	: No appearance
For R6	: Mr.I.Robert Chandra Kumar

Common Prayer in C.M.A.(MD)No.1173 to 1175 of 2012 : These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated 10.03.2011 made in M.C.O.P.Nos.33 to 35 of 2010 on the file of Motor Accident Claims (Additional District Court/Fast Track Court), Virudhunagar and allow these appeals.

C.M.A.(MD)No.443 of 2016

1. V.Maheswari
2. V.M.Amirtha Varshini
3. Minor V.M.Vijay Mari Eswar
4. D.P.S.Palani



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...Appellants/
Petitioners

(Minor 2nd appellant is declared as major and the guardianship of her mother/1st appellant is discharged vide Court order dated 06.07.2023 made in CMP(MD) No.5090 of 2023 in CMA(MD)No.443 of 2016)

Vs.

1. S.Narayanan
2. Royal Sundaram Alliance Insurance Company Ltd.,
represented through its Legal Manager,
having their office at TVS Co-operative Stores Building,
No.37, Krishna Rao Tank Street,
Madurai – 625001.
3. G.Ravi
4. United India Insurance Company Ltd.,
represented through its Branch Manager
having office at 137-B,
KPV Complex,
Pandalgudi Road,
Aruppukottai,
Virudhunagar District.

...Respondents/
Respondents

For Appellants	: Mr.H.Arumugam
For R2	: Mr.S.Srinivasa Raghavan
For R4	: Mr.I.Robert Chandra Kumar
For R1 & R3	: No appearance



C.M.A.(MD)Nos.1173 to 1175 of 2012, 443 and 1136 of 2016

Prayer in C.M.A.(MD)No.443 of 2016 : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order passed in M.C.O.P.No.13 of 2011 dated 27.08.2015 on the file of the Motor Accidents Claims Tribunal (Sub Court), Kovilpatti by allowing this appeal.

C.M.A.(MD)No.1136 of 2016

United India Insurance Co. Ltd.,
represented by its Branch Manager,
Branch Office:
137-B, KPV Complex,
Panthalgudi Road,
Aruppukottai,
Virudhunagar District.

...Appellant/
4th Respondent

Vs.

1. V.Maheswari
2. Minor V.M.Amirthavarshini
3. Minor V.M.Vijay Mari Eswar
4. D.P.S.Palani
5. P.Premadevi
6. S.Narayanan
7. Royal Sundaram Alliance Insurance Co. Ltd.,
represented by its Legal Manager,
Branch Office: TVS Co-operative Stores Building,
Door No.37, KrishnaravTank Street,
Madurai 625 001.

...Petitioners



C.M.A.(MD)Nos.1173 to 1175 of 2012, 443 and 1136 of 2016

8. G.Ravi

...Respondents/
Respondents 1to3

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(Minor Respondents 2 and 3 are represented by their mother and next friend 1st Respondent)

For Appellant	: Mr.I.Robert Chandra Kumar
For R1 to R5	: Mr.H.Arumugam
For R7	: Mr.S.Srinivasa Raghavan
For R6 & R8	: No appearance

Prayer in C.M.A.(MD)No.1136 of 2016 : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 27.08.2015 passed in M.C.O.P.No.13 of 2011 on the file of the Motor Accidents Claims Tribunal (Sub Court), Kovilpatti.

COMMON JUDGMENT

The Civil Miscellaneous Appeals in C.M.A.(MD)Nos.1173, 1174 and 1175 of 2012 are directed against the common award passed in M.C.O.P.Nos.33, 34 and 35 of 2010 dated 10.03.2011 on the file of the Motor Accident Claims Tribunal/Additional District Court (Fast Track Court), Virudhunagar.



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2. The Civil Miscellaneous Appeals in C.M.A.(MD)Nos.443 and 1136 of 2016 are directed against the award passed in M.C.O.P.No.13 of 2011 dated 27.08.2015 on the file of the Motor Accident Claims Tribunal/ Subordinate Court, Kovilpatti.

For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Tribunal.

3. The case of the claimants is that on 17.07.2009 at about 18.45 hours, auditor Venkata Subramanian along with power plant supervisor in Sri Parameswari Spinning Mills (P) Ltd., Poolraj and his wife Gomathi were travelling in a Mahindra Bolero car bearing Registration No.TN-67-E-6691 driven by one Krishnan, that when the car was proceeding in Aruppukottai - Ettayapuram NH 45B road and at the place near Rajapatti Villakku, a eicher lorry bearing Registration No.TN-72-AB-5694, which was proceeding in front of the Bolero car, suddenly stopped by its driver and as a result of which, the car was forced to hit behind the lorry, that the said Venkata Subramanian sustained serious head injuries and died on the spot, that the car driver Krishnan suffered serious injuries and



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subsequently, succumbed to the injuries at the hospital, that the said Poolraj and his wife Gomathi have suffered serious injuries and that the accident was occurred only due to the rash and negligent driving of the lorry driver.

4. The injured Poolraj and his wife Gomathi have filed the claim petitions in M.C.O.P.Nos.33 and 34 of 2010 (old M.C.O.P.Nos.152 and 153 of 2009) and the wife and children of the deceased driver Krishnan have filed a claim petition in M.C.O.P.No.35 of 2010 (old M.C.O.P.No. 154 of 2009) and the same were pending on the file of the Motor Accident Claims Tribunal/Additional District Court (Fast Track Court), Virudhunagar. The wife, parents and children of the deceased Venkata Subramanian have filed a claim petition in M.C.O.P.No.13 of 2011 and the same was pending on the file of the Motor Accident Claims Tribunal/Subordinate Court, Kovilpatti.

5. It is pertinent to note that the accident and the involvement of the lorry bearing Registration No.TN-72-AB-5694 and the Bolero car bearing Registration No.TN-67-E-6691 are not disputed.



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6. In all the claim petitions, the claimants have added the owner and insurer of the lorry as the respondents 1 and 2 respectively and the owner and insurer of the Bolero car as the respondents 3 and 4 respectively.

7. The defence of the second respondent is that there was no rashness and negligence on the part of the first respondent's vehicle driver, that the accident was occurred only due to the negligence of the car driver as he drove the car carelessly and negligently and dashed against the first respondent's vehicle and that therefore, the second respondent is not liable for the claim.

8. The defence of the fourth respondent is that the claimants have themselves clearly admitted that the entire accident was occurred only due to the carelessness and negligence of the first respondent's vehicle driver and as such, the respondents 1 and 2 alone are responsible and that therefore, the fourth respondent is not liable for the claim.

9. The second respondent, by filing additional counter statement, has raised an additional defence that the first respondent's lorry was not



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insured with the second respondent on the date of accident i.e., on 17.07.2009, that the second respondent has originally given a policy for the period from 04.04.2009 to 03.04.2010, that the first respondent has issued a cheque for Rs.20,569/- towards premium and promised to honor the same, that when the cheque was presented for collection, the same was returned for want of sufficient funds in the bank account of the first respondent, that the second respondent has then cancelled the policy as the same is ab-intio void for lack of consideration and that in the absence of any contract, the second respondent is not liable to indemnify the owner of the vehicle.

10. In the common enquiry conducted with respect to M.C.O.P.Nos. 33 to 35 of 2010, the claimants have examined 4 witnesses as P.W.1 to P.W.4 and exhibited 22 documents as Ex.P.1 to Ex.P.22. The respondents 1 and 3-owners of both the vehicles had remained *ex parte*. The second respondent has examined its Legal Administrator and Senior Legal Administrator as R.W.1 and R.W.2 respectively and exhibited 9 documents as Ex.R.1 to Ex.R.9.



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11. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned common order dated 10.03.2011, by holding that the accident was occurred only due to the rash and negligent driving of the lorry driver and that the cancellation of insurance policy was not properly done and the same was not informed to the owner of the vehicle and the Government authorities, mulcted liability on the second respondent and directed the respondents 1 and 2 to pay the compensation to the claimants. Aggrieved by the impugned common award mulcting entire liability on the second respondent, the second respondent has preferred three appeals in C.M.A.(MD)Nos.1173, 1174 and 1175 of 2012.

12. In the claim petition filed by the wife, parents and children of the deceased Venkata Subramanian, the claimants have examined the first claimant Maheswari as P.W.1 and one other witness as P.W.2 and exhibited 30 documents as Ex.P.1 to Ex.P.30. The respondents 1 and 3-owners of both the vehicles had remained *ex parte*. The second respondent has examined 2 witnesses as R.W.1 and R.W.2 and exhibited 10 documents as Ex.R.1 to Ex.R.10.



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13. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 27.08.2015, by holding that the drivers of both the lorry and car were responsible for the accident and fixed the negligence at 50% each and that since the insurance policy was cancelled due to its dishonor of cheque, mulcted 50% liability on the owner of the vehicle i.e., first respondent and thereby directed the respondents 1 and 4 to pay 50% each to the claimants. Challenging the liability mulcted on the fourth respondent, the fourth respondent has preferred an appeal in C.M.A.(MD)No.1136 of 2016 and whereas, the claimants, not satisfied with the quantum of compensation, have preferred an appeal in C.M.A.(MD)No.443 of 2016 claiming enhancement of the compensation.

14. It is pertinent to note that in C.M.A.(MD)Nos.1173 to 1175 of 2022, the second respondent i.e., Royal Sundaram Alliance Insurance Company has not challenged the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the first respondent's lorry driver. Since the second respondent has not challenged the negligence aspect, the finding of the Tribunal on negligence aspect has become final.



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15. In C.M.A.(MD)No.1136 of 2016, the fourth respondent i.e., United India Insurance Company has challenged the fixing of 50% negligence on the driver of the car and the consequent liability mulcted on it. To put it in other way, the main challenge in C.M.A.(MD)No.1136 of 2016 filed by United India Insurance Company is the apportionment of liability and negligence in equal proportion between the two vehicles involved in the accident.

16. No doubt, the second respondent was exonerated from the liability. As already pointed out, since the second respondent has not challenged the finding of the Tribunal with regard to the negligence and as such, the said finding has attained finality, the appeal filed by the fourth respondent challenging the finding of the Tribunal in C.M.A.(MD)No. 1136 of 2016 fixing negligence at 50% on the car driver is liable to be set aside and consequently, the entire negligence has to be fixed on the first respondent's lorry driver.

17. The second respondent, in an attempt to prove their defence that they are not liable as the insurance policy was not in force on the date of



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accident, has examined their officials as R.W.1 and R.W.2 and produced the documents such as cheque, copy of policy, written memo, receipt for premium paid, letter of the insurer and acknowledgment cards under Ex.R.1 to Ex.R.9. The main contention of the second respondent is that the cheque issued by the first respondent towards payment of premium was dishonored for want of sufficient funds in the bank account of the first respondent, that after dishonor, the insurance policy was cancelled, that the information about the cancellation of policy was sent to the first respondent and the same was also intimated to the concerned Regional Transport Office (RTO) and that since the insurance policy was cancelled and the same was not in force on the date of accident, the second respondent cannot be made liable.

18. It is pertinent to note that in the claim petitions in M.C.O.P.Nos. 33 to 35 of 2010, the Tribunal, considering the evidence available on record, has come to a decision that the cancellation was not properly done, that the cancellation was not informed to the owner and the Government authorities and that therefore, the second respondent is liable for the claim. But on the other hand, in the claim petition in M.C.O.P.No.13 of 2011, the



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learned trial Judge has given a finding that since the premium for the policy was not paid and the cheque issued towards premium was dishonored, the insurance policy already issued came to be cancelled and the same was informed to the first respondent and transport authorities and that therefore, since the first respondent's lorry was not possessing valid insurance coverage on the date of accident, the second respondent cannot be made liable.

19. The Tribunal, in the common order passed in M.C.O.P.Nos.33 to 35 of 2010, has referred the evidence of R.W.1 and R.W.2 and the relevant portions are extracted hereunder also for better appreciation;

R.W.1 in his cross-examination would say

□.... கூடுதல் எதிர் உரையில் கூறப்பட்டுள்ள விசயங்கள் சரி. அதில் வேறு ஒரு வாகனத்தின் விபரம் பாலிசி பற்றிய விபரம் குறிப்பிடப்பட்டுள்ளது. இன்னொரு வாகனம் பற்றி விபரத்தினை கூடுதல் எதிர் உரையில் கூறியிருப்பது தவறு என்று திருத்தம் செய்ய மனு தாக்கல் செய்யவில்லை. கூடுதல் எதிர் உரையில் 2வதாக 07.04.2009ல் அதே பிரிமீயம் தொகைக்கு காசோலை கொடுத்துள்ளார். அது வேறு ஒரு வண்டிக்கு உண்டானது ஆகும். அந்த வண்டிக்குரிய பாலிசி தாக்கல் செய்யவில்லை. 07.04.2009ல் 2வது கொடுக்கப்பட்ட காசோலை திருப்பப்பட்டதற்காக 1ஆம் எதிர்மனுதாரருக்கு அறிவிப்பு



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செய்து இருந்தும் அதனை தாக்கல் செய்யவில்லை பாலிசி ஒரு வாகனத்தில் காப்பீடு செய்தால் அந்த காப்பீடு ரத்து செய்வதற்கு சில விதிமுறைகள் உள்ளது. அந்த விதிமுறைகள் படி காப்பீடு செய்வதற்கு அறிவிப்பு அனுப்பிய பின் காப்பீடு ரத்து செய்ய வேண்டும். அறிவிப்பு செய்த நகல் தாக்கல் செய்யப்படவில்லை. எ.ம.சா.ஆ.5. அறிவிப்பு கடிதத்தை எ.ம.சா.ஆ.6ன் படி வேறு ஒரு நபர் சம்மந்தப்பட்டிருக்கிறார். 1ஆம் எதிர்மனுதாரர் கையொப்பம் பெறவில்லை என்றால் சரி. குறிப்பிட்ட காலத்தில் வட்டார போக்குவரத்து அலுவலகத்திற்கும் 1ஆம் எதிர்மனுதாரருக்கும் அறிவிப்பு அனுப்பியதற்கான அஞ்சல் ரசீது தாக்கல் செய்யவில்லை. இன்கூரன்ஸ் பாலிசியை ரத்து செய்ய வேண்டும் என்றால் காவல் துறைக்கு அறிவிப்பு அனுப்ப வேண்டும் என்றால் தெரியாது. காவல்துறையினருக்கு அறிவிப்பு அனுப்பவில்லை.□

R.W.2 in his evidence would say

“மோட்டார் வாகன சட்டப்படி காவல்துறையினருக்கு அறிவிப்பு அனுப்பப்படவில்லை. வட்டார போக்குவரத்து அலுவலருக்கு பதிவு தபால் அனுப்பியுள்ளேன். பதிவு தபால் அனுப்பியதற்கு ரிக்கார்டு இல்லை.□

20. In the case of ***New India Assurance Co. Ltd. Vs. Rula and others***, reported in ***AIR 2000 SCC 1082***, the Hon'ble Apex Court has held as follows:-



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“13.This decision, which is a 3-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the Insurance Policy in the instant case on the ground that the cheque through which premium was paid was dishonored, would not affect the rights of the third party which had accrued on the issuance of the Policy on the date on which the accident took place. If, on the date of accident, there was a Policy of Insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of Insurance Policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party.”

21. In *New India Assurance Company Limited Vs. Azhagusumathi and others* reported in 2015 (1) TN MAC 179 (DB), the Hon'ble Division Bench of this Court has observed as follows;

“14.....Therefore, the Appellant having intimated the notice of cancellation by Registered Post to the Owner and the RTO, the service of Notice of cancellation can be treated as sufficient and the Insurance Company can take advantage



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that it has duly intimated to the Owner of the offending vehicle and the Authorities concerned regarding cancellation of Policy due to the dishonour of Cheque. Hence, the Insurer cannot be held liable to indemnify the Owner and it is absolved from liability. The reasoning given and the finding recorded by the Tribunal in this regard is erroneous. Both the questions are answered accordingly. However, the claim of Third Party cannot be defeated for the self-created predicament of the Insurer in issuing the Policy without actually receiving the premium. Hence, the Insurance Company shall pay the Compensation to the Claimants which it may realise from the Owner of the offending vehicle.”

22. The Hon'ble Supreme Court in ***United India Insurance Co. Ltd. Vs. Laxamma and others*** reported in **2012 (1) TN MAC 481 (SC)** has summarized the legal position,

“19. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of sections 147(5) and 149(1) of the Motor Vehicles Act unless the policy



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of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify third parties which that policy covered ceased and the insurance company is not liable to satisfy awards of compensation in respect thereof.”

23. Considering the above, the position of law is well settled that the insurer, in order to absolve from the liability, has to prove that they have sent the mandatory notice to the owner and the driver of the offending vehicle, informing about the dishonor of the cheque and the consequent cancellation of the insurance policy and that they are also duty bound to inform the concerned Regional Transport Office (RTO) with regard to the cancellation of the insurance policy.

24. In the case on hand also, all the claimants are third parties to the contract of insurance existed between the owner and the insurer. Section



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64-VB of the Motor Vehicles Act contemplates that no insurer shall assume any risk in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. Sub Section 2 of the said Section has stated that in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer. Despite specific provisions in this regard, this Court is at loss to understand as to why the insurance companies have been issuing the policies itself without receiving the premium amount, but on the receipt of the cheques.

25. The learned counsel appearing for the second respondent would submit that the Insurance Regulatory and Development Authority (Manner of Receipt of Premium) Regulations, 2002 came to be issued vide notification dated 16.10.2002, which came into force on 17.10.2002 and produced the copy of the notification, whereunder, they have approved the



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payment of premium in any one or more of the following manners;

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- a) cash;
- b) any recognized banking negotiable instrument such as cheques, including demand drafts, pay orders, banker's cheques drawn on any scheduled bank in India;
- c) postal money orders;
- d) credit or debit cards held in his name;
- e) bank guarantee or cash deposit;
- f) internet;
- g) e-transfer
- h) direct credits via standing instructions or proposer or the policyholder or the life insured through bank transfer; and
- i) any other method of payment as may be approved by the authority from time to time.

26. No doubt, Regulation 4 of the said notification has stated that in all cases of risks covered by the policies issued by an insurer, the attachment of risk to an insurer will be in consonance with the terms of Section 64VB of the Act and except in the cases where the premium has



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been paid in cash, in all other cases the insurer shall be on risk only after the receipt of the premium by the insurer.

27. When the insurance companies were permitted as earlier as from 17.10.2002 to receive the premium by internet transfer or e-transfer or through credit or debit cards, this Court is at loss to understand as to why the insurance companies are not insisting the owners of the vehicles to follow any one of the above modes of payment and are still receiving the cheques towards premium. As rightly contended by the learned counsel appearing on either side, the said notification is still kept in dark. In fact, many of us do not aware of such notification till now, including the panel lawyers of the insurance companies. It is high time for the Insurance Regulatory and Development Authority (IRDA) and for the insurance companies to highlight the said notification dated 16.10.2002 and create awareness among the general public and encourage them to adopt the said modes of payment. Nowadays, the petty shops in the remote areas are displaying QR code enabling the public to pay the amount through that mode.



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28. When the insurance policy was issued on the receipt of cheque and the same was subsequently dishonored, the Law Enforcement Agencies such as police authorities and transport authorities cannot prevent or restrain those vehicles from plying in the road when the insurance policy already issued was shown to them and at that time, they cannot be expected to verify as to whether the policy was cancelled or the policy was in force on that date. By issuing the insurance policy, without receiving the payment, the insurers are indirectly allowing the vehicles to ply in the road without valid insurance, in case where the policy was cancelled subsequently due to the dishonor of the cheque, etc., More importantly, the above dispute can only be considered as a dispute interse between the owner and the insurer, but that dispute cannot be allowed to defeat the claim of a third party, who is no way connected with that dispute.

29. In the case on hand, as already pointed out, even according to the second respondent, they have issued the insurance policy for the period between 04.04.2009 and 03.04.2010 on the receipt of the cheque. As already pointed out, the Tribunal has rightly observed that the second



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respondent has not complied with the mandatory requirements with regard to the cancellation and sending of notice to the owner and the other authorities. Considering the above, this Court is of the clear view that it is a fit case to apply the doctrine of pay and recover and accordingly, is adopted.

30. Now turning to the appeal filed by the claimants in M.C.O.P.No. 13 of 2011, it is the specific case of the claimants that the deceased Venkata Subramanian, who was holding M.Com. and M.F.M., was practising as a company secretary and doing corporate services to companies and authorised to issue compliance certificate to the corporate companies under Section 383-1(A) of the Companies Act, that he was doing such services in and around South Tamil Nadu for around 200 companies, that he was earning Rs.75,000/- per month and after excluding the expenses for all the office staff salaries and maintenance, he was getting Rs.45,000/- per month, that the deceased Venkata Subramanian being a member of Hindu undivided family was getting Rs.15,000/- per annum, that he was also owning agricultural lands and was getting Rs.35,000/- per annum and that he was aged 38 years at the time of



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accident.

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31. Admittedly, the first claimant is the wife, the claimants 2 and 3 are the children and the claimants 4 and 5 are the parents of the deceased Venkata Subramanian.

32. The claimants, in order to prove the avocation and the income, have produced certificates issued by the Institute of Company Secretary of India, the letters sent by various companies to the deceased Venkata Subramanian, the letters showing payments made by the companies to the deceased Venkata Subramanian and the bank passbooks under Ex.P.21 to Ex.P.30. They have also produced the degree certificates and patta standing in the name of the deceased Venkata Subramanian in respect of the agricultural lands under Ex.P.10, Ex.P.11 and Ex.P.13 to Ex.P.16. The claimants, by alleging that the deceased Venkata Subramanian was a Income Tax assessee, have also produced the Income Tax Returns for the assessment years 2008-2009 and 2009-2010 under Ex.P.9 and Ex.P.12 respectively.

33. The Tribunal, by observing that Ex.P.12 was filed subsequent to



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the death of the said Venkata Subramanian, has relied on Ex.P.9-Income Tax Return for the assessment year 2008-2009 and fixed the monthly income at Rs.12,694/-. The Tribunal, by relying on the judgment of this Court in ***United India Insurance Co. Ltd., Vs. P.Girija*** reported in ***2014 (1) TN MAC 576***, has held that Income Tax Return filed subsequent to the death of the assessee cannot be considered.

34. The learned counsel appearing for the claimants would submit that in the said judgment, the income shown in the Income Tax Return was not substantiated by any documents like ledger, account books, etc., but in the present case, the claimants have produced Ex.P.23 to Ex.P.26 i.e., payments made by the companies in favour of the deceased Venkata Subramanian and copy of savings bank passbook under Ex.P.27 to Ex.P.30 and that the above documents would go to prove the income of the deceased Venkata Subramanian during the relevant period.

35. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***Anjali and others Vs. Lokendra Rathod and others*** reported in ***2022 LiveLaw (SC) 1012***,



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“9. The Tribunal and the High Court both committed grave error while estimating the deceased’s income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009- 2010) of the deceased, which reflects the deceased’s annual income to be Rs.1,18,261/-, approx. Rs.9,855/- per month. This Court in Malarvizhi & Ors. (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (Supra), this Court has laid as under:

“10. ...We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased.”

Hence, this Court is of the opinion that the deceased’s annual income be fixed at Rs.1,18,261/-, approx. Rs.9,855/- per month keeping in mind the deceased’s Income Tax Return for the year 2009-2010.

36. No doubt, as rightly contended by the learned counsel appearing



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for the claimants, the Income Tax Return filed subsequent to the death of the assessee cannot be rejected outrightly, but the Court has to see as to whether the documents to corroborate the income shown in the Income Tax Return are produced and in case of such production of supporting documents, the Court can very well rely on the said Income Tax Return. In the present case, according to the claimants, the deceased Venkata Subramanian had received all his payments through cheque only from the companies for which he had performed his professional work and the same were credited in his bank account, that generally Company Secretaryship Returns would be filed in respect of the previous financial year for the current assessment year and as such, the income for the deceased Venkata Subramanian from his profession shall be for the returns filed for the companies in respect of the previous financial year and that therefore, the income of the deceased Venkata Subramanian must be in respect of the work done by filing the return for the previous year.

37. No doubt, the claimants have produced the savings bank passbooks under Ex.P.27 to Ex.P.30 to prove the income of the deceased through the payments made by various companies. In Ex.P.9-Income Tax



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Return for the period 2008-2009, gross total income of the deceased Venkata Subramanian is shown as Rs.1,52,330/- and whereas in Ex.P.12- Income Tax Return for the period 2009-2010, gross total income is at Rs.4,01,749/-. As rightly pointed out by the learned counsel appearing for the second respondent, the difference in gross total income between two successive assessment years is more than 250%. In view of the high difference in the gross total income, it is for the claimants to prove that the deceased Venkata Subramanian had received the income to the tune of Rs.4,01,749/- during the relevant year.

38. No doubt, as rightly pointed out by the learned counsel appearing for the claimants, many payments were credited into the bank account of the deceased Venkata Subramanian. It is evident from Ex.P.27 to Ex.P.30 that for the period between April 2007 and March 2008, the deceased Venkata Subramanian has received more than Rs.5,00,000/- and that for the period between April 2008 and March 2009, he has received more than Rs.11,00,000/-. Considering the above, the total income shown at Rs.4,01,749/- cannot be found fault with.



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39. The learned counsel appearing for the claimants would submit that the Tribunal has taken the net income under Ex.P.9-Income Tax Return for calculating the loss of income and the same is not proper in view of the judgment of the Hon'ble Supreme Court in ***Kalpanaraj and others Vs. Tamil Nadu State Transport Corporation*** reported in **(2015) 2 SCC 764**. In the said judgment, the Hon'ble Supreme Court has specifically observed that in the light of the principle of law laid down by this Court in ***National Insurance Co. Ltd. Vs. Indira Srivastava*** reported in **(2008) 2 SCC 763**, they were of the opinion that the High Court erred in making deductions under various heads to arrive at the net income instead of ascertaining the gross income of the deceased out of the annual income earned from his occupation mentioned in the income tax return submitted for the relevant financial year 1994-1995. Considering the above, this Court has no hesitation to hold that the gross income alone has to be taken into account.

40. The learned counsel appearing for the claimants would further submit that the Tribunal has erroneously deducted 20% of the tax from the total annual income and is very much against the provisions of Income Tax



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Act and relied on the judgment of the Hon'ble Supreme Court in ***Shashikala and others Vs. Gangalakshamma and another*** reported in ***(2015) 9 SCC 150***. In that decision, the Hon'ble Supreme Court has held that 10% of the income of the deceased has to be deducted towards income tax. As rightly pointed out by the learned counsel appearing for the claimants, the Division Bench of this Court, in ***the Divisional Manager, the Oriental Insurance Company Limited Vs. Ezhilarasi @ Maheswari and others (C.M.A.No.2265 of 2016 dated 22.03.2017)*** and in ***R.Rajan Vs. G.Rajkumar and another (C.M.A.No.1012 of 2017 dated 20.03.2017)***, have calculated the income tax by deducting the amount exempted under Section 80C of the Income Tax Act and also given statutory exemption for the first Rs.1,80,000/-. As already pointed out, as per Ex.P.12, the gross income of the deceased Venkata Subramanian is shown as Rs.4,01,749/- and the monthly income would come to Rs.33,479/- (Rs.4,01,749 / 12).

41. As rightly pointed out by the learned counsel appearing for the respondents 2 and 4, the Tribunal has added 50% of the income towards future prospects. The Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017 (2) TN***



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MAC 609 (SC), has concluded that if the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant, where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. Applying the above decision of the Hon'ble Apex Court, 40% of the income is to be added towards future prospects and after such addition, the monthly income would come to Rs.46,870/- (Rs.33,479/- + Rs.13,391/- (40% of the income)). For the purpose of calculating the income tax, the annual income would come to Rs.5,62,440/- (Rs.46,870/- x 12) and after deducting Rs.1,00,000/- under Section 80C of the Act, the same would come to Rs.4,62,440/- and after giving exemption of Rs.1,80,000/-, taxable income would come to Rs.2,82,440/-. As rightly contended by the learned counsel appearing for the claimants, the said income would attract 10% of the tax and as such, the same would come to Rs.28,244/-, which is equivalent to Rs.2,354/- for month. After deducting the said amount of Rs.2,354/-, the total monthly income would come to Rs.44,516/- (Rs.46,870/- - Rs.2,354/-)



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42. The learned counsel appearing for the claimants would submit that the Tribunal has erroneously deducted 1/3rd of the income towards personal expenses. As per the judgment of the Hon'ble Supreme Court in ***Sarla Varma and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***, considering the number of the claimants, 1/4th of the income is to be deducted for personal and living expenses and after such deduction, the monthly income would come to Rs.33,387/-. The Tribunal, considering the records available on record, has rightly fixed the age of the deceased at 39 years at the time of accident. As per the dictum laid down in ***Sarla Varma's case***, the Tribunal has rightly applied the multiplier 15. Hence, the loss of dependency would be Rs.60,09,660/- (Rs.33,387/- x 12 x 15).

43. The Tribunal has awarded Rs.1,00,000/- towards spousal consortium, Rs.1,50,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards transport expenses and Rs.2,000/- towards loss of dress and articles. Our Hon'ble Supreme Court in ***Pranay Sethi's case*** has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, the Hon'ble Supreme Court in



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Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru

Ram and others reported in ***(2018) 18 SCC 130***, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. The Hon'ble Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, the Hon'ble Apex Court in ***The New India Assurance Company Ltd. Vs. Smt.Somwati and others***, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in ***Pranay Sethi's*** case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

44. The first claimant being the wife, the claimants 2 and 3 being the children and the claimants 4 and 5 being the parents of the deceased are certainly entitled to get Rs.40,000/- each towards loss of consortium.



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The claimants are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads. Considering the above, the claimants are entitled to get total compensation of Rs.62,39,660/- (Rupees Sixty Two Lakhs Thirty Nine Thousand Six Hundred and Sixty only).

45. Since this Court has decided to award more compensation than the amount claimed, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Surekha and others vs. Santosh and others (C.A.No. 476 of 2020 dated 21.01.2020)*** wherein, the Hon'ble Apex Court has held as follows:-

“2. This appeal takes exception to the judgment and order dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.

3. By now, it is well-settled that in the matter of



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insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants.”

47. Considering the other facts and circumstances of the case, this Court further decides that all the parties are to be directed to bear their own costs.

48. In the result,

(i) the Civil Miscellaneous Appeals in C.M.A.(MD)Nos.1173 to 1175 of 2012 are partly allowed and the order of the Tribunal in M.C.O.P.Nos.33 to 35 of 2010 directing the appellant-Royal Sundaram Alliance Insurance Company to pay the compensation on behalf of the second respondent-owner of the lorry is set aside. The appellant-Royal Sundaram Alliance Insurance Company is directed to deposit the compensation amount together with interest at 7.5% per annum and costs to the credit of M.C.O.P.Nos.33 to 35 of 2010 on the file of the Motor Accident Claims Tribunal/Additional District Court (Fast Track Court), Virudhunagar, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment.



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Thereafter, the appellant-Royal Sundaram Alliance Insurance Company is permitted to recover the same from the owner of the lorry as per law. On such deposit, the claimants are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs, on due application before the Tribunal;

(ii) the Civil Miscellaneous Appeal in C.M.A.(MD)No.1136 of 2016 is allowed and the order of the Tribunal in M.C.O.P.No.13 of 2011 mulcting liability on the appellant-United India Insurance Company is set aside. The appellant-United India Insurance Company is permitted to withdraw the amount, if any amount already deposited. In case, the respondents 1 to 5-claimants have already withdrawn any amount deposited by the appellant-United India Insurance Company, the appellant-United India Insurance Company is permitted to recover the same from the seventh respondent-Royal Sundaram Alliance Insurance Company as per law;

(iii) the Civil Miscellaneous Appeal in C.M.A.(MD)No.443 of 2016 is allowed and the compensation awarded by the Tribunal at



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Rs.21,15,000/- (Rupees Twenty One Lakhs and Fifteen Thousand only) is hereby enhanced to **Rs.62,39,660/- (Rupees Sixty Two Lakhs Thirty Nine Thousand Six Hundred and Sixty only)** together with interest at 7.5% per annum. The second respondent-Royal Sundaram Alliance Insurance Company is directed to deposit the modified enhanced amount together with interest at 7.5% per annum and costs to the credit of M.C.O.P.No.13 of 2011 on the file of the Motor Accident Claims Tribunal/ Subordinate Court, Kovilpatti, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. Thereafter, the second respondent-Royal Sundaram Alliance Insurance Company is permitted to recover the same from the first respondent-owner of the lorry as per law. On such deposit, the first appellant is entitled to get **Rs.20,00,000/- (Rupees Twenty Lakhs only)**, the second appellant is entitled to get **Rs.12,39,660/- (Rupees Twelve Lakhs Thirty Nine Thousand Six Hundred and Sixty only)**, the third appellant is entitled to get **Rs.15,00,000/- (Rupees Fifteen Lakhs only)**, the fourth appellant is entitled to get **Rs.5,00,000/- (Rupees Five Lakhs only)** and the fifth appellant is entitled to get **Rs.10,00,000/- (Rupees Ten Lakhs only)**. Accordingly, the appellants 1, 2, 4 and 5 are



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permitted to withdraw their shares along with interest and costs and the share of the minor third appellant shall be deposited in any one of the Nationalised Banks till he attain majority. The first appellant, who is the mother of the minor third appellant is permitted to withdraw the interest of minor once in three months directly from the Bank.

(iv) Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

(v) The appellants in C.M.A.(MD)No.443 of 2016 is **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

29.09.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Motor Accident Claims Tribunal /
Additional District Court (Fast Track Court),
Virudhunagar.
2. The Motor Accident Claims Tribunal /



C.M.A.(MD)Nos.1173 to 1175 of 2012, 443 and 1136 of 2016

Subordinate Court, Kovilpatti.

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3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Judgment made in
C.M.A.(MD)Nos.1173, 1174 and 1175 of 2012,
443 of 2016 and 1136 of 2016
and C.M.P.(MD)Nos.10214 of 2016 and 10075 of 2017

Dated : 29.09.2023