



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

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C.M.A. (MD) No.1464 of 2016andC.M.P (MD) No.12250 of 2016

Royal Sundaram Alliance Insurance
Company Limited, Sundharam Towers
45, 46, Whites Road,
Chennai (North Division),
Chennai.
represented by its
Branch Manager

... Appellant/
2nd Respondent

Vs.

1.Vasanthapurani
2.Minor Gitanjali
3.Minor Rakesh

**(Minor Respondents 2 and 3 are represented by
their mother and guardian, the first respondent
herein.)**

4.Perumal
5.Papathi

... Respondents 1 to 5/
Claimants

6.P.Natrajan

... 6th Respondent/
1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decretal order dated 11.11.2013 made in M.C.O.P.No.825 of 2010, by the Motor Accident Claims Tribunal - cum - Additional District and Sessions Court, Dindigul.

For Appellant

: Mr.M.Jerin Mathew
for Mr.M.E.Ilango

JUDGMENT

Compliance of principles of natural justice is necessary and it is a basic principle. Whether non-issuance of notice before enhancing the compensation to the opposite side, is necessary? Certainly, not. Only when non-compliance of principles of natural justice causes prejudice or violates the rights of the opposite party, the entire proceedings are vitiated. Whereas when the



opposite party is going to be benefitted by an order, there is no necessity to issue notice to the said party.

2. To put it otherwise, benefit could be given even *exparte* in the absence of the opposite party in the proceedings, especially, in claims regarding the Motor Vehicles Act, 1988, when the proceedings are brought before this Court by Insurance Companies/Transport Corporation. Similarly, while dismissing the appeal filed by the Insurance Companies/Transport Corporation, etc., this Court has got power and jurisdiction to enhance the compensation by reappreciating the evidence on record when the Tribunal did not award just compensation to the victims of the road traffic accidents.

3. Here is one such case, wherein the appellant-Insurance Company is aggrieved over fixing the liability on the appellant-Insurance Company and awarding of Rs.7,13,000/- (Rupees Seven Lakhs and Thirteen Thousand only) for the death of one Vellaichamy, aged about 31 years, an L.I.C. Agent, allegedly earning about Rs.20,000/- (Rupees Twenty Thousand only), in the accident occurred on 13.07.2010, when he was riding his two wheeler which was allegedly hit behind by Eicher Van owned by the sixth respondent and insured with the appellant-Insurance Company.

4. The case of the appellant-Insurance Company is that the accident was a 'Hit and Run' case and subsequently, the insured vehicle was roped in only for the purpose of insurance claim. That was the contention made in the counter statement. However, the Tribunal based on the evidence of P.W.2 - eyewitness, fixed the negligence on the driver of Eicher Van and awarded Rs.7,13,000/- (Rupees Seven Lakhs and Thirteen Thousand only) to be paid by the appellant-Insurance Company.

5. Mr.M.Jerin Mathew, learned Counsel representing Mr.M.E.Ilango, Counsel for the appellant-Insurance Company would submit that (i) the vehicle was not involved in the accident; (ii) it was a 'Hit and Run' case; (iii) only for the purpose of insurance claim, subsequently, the vehicle was deliberately included; (iv) there is no mention about the Registration Number of the vehicle either in the complaint or in the evidence adduced by P.W.2 - eyewitness; (v) the Tribunal failed to give any finding with regard to the negligence in respect of the specific plea made by the appellant-Insurance Company and (vi) there is nothing in the evidence to show that the vehicle was involved in the accident. He would further submit that in the absence of a finding by the Tribunal with regard to the negligence, the matter at least, be remanded to the Tribunal for fresh disposal.

<https://hcservices.courts.gov.in/hcservices/> 6. This Court heard the learned Counsel for the appellant-Insurance Company at length and perused the records very meticulously.



7. However, this Court is not inclined to appreciate any of the contentions made by the learned Counsel for the appellant-Insurance Company.

8. The accident occurred on 13.07.2010 and the deceased was taken to the hospital, where he was declared dead. It is the specific case of the respondents 1 to 5/claimants that Eicher Van was involved in the accident and P.W.2 who witnessed the accident and who was travelling behind the deceased in another two wheeler, categorically stated that Eicher Van overtook him and dashed behind the two wheeler in which the deceased was travelling. Therefore, it is clear that Eicher Van was involved in the accident as there was no rebuttal evidence on the part of the appellant-Insurance Company.

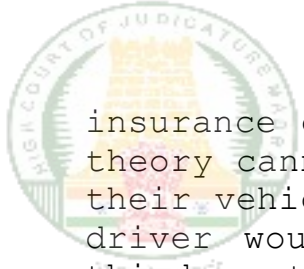
9. The learned Counsel for the appellant-Insurance Company would submit that there is no mention about the vehicle Registration Number in the F.I.R and it was recorded as a 'Hit and Run' case. No doubt, in the F.I.R, no vehicle Registration Number had been given. However, P.W.2 categorically stated that it is an Eicher Van which was involved in the accident. At the time of the accident, people would be rushing to the spot only to help the victims and mostly, nobody would be in a position to note down the vehicle Registration Number of the offending vehicle and everybody would be in a shock of mind and the first step would be only to rush to the hospital. When that is the position, non-mentioning of the vehicle Registration Number could not be a ground to come to the conclusion that Eicher Van was not involved in the accident. Further, after registration of the F.I.R, the driver himself surrendered before the police and he was remanded to the police custody as per Ex.P.2 - remand report.

10. If all the details have to be included in the F.I.R, in this country, no criminal case could be prosecuted and most of the cases would be registered against unknown persons only and therefore, the contention made by the learned Counsel for the appellant-Insurance Company is liable to be rejected. Further, even if the Registration Number of the vehicle is not given, the investigation could fix the vehicle.

11. It is to be noted that the accident occurred on 13.07.2010 and the driver of Eicher Van surrendered on coming to know about the police investigation on 16.07.2010 itself and in Ex.P.2 - remand report itself, the Vehicle Registration Number has been categorically incorporated. Therefore, the vehicle involved in the accident is only Eicher Van and has been rightly proved by the evidence of P.W.2 - eyewitness as well as Ex.P.2 - remand report.

<https://hcservices.ecourts.gov.in/hcservices/>

12. Another contention made by the learned Counsel for the appellant-Insurance Company is that only for the purpose of



insurance claim, that vehicle was subsequently included. Even that theory cannot be accepted for the reason that if the driver allows their vehicle to be used for the purpose of claiming insurance, no driver would come forward to get arrested for the sake of some third party who is not connected to him. In this case, as per Ex.P.2 - remand report, the driver of Eicher Van was arrested and he was remanded and therefore, the contention made by the learned Counsel for the appellant-Insurance Company is liable to be rejected.

13. No doubt, there is no finding given by the Tribunal with regard to the negligence. That would only go to show that the Tribunal had not applied its mind to give a finding regarding negligence.

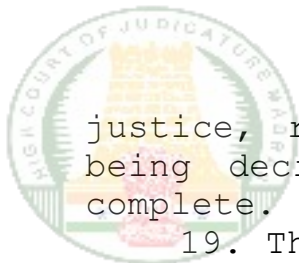
14. In any event, the omission made by the Tribunal would not enable the appellant-Insurance Company to take advantage either to get a favourable order or a remand order from this Court. The facts are before this Court including the evidence. As an appellate Court, this Court, even in the absence of any finding given by the Tribunal, can fill up the gap left by the Tribunal and give its finding based on the evidence on record. After all, the appeal is a continuation of the original proceedings. There is no prohibition for this Court to give a finding which was not reached by the Tribunal.

15. Order 41 Rule 33 of the Code of Civil Procedure clothes this Court with all the powers which the Tribunal enjoys and therefore, this Court gives a finding based on the available evidence produced by the appellant-Insurance Company that the vehicle involved in the accident is Eicher Van belonging to the sixth respondent and insured with the appellant-Insurance Company as proved by P.W.2 - eyewitness and Ex.P.2 - remand report.

16. Merely because, based on the omission/mistake made/error committed by the Tribunal, if this Court remands the matter to the Tribunal, it would be an injustice caused to the respondents 1 to 5/claimants, who are already suffering due to loss of the breadwinner of the family and that too, at the age of 31 years.

17. The respondents 2 and 3 are hardly aged 9 and 5 years respectively and the first respondent/wife is aged 27 years. It would only prolong the agony and pain and extend the sufferings of the respondents 1 to 5/claimants.

18. Therefore, it should be an endeavour of the Courts that as far as possible not to remand the matter, unless there is a lack of factual details which are required to be adduced. Otherwise, <https://hccservicescourts.gov.in/hccservices> It would not only avoid prolonging and pendency of the cases, but also to expedite the litigation to come to a finality. Therefore, in an endeavour to render a speedy



justice, remand should be avoided. In that way, this matter is being decided by this Court as the facts are very clear and complete.

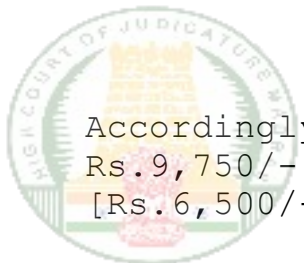
19. The appellant-Insurance Company has filed this appeal only with regard to the negligence aspect. However, this Court on perusing the award, finds that the compensation amount of Rs.7,13,000/- (Rupees Seven Lakhs and Thirteen Thousand only) awarded by the Tribunal is low.

20. Therefore, it is the bounden duty of this Court, especially, the matters arising out of the Motor Vehicles Act, 1988, have to be dealt with very sympathetically as well as liberally as a precious life was lost. In this case, the deceased was hardly 31 years and he was stated to be earning about Rs.20,000/- (Rupees Twenty Thousand only) per month as an L.I.C. Agent. Further, there was no evidence except the evidence of P.W.1 and the Tribunal determined the monthly income at Rs.4,500/- (Rupees Four Thousand and Five Hundred only) and deducted 1/4th amount towards personal expenses as the family consists of five persons and applied the multiplier '16' and arrived at a sum of Rs.6,48,000/- (Rupees Six Lakhs and Forty Eight Thousand only) towards loss of income. Further, the Tribunal awarded a sum of Rs.20,000/- (Rupees Twenty Thousand only) towards loss of consortium to the first respondent/wife; a sum of Rs.40,000/- (Rupees Forty Thousand only) towards loss of love and affection to the respondents 2 and 3/children; a sum of Rs.5,000/- (Rupees Five Thousand only) towards funeral expenses and a sum of Rs.5,000/- (Rupees Five Thousand only) towards loss of properties, totalling a sum of Rs.7,13,000/- (Rupees Seven Lakhs and Thirteen Thousand only).

21. The accident occurred on 13.07.2010 and it is very difficult to get a manual labour for Rs.4,500/- (Rupees Four Thousand and Five Hundred only) in 2010.

22. The Honourable Supreme Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.** reported in **2014 (1) TNMAC 459 (SC)**, determined the monthly income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month for a vegetable vendor, who sustained injury in the accident occurred on 14.07.2008. Whereas, in the case on hand, the accident occurred on 13.07.2010 and this Court is inclined to follow the monthly income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) even in the absence of any positive evidence regarding income.

23. No amount towards future prospects was added by the Tribunal as per the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54**. Therefore, 50% has to be added towards future prospects as the deceased was aged about 31 years.



Accordingly, the monthly income of the deceased would be Rs.9,750/- (Rupees Nine Thousand Seven Hundred and Fifty only) [Rs.6,500/- + Rs.3,250/-].

24. The family of the deceased contains five members and therefore, as per the judgment of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, 1/4th amount has to be deducted towards personal expenses of the deceased. After deducting 1/4th amount towards personal expenses of the deceased, the monthly income of the deceased would be Rs.7,312.50 (Rupees Seven Thousand Three Hundred and Twelve and Paise Fifty only) [Rs.9,750/- - 2,437.50].

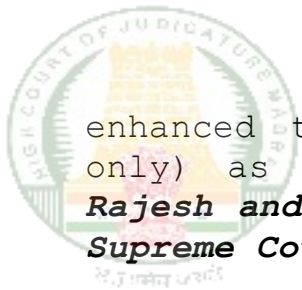
25. As per the judgment of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, the appropriate multiplier to be applied for the deceased aged 31 years, is 16 and accordingly, the loss of income would be **Rs.14,04,000/-** (Rupees Fourteen Lakhs and Four Thousand only) [Rs.7,312.50 X 12 X 16].

26. A sum of Rs.20,000/- (Rupees Twenty Thousand only) awarded to the first respondent/wife towards loss of consortium shocks the conscious of this Court. The first respondent/wife was hardly aged 27 years at the time of loss of her husband, which is painful and that too, at the young age of 27 years and it would cause physical and psychological pain throughout her life and she lost her companionship and therefore, she has to be compensated appropriately. In view of the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54**, a sum of **Rs.1,50,000/-** (Rupees One Lakh and Fifty Thousand only) is awarded towards loss of consortium to the first respondent/wife.

27. The respondents 2 and 3 were aged 9 years and 5 years respectively at the time of the accident. For proper grooming of a child, the mother's love and affection and the father's care and protection are necessary, important and vital and even loss of anyone would cause tremendous effect on the child. It is impossible to expect grooming a normal child without love and affection of a mother and care and guidance of a father throughout his/her life which cannot be estimated in terms of money. Therefore, this Court awards a sum of **Rs.1,00,000/-** (Rupees One Lakh only) **each** to the respondents 2 and 3/children, totalling a sum of Rs.2,00,000/- (Rupees Two Lakhs only).

28. A sum of **Rs.5,000/-** (Rupees Five Thousand only) awarded towards loss of properties is confirmed.

29. Further, a sum of Rs.5,000/- (Rupees Five Thousand only) awarded towards funeral expenses is very low and the same is



enhanced to a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) as per the judgment of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others** reported in **(2013) 9 Supreme Court Cases 54**.

30. No amount was awarded towards transportation and as per the same judgment, this Court awards a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only).

31. Similarly, no amount was awarded to the parents of the deceased. The respondents 4 and 5/parents of the deceased lost their child, who was duty bound to look after them in the evening of their life and that has been knocked by the time because of the accident. The respondents 4 and 5/parents of the deceased are entitled to a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) **each** towards loss of love and affection, totalling a sum of **Rs.1,00,000/-** (Rupees One Lakh only).

32. For loss of estate, no amount was awarded by the Tribunal and therefore, a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) is awarded.

33. Accordingly, the respondents 1 to 5/claimants are entitled to the following compensation:

S1. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount reduced/enhanced by this Court (Rs.)	Total (Rs.)
1.	Loss of Income	6,48,000.00	(+) 7,56,000.00	14,04,000.00
2.	Loss of Consortium to the first respondent/wife	20,000.00	(+) 1,30,000.00	1,50,000.00
3.	Loss of Love and Affection to the respondents 2 and 3/children - Rs.1,00,000/- each.	40,000.00	(+) 1,60,000.00	2,00,000.00
4.	Loss of Love and Affection to the respondents 4 and 5/parents - Rs.50,000/- each.	Nil	(+) 1,00,000.00	1,00,000.00

5.	Funeral Expenses	5,000.00	(+) 20,000.00	25,000.00
6.	Loss of Properties	5,000.00	Nil	5,000.00
7.	Transportation Charges	Nil	(+) 15,000.00	15,000.00
8.	Loss of Estate	Nil	(+) 50,000.00	50,000.00
Grand Total				19,49,000.00
Rounded off				19,50,000.00

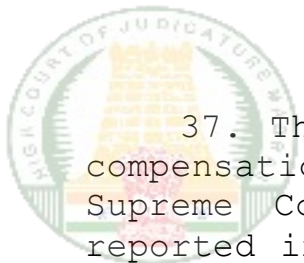
34. Out of the above said award amount, the respondents 1 to 5/claimants are entitled to get their respective shares as per the apportionment made hereunder:

Sl. No.	Claimants	Amount (s) Rs.
1.	1 st Respondent/1 st Claimant/Wife of the deceased	7,00,000.00
2.	2 nd Respondent/2 nd Claimant/Minor Daughter of the deceased	5,00,000.00
3.	3 rd Respondent/3 rd Claimant/Minor Son of the deceased	5,00,000.00
4.	4 th Respondent/4 th Claimant/Father of the deceased	1,25,000.00
5.	5 th Respondent/5 th Claimant/Mother of the deceased	1,25,000.00
Total		19,50,000.00

However, the rate of interest awarded by the Tribunal at **9%** per annum, remains unaltered.

35. The facts of the case enable this Court to enhance the compensation from Rs.7,13,000/- (Rupees Seven Lakhs and Thirteen Thousand only) to a sum of Rs.19,50,000/- (Rupees Nineteen Lakhs and Fifty Thousand only), invoking Order 41 Rule 33 and Section 151 of the Code of Civil Procedure. As the Tribunal erroneously awarded a lesser amount, this Court is compelled to enhance the compensation even in the absence of appeal/cross appeal by the respondents 1 to 5/claimants, while dismissing the appeal filed by the appellant-Insurance Company and even before issuing notice and without notice to the respondents 1 to 5/claimants.

36. It is not only the party who approaches the Court should be given justice, but also the persons who are not before this Court, who should also be rendered justice while disposing of the



37. This Court has got power and jurisdiction to enhance the compensation and the power has been recognised by the Honourable Supreme Court in **Nagappa v. Gurudayal Singh and others** reported in **2004 (2) TNMAC 398 (SC) : 2003 (2) SCC 274**. Moreover, the provisions of the Motor Vehicles Act, 1988, are benevolent in nature and its provisions are aimed at only to compensate for every loss both physically and psychologically and taking into consideration all the factors together only, this Court enhances the compensation.

38. In the result,

(i) This Civil Miscellaneous Appeal is dismissed;

(ii) The respondents 1 to 5/claimants are entitled to a sum of **Rs.19,50,000/-** (Rupees Nineteen Lakhs and Fifty Thousand only), along with interest at the rate of **9% per annum** from the date of petition till date of realisation and proportionate costs;

(iii) The respondents 1 to 5/claimants are directed to pay the additional Court fees for the enhanced award amount immediately;

(iv) The first respondent/wife of the deceased as well as the respondents 4 and 5/parents of the deceased are entitled to get their respective shares as per the apportionment made by this Court;

(v) The appellant-Insurance Company is directed to transfer the respective shares of the first respondent/wife of the deceased as well as the respondents 4 and 5/parents of the deceased in the award amount, along with interest at rate of 9% per annum from the date of petition till date of realisation and proportionate costs, less the amount already deposited, if any, directly to their respective Personal Savings Bank Account Numbers, through RTGS/NEFT, after getting their Account Details by the officials of the appellant-Insurance Company, within a period of **four weeks** from the date of receipt of a copy of this judgment;

(vi) Insofar as the shares of the minor respondents 2 and 3/claimants 2 and 3 are concerned, the appellant-Insurance Company is directed to deposit their respective share amounts to the credit of M.C.O.P.No.825 of 2010, on the file of the Motor Accident Claims Tribunal - cum - Additional District and Sessions Court, Dindigul and thereafter, the Tribunal shall deposit the same in an interest bearing Fixed Deposit under a renewable scheme, till they attain majority;

(vii) The first respondent/mother of the children is permitted to withdraw the interest accrued thereon once in two months for the welfare of the minor respondents 2 and 3/claimants 2 and 3;

(viii) Since the appeal filed by the appellant-Insurance Company is dismissed and enhancement has been made in favour of the respondents 1 to 5/claimants 1 to 5 *suo motu exparte* by this Court, the respondents 1 to 5/claimants 1 to 5 may not be knowing about the enhancement made by this Court and therefore, a copy of this judgment is directed to be served on the respondents 1 to 5/claimants, directly free of costs; and



(ix) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal - cum -
Additional District and Sessions Court,
Dindigul.

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

3 VASANTHAPURANI.

W/O.LATE. P. VELLAISAMY,
K.AIYYAPATTI, KOMBAIPATTI POST,
VEMBARPATTI VIA, DINDIGUL TALUK, DINDIGUL.

4 MINOR GITANJALI

D/O.LATE. P.VELLAISAMY,
K.AIYYAPATTI, KOMBAIPATTI POST,
VEMBARPATTI VIA, DINDIGUL TALUK, DINDIGUL.

5 MINOR RAKESH,

S/O.LATE.P.VELLAISAMY,
K.AIYYAPATTI, KOMBAIPATTI POST,
VEMBARPATTI VIA, DINDIGUL TALUK, DINDIGUL.

6 PERUMAL,

S/O.ARUMUGAKOUNDAR,
K.AIYYAPATTI, KOMBAIPATTI POST,
VEMBARPATTI VIA, DINDIGUL TALUK, DINDIGUL.

7 PAPAPTHI,

W/O.PERUMAL,
K.AIYYAPATTI, KOMBAIPATTI POST,
VEMBARPATTI VIA, DINDIGUL TALUK, DINDIGUL.

+1cc to M/S.M.E.ILANGO, ADVOCATE SR.No. 568

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and C.M.P (MD) No.12250 of 2016
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