



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE VELUMANI

CMA.(MD). Nos.334 to 343 of 2014 and
CMP(MD)Nos.5061 to 5070 of 2016

The Oriental Insurance Company Ltd.,
REP. THROUGH ITS DIVISIONAL MANAGER,
D.D.J. CENTRE, 1ST FLOOR,
OPP. TO VADASERI BUS STAND,
NAGERCOIL-629 001.

..APPELLANT/2ND RESPONDENT
IN ALL THE CMA'S

VS

1.P.RAJENDRAN
2.R.VIJAYADEVI

.. RESPONDENTS 1 & 2/
PETITIONERS 1 & 2

3.M.ARUMUGHAM PILLAI
(3RD RESPONDENT REMAINED EX PARTE
BEFORE THE LOWER COURT)

.. 3RD RESPONDENT/1ST RESPONDENT

4.THE NATIONAL INSURANCE COMPANY LTD.,
REP. THROUGH ITS DIVISIONAL MANAGER,
NORTH VELI STREET,
MADURAI-1.

.. 4TH RESPONDENT/3RD RESPONDENT
IN CMA(MD)No.334 of 2014

1.P. RAJENDRAN, S/O. BALUCHAMY, 122, CHELLATHAMMAN KOIL STREET,
MANAGIRI, MADURAI-20.

2.R.VIJAYADEVI, D/O. P.RAJENDRAN, 122,
CHELLATHAMMAN KOIL STREET, MANAGIRI, MADURAI-20.

3.M.ARUMUGAM PILLAI, S/O. A.MAHADEVAN PILLAI, 40,
GANESH STORES, RAILWAY FEEDER ROAD, NAGERCOIL KK DISTRICT.
(3RD RESPONDENT REMAINED EXPARTE BEFORE THE LOWER COURT)

4 THE NATIONAL INSURANCE CO.LTD. THROUGH IT DIVISIONAL MANAGER,
NORTH VELI STREET, MADURAI-1.

... Respondents in CMA(MD). 335/ 2014



1.S.JEYARANI, W/O. LATE. SELVAM, 122, CHELLATAMMAN KOIL ST,
MANAGIRI, MADURAI-20.

2.MINOR S.ABINAYA, D/O. LATE. SELVAM, 122, CHELLATAMMAN KOIL ST,
MANAGIRI, MADURAI-20.

2ND RESPONDENT REP BY HER MOTHER AND NEXT FRIEND,
THE 1ST RESPONDENT.

3.M.ARUMUGAM PILLAI, S/O. A.MAHADEVAN PILLAI,
40, GANESH STORES, RAILWAY FEEDER ROAD, NAGERCOIL KK DT.
(3RD RESPONDENT REMAINED EXPARTE BEFORE THE LOWER COURT)

4.P. RAJENDRAN, S/O. PALANICHAMY, 122,
CHELLATHAMMAN KOIL STREET, MANAGIRI, MADURAI-20.

5.R.VIJAYADEVI, W/O. KASINATHAN, 122, CHELLATHAMMAN KOIL STREET,
MANAGIRI, MADURAI-20.

6.THE NATIONAL INSURANCE CO.LTD. THROUGH IT DIVISIONAL MANAGER,
3, NORTH VELI STREET, MADURAI-1.

... Respondents in CMA(MD). 336/ 2014

1.S.JEYARANI, W/O. LATE. SELVAM, 122, CHELLATAMMAN KOIL ST,
MANAGIRI, MADURAI-20.

2.MINOR S.ABINAYA, D/O. LATE. SELVAM, 122,
CHELLATAMMAN KOIL ST, MANAGIRI, MADURAI-20.

2ND RESPONDENT REP BY HER MOTHER AND NEXT FRIEND,
THE 1ST RESPONDENT.

3.M. ARUMUGAM PILLAI, S/O. A.MAHADEVAN PILLAI, 40, GANESH
STORES, RAILWAY FEEDER ROAD, NAGERCOIL KK DT.

(3RD RESPONDENT REMAINED EXPARTE BEFORE THE LOWER COURT)

4.P. RAJENDRAN, S/O. PALANICHAMY,
122, CHELLATHAMMAN KOIL STREET, MANAGIRI, MADURAI-20.

5.R.VIJAYADEVI, W/O. KASINATHAN, 122, CHELLATHAMMAN KOIL STREET,
MANAGIRI, MADURAI-20.

6.THE NATIONAL INSURANCE CO.LTD. THROUGH IT DIVISIONAL MANAGER,
3, NORTH VELI STREET, MADURAI-1.

... Respondents in CMA(MD). 337/ 2014

1.R. VIJAYADEVI W/O. KASINATHAN, 122, CHELLATHAMMAN KOIL STREET,
MANAGIRI, MADURAI - 625 020

2.M. ARUMUGHAM PILLAI S/O. A. MAHADEVAN PILLAI, 40, GANESH
STORES, RAILWAY FEEDER ROAD, NAGERCOIL, KANYAKUMARI DT

3.THE NATIONAL INSURANCE COMPANY LTD, TRRO ITS DIVISIONAL
MANAGER, 3, NORTH VELI STREET, MADURAI - 1

... Respondents in CMA(MD). 338/ 2014



1.P.M. PRABHU @ NIRMALRAJ PANDIAN, S/O. S.P. MAHARAJAN
2/567, PERUMAL KOIL NORTH STREET, VANDIYUR, MADURAI - 625 020.

2.M. ARUMUGHAM PILLAI S/O. A. MAHADEVAN PILLAI, 40, GANESH
STORES, RAILWAY FEEDER ROAD, NAGERCOIL, KANYAKUMARI DT
(2ND RESPONDENT REMAINED EXPARTE BEFORE THE LOWER COURT)

... Respondents in CMA(MD). 339/ 2014

1.R. MANORAMMAL W/O. RAMASAMY
107, MANAGIRI MIDDLE STREET, MADURAI - 625 020

2.M. ARUMUGHAM PILLAI S/O. A. MAHADEVAN PILLAI, 40, GANESH
STORES, RAILWAY FEEDER ROAD, NAGERCOIL, KANYAKUMARI DT
(2ND RESPONDENT REMAINED EXPARTE BEFORE THE LOWER COURT)

3.P. RAJENDRAN S/O. BALUCHAMY
122, CHELLATHAMMAN KOIL STREET, MANAGIRI, MADURAI - 625 020

4.R. VIJAYADEVI W/O. KASINATHAN, 122, CHELLATHAMMAN KOIL STREET,
MANAGIRI, MADURAI - 625 020

5.THE NATIONAL INSURANCE COMPANY LTD,
THRO ITS DIVISIONAL MANAGER, 3, NORTH VELI STREET, MADURAI - 1

... Respondents in CMA(MD). 340/ 2014

1.M.PUSHPALATHA, W/O.MANIMARAN, 107, MANAGIRI MIDDLE STREET,
MADURAI-625 020.

2.M.ARUMUGHAM PILLAI, S/O.A.MAHADEVAN, 40, GANESH STORES,
RAILWAY FEEDER ROAD, NAGERCOIL, K.K.DIST.

(R2 REMAINED EXPARTE BEFORE THE LOWER COURT)

3.P.RAJENDRAN, S/O.BALUCHAMY, 122, CHELLATHAMMAN KOIL ST.,
MANAGIRI, MADURAI-625 020.

4.R.VIJAYADEVI, W/O.KASINATHAN, 122, CHELLATHAMMAN KOIL ST.,
MANAGIRI, MADURAI-625 020.

5.THE NATIONAL INSURANCE CO.LTD. REP.THROUGH ITS DIVISIONAL
MANAGER, 3, NORTH VELI ST., MADURAI-1.

... Respondents in CMA(MD). 341/ 2014

1.MINOR.M.KARTHIKA, D/O.MANIMARAN, 109, MANAGIRI MIDDLE ST.,
MDU-20. (REP.BY HER MOTHER/NATURAL GUARDIAN & NEXT FRIEND
M.PUSHPALATHA)

2.M. ARUMUGHAM PILLAI, S/O.A.MAHADEVAN, 40, GANESH STORES,
RAILWAY FEEDER ROAD, NAGERCOIL, K.K.DIST. (R2 REMAINED EXPARTE
BEFORE THE LOWER COURT)

3.P.RAJENDRAN, S/O.BALUCHAMY, 122, CHELLATHAMMAN KOIL ST.,
MANAGIRI, MADURAI-625 020.

4.R.VIJAYADEVI, W/O.KASINATHAN, 122, CHELLATHAMMAN KOIL ST.,
MANAGIRI, MADURAI-625 020.

5.THE NATIONAL INSURANCE CO.LTD. REP.THROUGH ITS DIVISIONAL
MANAGER, 3, NORTH VELI ST., MADURAI-1.

... Respondents in CMA(MD). 342/ 2014

1.MINOR.N.VINOTH KUMAR, S/O.NAGARAJAN, 18/40, KEELA RATHA
VEEDHI, THIRUPPARANKUNDRAM, MDU-05. (REP.BY HIS FATHER/NATURAL
GUARDIAN & NEXT FRIEND V.NAGARAJAN)

2.M.ARUMUGHAM PILLAI, S/O.A.MAHADEVAN, 40, GANESH STORES,
RAILWAY FEEDER ROAD, NAGERCOIL, K.K.DIST. (R2 REMAINED EXPARTE
BEFORE THE LOWER COURT)

3.P.RAJENDRAN, S/O.BALUCHAMY, 122, CHELLATHAMMAN KOIL ST.,
MANAGIRI, MADURAI-625 020.

4.R.VIJAYADEVI, W/O.KASINATHAN, 122, CHELLATHAMMAN KOIL ST.,
MANAGIRI, MADURAI-625 020.

5.THE NATIONAL INSURANCE CO.LTD. REP.THROUGH ITS DIVISIONAL
MANAGER, 3, NORTH VELI ST., MADURAI-1.

... Respondents in CMA(MD). 343/ 2014

1.THE BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED,
G.K.M.A.COMPLEX, NO.1 &2, RAM NAGAR, PYE-PASS ROAD, MADURAI,
REP BY ITS BRANCH MANAGER.

2.A.RAMESH BABU S/O. N.ALAGARSAMY, NO.86-A, JUNCTION ROAD,
VIRUDHACHALAM, CUDDALORE DISTRICT.

3.ARUMUGHA DEVI W/O. HARI HARAN, NO.24, D.D.ROAD, AARAPALAYAM,
MADURAI.

4.ISWARIYA D/O. HARI HARAN, NO.24, D.D.ROAD, AARAPALAYAM,
MADURAI.

... Respondents in CMA(MD). 344/ 2014

Prayer in CMA(MD)No.334/2014:- Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, praying to set aside the Award of
Rs.1,85,000/- made in M.C.O.P.No.2237 of 2005, dated 28.03.2013,
on the file of the Motor Accidents Claims Tribunal-cum-Principal
District Judge, Madurai.

Prayer in CMA(MD). 335/ 2014 :

To set aside the award of Rs.3,47,000/- (Rupees Three
Lakhs Forty Seven Thousan Only) passed in MCOP.No.2239/2005, dated



28.03.2013, on the file of the MACT cum Principal District Judge, Madurai and pass such further or other orders was this Honble Court may deem fit and proper in the facts and circumstances of this case and thus render justice.

Prayer in CMA(MD). 336/ 2014 :

To set aside the award of Rs.3,95,000/- (Rupees Three Lakhs Ninety Five Thousand Only) passed in MCOP.No.2240/2005, dated 28.03.2013, on the file of the MACT cum Principal District Judge, Madurai and pass such further or other orders was this Honble Court may deem fit and proper in the facts and circumstances of this case and thus render justice.

Prayer in CMA(MD). 337/ 2014 :

To set aside the award of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand Only) passed in MCOP.No.2241/2005, dated 28.03.2013, on the file of the MACT cum Principal District Judge, Madurai and pass such further or other orders was this Honble Court may deem fit and proper in the facts and circumstances of this case and thus render justice.

Prayer in CMA(MD). 338/ 2014 :

To set aside the Award of Rs. 1,61,200/- (Rupees one Laksh Sixty One Thousand Two Hundred Only), passed in MCOP No. 680/2006 dated 28.03.2013 on the fiel of the MACT cum Principal District Judge, Madurai.

Prayer in CMA(MD). 339/ 2014 :

To set aside the Award of Rs. 2,19,300/- (Rupees two Laksh Nineteen Thousand Three Hundred Only), passed in MCOP No. 681/2006 dated 28.03.2013 on the fiel of the MACT cum Principal District Judge, Madurai.

Prayer in CMA(MD). 340/ 2014 :

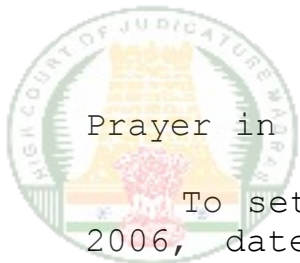
To set aside the Award of Rs. 1,18,600 (Rupees one Lakhs Eighteen Thousand Six Hundred only) passed in MCOP No. 696/2006 dated 28.03.2013 on the fiel of the MACT cum Principal District Judge, Madurai.

Prayer in CMA(MD). 341/ 2014 :

To set aside the award of Rs.1,54,700/- made in MCOP No.697 of 2006, dated 28.03.2013, on the file of the MACT cum Principal District Judge, Madurai.

Prayer in CMA(MD). 342/ 2014 :

To set aside the award of Rs.25,000/- made in MCOP No.759 of 2006, dated 28.03.2013, on the file of the MACT cum Principal District Judge, Madurai.



Prayer in CMA (MD) No.343/2014:-

To set aside the award of Rs.22,500/- made in MCOP No.760 of 2006, dated 28.03.2013, on the file of the MACT cum Principal District Judge, Madurai.

CMA (MD) No.334/2014:-

For Appellant	: Mr.K.Bhaskaran
For R1 and R2	: Mr.M.Arun Murugan
For R4	: Mr.D.Sivaraman
For R3	: No Appearance

CMA (MD) No.335 of 2014:

For Appellant	: Mr.Mr.K.Bhaskaran
For Respondent	: Mr.M.Arun Murugan for R1 and R2
	: Mr.D.Sivaraman for R4
	: No Appearance for R3

CMA (MD) No.336 of 2014:-

For Appellant	: Mr.K.Bhaskaran
For respondents	: M/s.D.Jeyam for R1 and R2
	Mr.M.Arun Murugan for R4 and R5
	Mr.D.Sivaraman for R6
	No Appearance for R3

CMA (MD) No.337 of 2014:-

For Appellant	: Mr.K.Bhaskaran
For respondents	: Mr.D.Jeyam for R1 and R2
	Mr.M.Arun Murugan for R4 and R5
	Mr.D.Sivaraman for R6
	No Appearance for R3

CMA (MD) No.338 of 2014:-

For Appellant	: Mr.K.Bhaskaran
For respondents	: Mr.M.Arun Murugan for R1
	Mr.D.Sivaraman for R3
	No Appearance for R2

CMA (MD) No.339 of 2014:-

For Appellant	: Mr.K.Bhaskaran
For respondents	: Mr.M.Arun Murugan for R1
	No Appearance for R2

CMA (MD) No.340 of 2014:-

For Appellant	: Mr.K.Bhaskaran
For respondents	: M/s.D.Jeyam for R1
	Mr.M.Arun Murugan for R3 and R4
	Mr.D.Sivaraman for R5
	No Appearance for R2



CMA (MD) No.341 of 2014:-

For Appellant
For respondents

: Mr.K.Bhaskaran
: M/s.D.Jeyam for R1
Mr.M.Arun Murugan for R3 and R4
Mr.D.Sivaraman for R5
No Appearance for R2

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CMA (MD) No.342 of 2014:-

For Appellant
For respondents

: Mr.K.Bhaskaran
: M/s.D.Jeyam for R1
Mr.M.Arun Murugan for R3 and R4
Mr.D.Sivaraman for R5
No Appearance for R2

CMA (MD) No.343 of 2014:-

For Appellant
For respondents

: Mr.K.Bhaskaran
: M/s.D.Jeyam for R1
Mr.M.Arun Murugan for R3 and R4
Mr.D.Sivaraman for R5
No Appearance for R2

COMMON JUDGMENT

All these Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company against the common award, dated 28.03.2013 passed in M.C.O.P.NOs.2237, 2239, 2240, 2241 of 2015, 680, 681, 696, 697, 759, 760 of 2006, by the Motor Accidents Claims Tribunal - cum - Principal District Judge, Madurai, filed by the respective claimants.

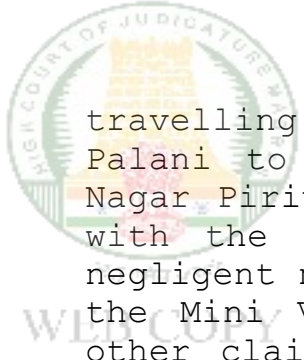
2. Since all the appeals arise out of a common award passed in respect of the same accident occurred on 29.12.2004, these appeals are disposed of by this common judgment.

3. For the sake of convenience, the parties are referred to according to their respective status before the Tribunal.

4. The appellant is the second respondent/Insurance Company of the lorry bearing Registration No.TN-74-9396 involved in the accident. In M.C.O.P. Nos.2237 & 2239 of 2005 the claimants are the owner of the Omni Van bearing Registration No.TN-59-U-943, who are the father and sister of the deceased Dilipkumar. In other claim petitions in M.C.O.P.Nos.2240 & 2241 of 2005 owners of Omni Van were impleaded as respondents 3 & 4. In M.C.O.P.Nos.680, 681, 696, 697, 759 and 760 of 2006 the injured claimant are the parties.

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

5. According to the claimants, on 29.12.2004 at about 02.15 a.m., the injured claimants as well as the deceased were



travelling in a Mini Van bearing Registration No.TN-59-U-943 from Palani to Madurai. Near Samayanallur power house, Sathyamoorthi Nagar Pirivu, the lorry belonging to the first respondent insured with the appellant/second respondent was driven in a rash and negligent manner came in the opposite direction and dashed against the Mini Van. In view of the accident, four persons died and other claimants suffered multiple injuries. The injured persons were admitted in the Velammal Hospital and were taking treatment as Inpatient for different periods depending upon the injuries suffered by him.

6. The claimants in other claim petitions, are dependants of the deceased persons. According to the claimants, the driver of the lorry was driving the lorry in a rash and negligent manner. The first respondent the owner of the lorry and second respondent, the insurer of the lorry are liable to pay compensation. Therefore, the dependants of the deceased and injured persons have filed the claim petitions claiming compensation.

7. The appellant/second respondent filed counter statement and denied all the averments made by the claimants in the claim petitions.

8. According to the appellant/second respondent, the driver of the lorry was driving the vehicle at moderate speed. The driver of the Mini Van drove the vehicle in a rash and negligent manner and caused the accident. On the complaint given by the driver of the another vehicle, which was following the Mini Van, the police registered the case only against the driver of the Mini Van. After investigation, the police filed charge-sheet only against the driver of the van. Therefore, the accident took place only due to the rash and negligent driving of the driver of the Mini Van.

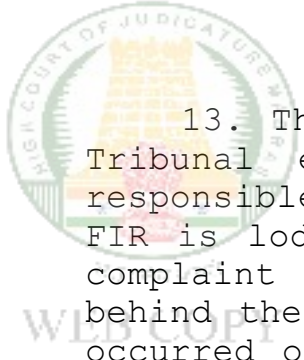
9. The Insurance Company of Mini Van also filed counter and submitted that the accident occurred only due to the rash and negligent driving of the driver of the lorry and the Insurance Company of the Mini Van is not liable to pay compensation.

10. Before the Tribunal, some of the claimants examined themselves as P.W.1 to P.W.8 and Doctor was examined as P.W.9 and 60 documents were marked as Exs.P1 to Ex.P60. The respondents in the claim petition examined 5 witnesses as R.W.1 to R.W.5 and marked 5 documents as Ex.R.1 to Ex.R.5.

11. The Tribunal considering the pleadings, oral and documentary evidence held that the accident took place only due to the rash and negligent driving of the driver of the lorry and first respondent and appellant are liable to pay compensation.

12. Aggrieved by the said award, the appellant/Insurance

Company has filed these appeals.



13. The learned counsel for the appellant contended that the Tribunal erred in holding that the driver of the lorry is responsible for the accident. The Tribunal failed to see that the FIR is lodged only against the driver of the Mini Van. The said complaint was given by the driver of vehicle which was coming behind the Mini Van. In the FIR, it is stated that the accident occurred only due to rash and negligent driving of the driver of the Mini Van. The police after investigation filed the charge-sheet only against the driver of the Mini Van. The reasons given by the Tribunal for rejecting the FIR and charge-sheet and evidence of R.W.2 driver of the lorry are not valid and are contrary to oral and documentary evidence. The Tribunal relying on the judgment referred to by the claimants that when two vehicles are involved in the accident, the driver of the heavy vehicle must be responsible for the accident is not applicable to the facts of the present case. The appellant has examined driver of lorry as R.W.2 and proved that the accident occurred only due to rash and negligent driving of the driver of the Mini Van and the Tribunal ought to have fixed the contributory negligence on the part of the Mini Van and directed the Insurance Company of the Mini Van also to pay the compensation.

14. The learned counsel for the appellant/second respondent contended that the Tribunal failed to consider the sketch prepared by the police which clearly shows that the driver of the Mini Van drove the vehicle to the right hand side of the road and dashed against the lorry. The rough sketch coupled with FIR prove that the accident occurred only due to rash and negligent driving by the driver of the Mini Van. The learned counsel for the appellant relied on the following judgments:

1. I (1990) ACC 507 (DB) - DHARMAN AND ANOTHER V. N.C.SRINIVASAN AND OTHERS wherein at paragraphs 15 and 16, it is observed as follows:

"According to the learned counsel for the appellants, the markings in Ex.A.6, the rough sketch of the scene made by PW3, the Investigating Officer, are based on statements recorded by him under S. 161, Cr.P.C. which are inadmissible in evidence and as such those markings in Ex.P.6 are to be eschewed from consideration. The findings of the Tribunal, as well as of, the learned Judge, based on those markings are therefore, unsustainable. Reliance was placed upon a decision of the Supreme Court in *Tori Singh v. State of U. P.* . The bar under S. 161, Cr.P.C. is applicable only to criminal trials. The statements recorded by the Investigating Officer under S. 161, Cr.P.C. could be looked into in other proceedings, provided of course, they are properly proved, either by examining the Investigating Officer, who recorded the statements or by examining the witnesses themselves. Once proved,



those statements could be relied on, in proceedings like the present one. If, however, those statements are not proved, they would come within the category of hearsay evidence and would not be admissible. In the instant case, PW 3 has stated that he visited the scene of accident and that the driver of the motor cycle and one Kupparaj were available there and that they pointed out the scene and on the basis of that he had drawn Ex.P.6, Ex.P.6, therefore could be relied on.

16. Both the Tribunal as well as the learned Judge have held, that the accident was due to the rash and negligent driving of the second appellant, mainly because the accident had occurred in the eastern extremity of the road, while the vehicle was coming from north to south and the first respondent was proceeding from west to east. The width of the road was 7.55 metres. The first respondent, therefore, had crossed about 3/4ths of the road, and was about to reach the eastern pavement when the accident occurred. This rules out any negligence on the part of the first respondent and clearly spells out rashness and negligence on the part of the second appellant. We concur with the findings of the Tribunal as well as the learned Judge to that effect."

II. III (2007) ACC 54 (SC) - ORIENTAL INSURANCE CO. LTD., V. PREMLATA SHUKLA & OTHERS, wherein paragraphs 13 and 14, it is observed as follows:

"13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise."

III. 2012 (1) TN MAC 725 - KAVITHA V. ASHOKUMAR, wherein, paragraph 11, it is held as follows:

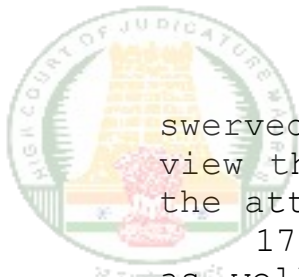


"11. In order to determine the negligence on the part of the deceased as well as the driver of the Lorry, the Rough Sketch or Observation Mahazar prepared on the spot ought to have been produced, but it was not produced. The Court below, only on the basis of First Information Report registered against the deceased, determined his contributory negligence at 75%. Further, the Insurance Company/Fifth Respondent herein, against whom 25% contributory negligence was fastened by the Court below has not come forward with any Appeal. Therefore, taking into consideration the entire evidence available on record and the non-production of Observation Mahazar or Rough Sketch by the parties to the proceedings, I am of the view that the Court below ought not to have fixed the contributory negligence in the ratio of 75% and 25% merely on the basis of registration of First Information Report in the name of the deceased especially when RW1, official of the Insurance Company corroborated the version of the only eye witness PW2/First Respondent herein. Under those circumstance, I am of the view that when the two vehicles collided each other in a road accident, the responsibility or contributory negligence has to be fastened on both vehicles equally, in the absence of any other contra evidence, including the Rough Sketch or observation mahazar. "

IV) II (2014) ACC 936 (DB) (Mad.) - NEW INDIA ASSURANCE CO. LTD., V. S.UMMAL MARJUNA BEEVI & OTHERS, wherein paragraphs 14, 15 and 17, it is observed as follows:

"14. Motorcyclist-deceased Shajahan was proceeding from east to west. On perusal of rough sketch, Exh.B1, it is seen that the scene of occurrence/point of impact is on the northern side of the road. Motorcyclist appears to have swerved to the northern side. Merely because the point of impact was on the northern side, Tribunal appears to have arrived at the conclusion that the motor cycle came on the wrong side and that the accident was due to rash and negligent riding of the deceased Shajahan. Rashness and negligence could be ascertained from the contemporaneous documents like observation mahazar and rough sketch, etc.

15. On perusal of rough sketch, Exh.B1, it is seen that at the place of accident, there is a slight curve. While negotiating the curve, in order to maintain the balance, two-wheeler appears to have swerved to the northern side. It is pertinent to note that even though the scene of occurrence is on the northern side, scene of occurrence is not on the northern extremity road. As pointed out earlier, because of the curve, while negotiating the curve the deceased Shajahan appears to have



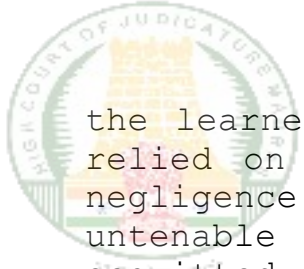
swerved to the northern side. Tribunal did not keep in view the physical features of the scene of occurrence and the attendant circumstances.

17. While negotiating the curve, both the two-wheeler as well as the bus ought to have taken reasonable care. RW1 who was driving the heavy vehicle ought to have adopted defensive driving anticipating the oncoming light vehicles coming in the opposite direction. Upon analysis of evidence and facts and circumstances of the case, contributory negligence of the deceased Shajahan is fixed at 30 per cent and the negligence of the bus driver is fixed at 70 per cent."

v) 2015 (1) TN MAC 496 - NATIONAL INSURANCE CO. LTD., V. KUPPUSAMY AND OTHERS, wherein paragraph - 8, it reads as under:

"8. Keeping the submissions made on either side, I have carefully perused the materials available on record and I find that a case has been registered in Crime No.19 of 2000 as against the driver of the lorry, bearing Registration No.TAN-7898 on the file of Paramathy Police Station under Sections 279, 337, 338 and 304(A) of IPC. PW1, PW8 and PW9 are the eye witnesses to the occurrence. First Information Report was given by one Selvam, the cyclist, who was an eye witness to the occurrence, but, he has not been examined. Further I find that the said Selvam had clearly mentioned in the First Information Report that at the time of accident, the driver of the jeep made an attempt to overtake a bullock cart by giving a signal to the vehicle coming from the opposite direction. In the said process, the lorry and the jeep dashed against each other. From the statement made in the First Information Report, I am of the opinion that the accident is the result of head on collision. The driver of the jeep was not examined before the Tribunal to deny the statement made in FIR or to rebut the evidence of RW1, the driver of the lorry. Further, I find that no crucial documents viz., Rough Sketch, Motor Vehicle Inspector's report, have been marked. Based on the available material on record, the Tribunal has come to the conclusion that the accident had occurred due to the rash and negligent driving of both the vehicles and fixed the liability on the drivers of respective vehicles at 50% and directed the respective Insurance Companies to pay compensation amount to the injured victim and the legal representatives of the deceased persons."

15. The accident occurred in the Highway involving two vehicles. It is a head on collision. The First Information Report was lodged against the driver of the Mini Van, by a driver of a vehicle which was coming behind the Mini Van. The contention of

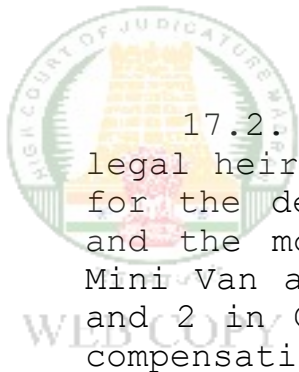


the learned counsel for the appellant that as FIR was marked and relied on by the parties, the tribunal ought to have fixed the negligence on the part of the driver of the Mini Lorry, is untenable on the ground that the driver of the Mini Van was acquitted in the Criminal case, which would have been considered by the Tribunal in arriving at a finding with regard to negligence. The injured/claimants who travelled in the Mini Van deposed that the accident occurred due to rash and negligent driving by the driver of lorry. The Tribunal did not consider the rough sketch. It is seen that the Mini Van swerved towards right side of the road. Based on the impact, it cannot be said that only due to negligence of the driver of the Mini Van that the accident had occurred. The Division Bench of this Court in *II (2014) ACC 936 DB Mad.*, referred to above, held that attendant circumstances must be taken into consideration along with place of impact and physical features of scene of occurrence. The Hon'ble Division Bench of this Court at para-17 of the judgment held that the driver who had driven the heavy vehicle ought to have adopted defensive driving, anticipating the oncoming light vehicles coming in the opposite direction.

16. However, the learned counsel for the claimants as well as the counsel appearing for the Insurance Company of Mini Van separately contended that the claimants have proved that the accident took place only due to rash and negligent driving of the driver of the Lorry. The FIR has been wrongly lodged against the driver of the Mini Van and he was acquitted in the Criminal Proceedings. The Tribunal has appreciated the oral and documentary evidence available on record and has rightly held that the accident occurred only due to rash and negligent driving of the driver of the lorry and awarded a just compensation.

17. Considering the materials on record, the acquittal of the driver of the Mini Van and the accident occurred at right hand side of the road, I hold that both the drivers of the lorry and mini van are negligent and responsible for the accident. The lorry, being the heavy vehicle, negligence is fixed at 60% on the part of the driver of the lorry and 40% on the part of the driver of the Mini Van. The appellant/second respondent-Insurer and the owner of the lorry are liable to pay jointly and severally 60% and owner of Mini Van and its insurer are liable to pay 40%, as compensation awarded by the Tribunal.

17.1. The respondents 1 and 2 in CMA No.334 of 2014 are the legal heirs of the owner of Mini Van and have claimed compensation for the death of their son Dilip Kumar. As the owners of the Mini Van are also responsible for the accident, the respondents 1 and 2 in CMA No.334 of 2014 are entitled to only 60% out of the compensation awarded by the Tribunal.



17.2. The respondents 1 and 2 in CMA No.335 of 2014 are the legal heirs of the owner of Mini Van and have claimed compensation for the death of R.Poongothai, the wife of the first respondent and the mother of the second respondent. As the owners of the Mini Van are also responsible for the accident, the respondents 1 and 2 in CMA No.335 of 2014 are entitled to only 60% out of the compensation as awarded by the Tribunal.

17.3. The 1st respondent in CMA No.338 of 2014 is one of the legal heirs of the owner of Mini Van and has claimed compensation for the injury suffered on her. As the owners of the Mini Van are also responsible for the accident, the 1st respondent in CMA No.338 of 2014 is entitled to only 60% out of the compensation as awarded by the Tribunal.

17.4. The other claimants/claimant in C.M.A.Nos.336, 337, 339 to 343 of 2014 are entitled to full compensation (i.e.) 60% from the insurer and the owner of the lorry and 40% from the insurer and the owners of the Mini Van out of the compensation as awarded by the Tribunal. The award of Tribunal is confirmed in all other aspects.

18. With the above modification, the Civil Miscellaneous Appeals are partly allowed. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Madurai

+10ccs to Mr.K.Bhaskaran, Advocate, SR.Nos.17764 to 17773
+One cc to Mr.D.Sivaraman, Advocate, SR.No.17760
+One cc to Mr.D.Jeyam, Advocate, SR.No.17845

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RL/14C/14P/KK/SAR1/8/8/2017

CMA.(MD). Nos.334 to 343 of 2014