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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA(MD)Nos.813 & 814 of 2017 and
CMP (MD)Nos.8899 & 8787 of 2017 &
CMP(MD)Nos.10803 & 10804 of 2017

Royal Sundaram Alliance Insurance Company Ltd,
No.21, Patullos Road,
Chennai - 600 002,
Rep.by its Branch Manager.

... Appellant in both CMAs/
2nd Respondent

Vs.

1. Nagarani

... 1st respondent in
CMA(MD)No.813 of 2017/Claimant

1. S.Kazhu Sivalingam

... 1st respondent in
CMA(MD)No.814 of 2017

2. Rajalingam

3. Selvaraj

4. The New India Insurance Company Ltd,
Door No.248-B, Reka Towers 2nd Floor,
Kamarajar Street, Madurai - 625 009,
Rep.through its Branch Manager.

... 2 to 4th respondents in both CMAs/
Respondents 1,3 & 4

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.11.2016 made in MCOP.Nos.50 & 52 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Judge, Aruppukkottai.

For Appellant

in both CMAs : Mr.M.E.Ilango

For Respondents

in both CMAs : Mr.I.Suthakaran for R1

Mr.D.Sivaraman for R4

R2&R3 - No appearance

COMMON JUDGMENT

<https://hcservices.eas.gov.in/hcservices> Here and there learned counsel for the parties.

2.On 13.06.2013 at about 06.30 P.M in Thenkasi - Madurai Main road near Alagapuri to Virudhunagar junction an accident occurred



involving the lorry insured with the appellant and a van insured with the fourth respondent herein. The passengers travelling the van were injured. Two of them filed claim petitions before Motor Accidents Claims Tribunal, Sub Court, Aruppukkottai. One Kazhu Sivalingam suffered fractures on both the limbs and suffered injuries all over the body. He filed MCOP.No.50 2013. One Nagarani suffered injuries on her chest as well as left wrist and also her ankle. She filed MCOP.No.52 of 2013. The Tribunal awarded a sum of Rs.2,98,700/- with interest in MCOP.No.52 of 2013 and a sum of Rs.4,30,700/- was awarded in MCOP.No.50 of 2013. CMA(MD) No.813 of 2017 has been filed by the insurer of the lorry against whom the award was passed. CMA(MD)No.814 of 2017 has been filed against the award made in MCOP.No.50 of 2013.

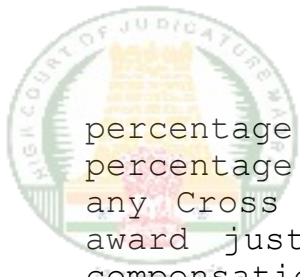
3.Heard the learned counsel on either side.

4.The learned counsel appearing for the appellant insurance company would contend that the accident involved a head on collision between the two vehicles on a high way. He drew my attention to the rough sketch which was filed along with Ex.R1. A detailed note of written arguments was also filed by the appellant insurer before the Tribunal. It can be seen that the lorry was coming North to South while the van was going in Thenkasi - Madurai main road (NH 208) South to North. There is a branch road on the Eastern side going to Virudhunagar. The van appears to have taken a turn towards the East well before the junction point.

5.Thus, the accident occurred on the wrong side of the road as far as the van is concerned. Therefore, in the very nature of things, it is a case of composite negligence. The Tribunal has fixed the entire negligence on the lorry driver. I am of the view that the negligence must have been fastened both the lorry driver as well as van driver. As the Hon'ble Supreme Court held in **2006 1 TNMAC 99 SC, (Bijory Kumar Dugar Vs. Bidyadhar Dutta & others)**, where there is a head on collision involving two vehicles in a high way negligence must be equally distributed between the drivers of both the vehicles. Applying the said principle in this case, the appellant insurance company and the fourth respondent New India Insurance Company Limited must bear the liability to satisfy the award in equal proportion.

6.Coming to quantum of compensation, it is seen that the injured claimant in MCOP.No.52 of 2013 Nagarani was assessed at having suffered 57% disability. But, instead of awarding Rs.3,000/- per percentage of the disability only Rs.2,000/- was awarded. Considering the nature of injuries suffered by the claimant, namely triple fractures and the period of time she has spent in the hospital as an in-patient, I am of the view that in this case a sum of Rs.3,000/- should be awarded per percentage of disability.

7.Likewise, Kalu Sivalingam, claimant in MCOP.No.50 of 2013 must also have been awarded a sum of Rs.3,000/- towards per



percentage of disability. He was assessed at having suffered 68% percentage disability. Even though the claimant has not been filed any Cross Objection, I am of the view that invoking the power to award just and fair compensation, I am inclined to enhance the compensation payable to the claimants.

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8.The claimant in MCOP.No.52 of 2013 is entitled to a further sum of Rs.57,000/- over and above what was already awarded to her. The claimant in MCOP.No.50 of 2013 is entitled to a sum of Rs.68,000/- over and above what was already awarded to him.

9.The awards dated 22.11.2016 made in MCOP.Nos.50 & 52 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Judge, Aruppukkottai are modified.

10.The Royal Sundaram Alliance Insurance Company Ltd / appellant and the fourth respondent / the New India Insurance Company Ltd shall be liable to satisfy the award in the ratio of 50:50 with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs in both the MCOPs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants in both MCOPs are entitled to withdraw the same by filing proper application before the Tribunal, less the amount already withdrawn by them, if any.

11.Both the appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal, Aruppukkottai.

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

+ 1 CC TO Mr.M.E.ILANGO, ADVOCATE IN SR No. 92350
+ 2 CC TO Mr.I.SUTHAKARAN, ADVOCATE IN SR No. 91982
+ 2 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 92138 & 92139

SKM

TE/KKR/SAR-2 : 20/03/2018 : 3P/9C

CMA(MD)Nos.813 & 814 of 2017 and
CMP (MD)Nos.8899 & 8787 of 2017 &
CMP(MD)Nos.10803 & 10804 of 2017
11.12.2017