BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A(MD)Nos.622, 1448, 1450 & 1451 of 2013
and
M.P(MD)No.1 of 2013

1.C.M.A(MD)No.622 of 2013:-

Royal Sundaram Alliance Insurance Company Limited,
Branch Office,
Mangalam Building,
Salem - 636 009. ... Appellant/2nd Respondent

Vs.

1.V.Mani (died) ... 1st Respondent/Petitioner

2.K.Subramaniam
3.M.Thamilselvi

4.Bajaj Allianz General Insurance Company Limited,
Branch Office,
No.19/6, Sahib Complex,
Woraiyur, Salai Road,
Trichy - 3. ... Respondents 2 to 4/Respondents 1, 3 & 4

5.Vaithiyanathan
6.Lakshmi
7.Parvathi
8.Thirupura
9.M.Kalyani ... Respondents 5 to 9

(RR 5 to 9 were brought on record as LRs of the deceased-first respondent in M.P(MD)No.1 of 2015)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.438 of 2009, dated 21.03.2012 on the file of the Motor Accident Claims Tribunal, (District Court), Karur.

For Appellant : Mrs.K.R.Shivashankari
for Mr.S.Srinivasaraghavan

For RR 2 & 3 : No appearance

For R - 4 : Mr.J.S.Murali

For RR 5 to 9 : Mr.K.Suresh
for Mr.E.K.Kumaresan

2.C.M.A(MD)No.1448 of 2013:-

Royal Sundaram Alliance Insurance Company Limited,
Branch Office,
Mangalam Building,
Salem - 636 009. ... Appellant/2nd Respondent

Vs.

1.R.Balasubramanian
2.B.Sathya Narayanan
3.B.Chandrasekaran
4.V.Mani (died)
5.M.Lakshmi ... Respondents 1 to 5/Petitioners 1 to 5

6.K.Subramaniam
7.M.Thamilselvi

8.Bajaj Allianz General Insurance Company Limited,
Branch Office,
No.19/6, Sahib Complex,
Woraiyur, Salai Road,
Trichy - 3. ... Respondents 6 to 8/Respondents 1, 3 & 4

9.Vaithiyanathan
10.Parvathi
11.Thirupura
12.M.Kalyani ... Respondents 9 to 12

(RR 9 to 12 were brought on record as LRs of the deceased-fourth respondent in M.P(MD)No.1 of 2015 in CMA(MD)No.1448/2013 dated 08/12/2016)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.437 of 2009, dated 21.03.2012 on the file of the Motor Accident Claims Tribunal, (District Court), Karur.

For Appellant : Mrs.K.R.Shivashankari
for Mr.S.Srinivasaraghavan

For RR 1 to 3 & 5 & 9 to 12 : Mr.K.Suresh
for Mr.E.K.Kumaresan

For RR 6 & 7 : No appearance

For R - 8 : Mr.J.S.Murali

3.C.M.A(MD)No.1450 of 2013:-

Royal Sundaram Alliance Insurance Company Limited,
Branch Office,
Mangalam Building,
Salem - 636 009. ... Appellant/2nd Respondent

Vs.

1.M.Lakshmi ... 1st Respondent/Petitioner

2.K.Subramaniam
3.M.Thamilselvi

4.Bajaj Allianz General Insurance Company Limited,
Branch Office,
No.19/6, Sahib Complex,
Woraiyur, Salai Road,
Trichy - 3. ... Respondents 2 to 4/Respondents 1, 3 & 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.436 of 2009, dated 21.03.2012 on the file of the Motor Accident Claims Tribunal, (District Court), Karur.

For Appellant :Mrs.K.R.Shivashankari
for Mr.S.Srinivasaraghavan

For R - 1 : Mr.K.Suresh
for Mr.E.K.Kumaresan

For RR 2 & 3 : No appearance

For R - 4 : Mr.J.S.Murali

4.C.M.A(MD)No.1451 of 2013:-

Royal Sundaram Alliance Insurance Company Limited,
Branch Office,
Mangalam Building,
Salem - 636 009. ... Appellant/2nd Respondent

Vs.

1.M.Vaithiyanathan
2.S.Bhuvaneswari ... Respondents 1 & 2/Petitioners

3.K.Subramaniam
4.M.Thamilselvi

5.Bajaj Allianz General Insurance Company Limited,
Branch Office,
No.19/6, Sahib Complex,
Woraiyur, Salai Road,
Trichy - 3. ... Respondents 3 to 5/Respondents 1, 3 & 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.435 of 2009, dated 21.03.2012 on the file of the Motor Accident Claims Tribunal, (District Court), Karur.

For Appellant	:	Mrs.K.R.Shivashankari for Mr.S.Srinivasaraghavan
For RR 1 & 2	:	Mr.K.Suresh for E.K.Kumaresan
For RR 3 & 4	:	No appearance
For R - 5	:	Mr.J.S.Murali

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been preferred by the appellant/Royal Sundaram Alliance Insurance Company Limited, which insured the lorry bearing Registration No.TN-28-Q-6343 owned by K.Subramaniam, who is one of the respondents herein. The appeals have been preferred against the common award passed by the Tribunal in relation to an accident which occurred on 09.08.2009 involving the above lorry and a Maruthi Omni Van resulting in death of two persons and injuring two another persons. Therefore the claim petitions.

2.The Tribunal fixed the liability on the driver of the lorry and awarded compensation. Against the said award, the insurer of the lorry has come before this Court challenging the finding with regard to negligence fixed by the Tribunal on the driver of the lorry.

3.The facts are as follows:-

On 09.08.2009, the Maruthi Omni Van was running from Trichy to Karur and the lorry was coming from Karur to Trichy, near Perugamani, both the vehicles collided, resulting in the death of two persons and two persons getting injured.

4.The Tribunal based on evidence found that the accident occurred because of the negligence of the driver and awarded compensation. Challenging the negligence only, the present appeals have been filed.

5.Mrs.K.R.Shivashankari, learned counsel appearing for the appellant would submit that the Maruthi Omni Van alone was responsible for the accident. The Maruthi Omni Van which was coming from Trichy to Karur crossed the middle line and went into the right side, namely the Northern side and hit the lorry which was coming from West to East namely Karur to Trichy. Therefore, the lorry was coming in the right direction and the Omni Van alone crossed the middle line and if the lorry causing accident, the said accident is also proved by Ex.R.1-Rough sketch marked before the Tribunal. However, without taking note Ex.R.1, the Tribunal erroneously gave a finding that no sketch was marked by either parties and hence, the finding reached by the Tribunal is factually incorrect and liable to be set aside.

6.On the other hand, Mr.J.S.Murali, learned counsel appearing for the Insurer of the Maruthi Omni Van would contend that the Tribunal based on documentary and oral evidence rightly found that the negligence was only on the part of the driver of the lorry. With regard to Ex.R.1-Rough sketch, he would submit that the said document could not be looked into in view of the Judgments in ***Jiju Kuruvila & others Vs. Kunjujamma Mohan & others*** reported in ***2013 (4) TN MAC 44 (SC); Sivagami and others Vs. The Managing Director*** reported in ***2011 (1) TN MAC 151 (DB)*** and ***New India Assurance Company Limited Vs. K.Udayakumar*** reported in ***2013 (1) TN MAC 415.*** Therefore, he seeks confirmation of the award.

7.Mr.K.Suresh, learned counsel appearing for the claimants in all the petitions would submit that in C.M.A(MD)No.1451 of 2013, an award of Rs.3,81,000/- alone was awarded for the death of 14 years old boy and he would seek to enhance the compensation at Rs.5,00,000/- relying upon the Judgment of the Honourable Supreme Court in ***Kishan Gopal and another vs. Lala and others*** reported in ***(2014) 1 SCC 244.***

8.Heard the parties and perused the records.

9.A perusal of the records would show that the accident occurred on 09.08.2009. It is the contention of the learned counsel for the appellant that as per Ex.R.1-Rough Sketch, the Maruthi Omni Van alone crossed the middle line and came in the wrong side and hit the lorry. No doubt, the Tribunal did not take note of Ex.R.1-Rough Sketch and wrongly gave a finding that there was no sketch filed by both the parties. However, the position of law is that mere filing of the sketch itself is not enough to prove the negligence. Admittedly, rough sketch had been marked as Ex.R.1 and it is not proved by corroborative evidence. The said Ex.R.1 was not spoken to by R.W.2-driver of the lorry in his evidence. It is only R.W.1, who is the official of the appellant/Insurance Company, who spoke about the said document. R.W.1 was not an eye-witness and he was not competent to speak about the accident, which he had not witnessed. Therefore, there is no corroboration of Ex.R.1. In the absence of corroborative evidence, Ex.R.1-Rough sketch could not be looked into and that is declared by the Honourable Supreme Court in ***Jiju Kuruvila & others Vs. Kunjujamma Mohan & others*** reported in ***2013 (4) TN MAC 44 (SC)*** and by this Court in ***New India Assurance Company Limited Vs. K.Udayakumar*** reported in ***2013 (1) TN MAC 415***.

10.The Honourable Supreme Court in ***Jiju Kuruvila & others Vs. Kunjujamma Mohan & others*** reported in ***2013 (4) TN MAC 44 (SC)*** held that mere position of vehicle after a accident as shown in a same Mahazar cannot be a substantial proof as to the rash and negligent driving on the part of one or other and no conclusion could be drawn as to whether there was negligence on the part of the driver in the absence of direct or corroborative evidence. Paragraph No.24 of the said Judgment is extracted as follows:-

> *"24.The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc., depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual."*

Similarly, a Division Bench of this Court in ***Sivagami and others Vs. The Managing Director*** reported in ***2011 (1) TN MAC 151 (DB),*** laid a similar dictum and paragraph No.15, is usefully extracted as follows:-

> *"15.Drawing our attention to Ex.A.4-plan, the learned counsel for the respondent-Corporation contended that the Topo sketch would show that the deceased Palaniappan came in the middle of the road and thereby, the deceased was responsible for the accident and the*

Tribunal did not properly appreciate the evidence. Of course, in Ex.A.4, the scene of accident is shown in the middle of the road. In our considered view, Ex.A.4 does not reflect the position of the vehicles at the time of impact; but only reflects the position of the vehicles after the impact/accident. Therefore, it cannot be contended that based upon Ex.A.4 inference has to be drawn against the deceased that he was negligent."

A learned Single Judge of this Court in the ***New India Assurance Company Limited Vs. K.Udayakumar*** *reported in* ***2013 (1) TN MAC 415***, in paragraph No.14 held as follows:-

"14.RW1 is the investigator appointed by the third respondent. He is not an eyewitness to the accident. Ex.B1 is his Investigation Report. It has been pointed by the learned counsel for the first respondent/claimant that the Police after investigation filed the final report against the rider of Hero Honda bike, in the Magistrate's Court he had admitted the offence, he was convicted and fined and he paid the fine amount. RW1 also admits that the said bike rider has admitted the offence and paid the fine amount. In a road accident case, although the Observation Mahazar, Sketch Map and M.V.I. Report are important documents, since they will reveal that an accident had taken place and involvement of vehicles, but they cannot be sole evidence to depict the manner of road accident, which is mainly a matter of evidence of witnesses, who have seen the accident."

Therefore, Ex.R.1-Rough sketch of the accident could not be looked into and based on which no conclusion could be drawn that the driver of the Maruthi Omni Van alone was responsible for the accident.

11.On the other hand, P.W.4-one of the occupants of the Car at the time of accident, spoke clearly that the driver of the lorry alone was responsible for the accident and the lorry was driven rash and negligently. Moreover, the F.I.R-Ex.P.1 had been filed against the lorry driver and charge-sheet had also been filed against him regarding the accident. Therefore, the Tribunal rightly found that the driver of the lorry alone was responsible for the accident and the said finding cannot be set aside and therefore, the appeals are liable to be dismissed.

12.As far as C.M.A.No.1451 of 2013 is concerned, the respondents 1 and 2/claimants lost their son Nirmal Kumar, 14 years. For the death of the said Nirmal Kumar, the Tribunal awarded a sum of Rs.3,81,000/-. The minor was declared brain dead and his organs were harvested and donated to various persons to save their lives.

13.The learned counsel appearing for the claimants would submit that the Honourable Supreme Court for the death of minors, aged between 10 to 15 determined the compensation at Rs.5,00,000/- in ***Kishan Gopal and another vs. Lala and others*** reported in ***(2014) 1 SCC 244.***

14.Though Mrs.K.R.Shivashankari, learned counsel appearing for the appellant would submit that the only question in these appeals is negligence, this Court deems it fit to enhance the compensation, even in the absence of appeal/cross appeal filed by the claimants invoking Order 41 Rule 33 and Section 151 of the Code of Civil Procedure, which has been declared 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 Judgment of the Honourable Supreme Court in ***Kishan Gopal and another vs. Lala and others*** reported in ***(2014) 1 SCC 244*** also helps the claimants and paragraph No.39 of the Judgment is usefully extracted as follows:-

> *"39.In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs 30,000 and further taking the young age of the parents, namely, the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in* **Sarla Verma vs. DTC** *reported in* **(2009) 6 SCC 121**, *the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 X 15 = 4,50,000 and 50,000 under conventional heads towards loss of love and affection, funeral expenses, last rites as held in* ***Kerala SRTC v. Susamma Thomas*** *reported in* ***(1998) 2 SCC 176,*** *which is referred to in* ***Latta Wadhwa case vs. State of Bihar*** *reported in* ***(2001) 8 SCC 197*** *and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000 under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants."*

For the death of the children between age group of 10 to 15 years, notional income at Rs.30,000/- was taken and multiplier '15' could be applied as a multiplicant and determined Rs.4,50,000/- as loss of income and other conventional head towards loss of love and affection, funeral expenses, a sum of Rs.50,000/- was awarded. Following the said Judgment, taking note of the fact that the deceased was 14 years and similar to the Judgment given by the Honourable Supreme Court, this Court also determines the loss of compensation at Rs.5,00,000/-.

15.In the result,

(i) C.MA(MD)Nos.622, 1448 and 1450 of 2013 fails and the same are dismissed.

(ii) Since the first respondent and fourth respondent-V.Mani/claimant in C.M.A(MD)Nos.622 and 1448 of 2013 died and his legal heirs were brought on records as legal representatives of the deceased V.Mani as respondents 5 to 9 and 9 to 12 in C.M.A(MD) Nos.622 and 1448 of 2013 respectively, they are entitled to the share of the deceased-V.Mani equally.

(iii) Since the respective entire award amount has already been deposited, the Tribunal is directed to transfer the same with accrued interest and proportionate costs to the respective personal Savings Bank Account of the claimants in C.MA(MD)Nos.622, 1448 and 1450 of 2013 through RTGS/NEFT system after getting the Account Details from the respective claimants by the officials of the appellant-Insurance Company, within a period of six weeks from the date of receipt of a copy of this order.

(iv) C.M.A(MD)No.1451 of 2013 is disposed of and the award is enhanced from Rs.3,81,000/- to Rs.5,00,000/- with interest at 7.5% p.a from the date of petition till the date of realisation.

(v) The appellant/Insurance Company in C.M.A(MD)No.1451 of 2013 is directed to transfer the enhanced award amount along with accrued interest and proportionate costs, less the amount already deposited/paid by the appellant/Insurance Company to the personal Savings Bank Account of the claimants through RTGS/NEFT system after getting the Account Details from the respective claimants by the officials of the appellant-Insurance Company, within a period of six weeks from the date of receipt of a copy of this order. Further, the claimants are also permitted to withdraw their respective share amounts in the amount already deposited by the appellant/Insurance Company with accrued interest and proportionate costs, as per the ratio of apportionment made by the Tribunal.

(vi) No costs.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

ps
To
1.The Motor Accident Claims Tribunal,
District Court, Karur.

+4CC to Mr.S.Srinivasaraghavan, Advocate Sr.Nos.1693, 1694, 1695 and 1696.
+4CC to Mr.J.S.Murali, Advocate Sr.No.1106, 1107, 1108 and 1109

GJM/SV/MMS/17.2.17-10p-10C

C.M.A(MD)Nos.622, 1448, 1450 & 1451 of 2013
and
M.P(MD)No.1 of 2013
05.01.2017