BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	31.03.2021
Date of Judgment	01.07.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

CMA(MD)Nos.510 and 973 of 2016

and

CMP(MD)Nos.6396, 8725 of 2016 and 5370 of 2020

(1)CMA(MD)No.510 of 2016:-

Royal Sundaram Alliance Insurance Company Limited,
No.46 and 46,
Whites Road,
Chennai-14
rep. By its Branch Manager : Appellant/2nd Respondent

Vs.

1.Selvakumar
2.Mariammal
3.Subbiyan : R1 to R3/Claimants
4.Sekar : 4th Respondent/1st Respondent
5.Ambikapathy : 5th Respondent/3rd Respondent
6.Bajaj Alliance Insurance Company Limited,
Amingikarai,
Chennai. : 6th Respondent/4th Respondent

(5th and 6th Respondents were impleaded
by order, dated 21.04.2014 in I.A No.166/14)

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Special District Court), Thanjavur, in MCOP No.99 of 2010, dated 06.10.2015.

For Appellant	: Mr.M.Jerin Mathew
For R1 to R3	: Mr.G.Karnan
For 4th Respondent	: No appearance
For 5th Respondent	: Dismissed, vide order, dated 27.06.2018
For 6th Respondent	: Mr.J.S.Murali

(2)CMA(MD)No.973 of 2016:-

The Branch Manager,
Bajaj Allianz General Insurance Company Limited,
K.M.A Complex,12G, Ram Nagar By-Pass,
Madurai. : Appellant/2nd Respondent

Vs.

1.Kaliyamurthy : 1st Respondent/Petitioner
2.Ambigapathi
3.Sekar
4.The Branch Manager,
The Royal Sundaram Alliance Insurance
Company Limited,
Trichy. : R2 to R4/R1, R3 and R4

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court) Thanjavur at Kumbakonam, in MCOP No.25 of 2015, dated 25.08.2015.

For Appellant	: Mr.J.S.Murali
For 1st Respondent	: Mr.A.Ganapathy
For 2nd Respondent	: Dismissed
For 3rd Respondent	: No appearance
For 4th Respondent	: Mr.M.Jerin Mathew

COMMON JUDGMENT

CMA(MD)No.510 of 2016 has been filed challenging the award passed by the Motor Accident Claims Tribunal (Special District Court), Thanjavur, in MCOP No.99 of 2010 dated 06.10.2015, whereas CMA(MD)No.973 of 2016 is directed against the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Thanjavur at Kumbakonam in MCOP No.25 of 2015, dated 25.08.2015.

2.Since both Civil Miscellaneous Appeal arise out of the same accident, they heard jointly and disposed of by this common judgment.

3.The short facts of the case is that on 30.04.2009, the deceased Banumathi was returning from Thiruvaiyaru after attending her family function in Vantha Mahal Thirumana Mandabam, Thiruvaiyaru and she along with her relatives were returning in a Mahendra Seat Van TN-47-C-8456, which was hired by them to attend the function and while they were returning from Thiruvaiyaru at about 4.15 pm and when the Van was proceeding near Revenue Inspector Office, Ammanpattai in Thiruvaiyaru-Thanjavur Main Road, the TATA ACE Load Van TN-49-AC-6574 came in the opposite direction in a rash and negligent manner and dashed against the Mahendra Van. Due to the head on collision, the deceased Banumathi and others inmates, who travelled in the Mahendra Van as well as the in the TATA ACE Load Van were sustained grievous injuries and they were immediately taken to Thanjavur Medical College Hospital for treatment and in-spite of treatment, the deceased Banumathi died in the hospital, on

08.05.2009. The legal heirs of the deceased Banumathi filed a claim petition in MCOP No.99 of 2010 seeking compensation of Rs.5,00,000/- for the death of the deceased, whereas the claimant Kaliyamurthy, who was travelling in the TATA ACE load Van, filed a claim petition in MCOP No.25 of 2015 seeking compensation of Rs.4,00,000/- for the injuries sustained by him.

4.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, has awarded Rs.6,81,800/- in respect of MCOP No.99 of 2010 together with interest @ 9% p.a and Rs.20,000/- in respect of MCOP No.25 of 2015 together with interest @ 7.5% p.a.

5.The learned counsel appearing for the appellant/2nd respondent in CMA(MD)No.510 of 2016 argued that the accident had occurred only due to the rash and negligent driving of the driver of the Mahendra Van (TN-47-C-8456) and he had no valid driving licence to drive the said Van at the time of accident and the Mahendra Van had no valid permit to carry passengers and as such, the deceased Banumathi and the 2nd respondent herein were gratuitous passengers and hence, the 6th respondent Insurance Company herein alone is responsible to pay the compensation to the claimants and prays that the CMA(MD)No.510 of 2016 has to be allowed.

6.The learned counsel appearing for the appellant/2nd respondent in CMA(MD)No.973 of 2016 argued that in respect of the accident, FIR was registered as against the driver of the TATA ACE Load Van (TN-49-C-6574), which belonged to the 3rd respondent herein, but the tribunal fastened the entire negligence on the driver of the Mahendra Van (TN-47-C-8456) insured with the appellant Insurance Company and the same cannot be sustainable in law and in the connected case in MCOP No.99 of 2010, the judgment and decree was delivered by the Motor Accident Claims Tribunal at Thanjavur, wherein the entire negligence was fastened on the driver of the TATA ACE Load Van and the 4th respondent Insurance Company herein was directed to pay the entire award of compensation to the claimants and the appellant Insurance Company was totally exonerated from paying any award of compensation to the claimants and prays that CMA (MD)No.973 of 2016 has to be allowed.

7.The learned counsel appearing for the claimants, in both the cases, argued that based on the evidence, the tribunal has rightly awarded compensation to the claimants and prays for dismissal of the Civil Miscellaneous Appeals.

8.CMA(MD)No.510 of 2016 arising out of the award passed in MCOP No.99 of 2010, whereas CMA(MD)No.973 of 2016 filed against the order passed in MCOP No.25 of 2015. In MCOP No.99 of 2010, the tribunal found the negligence on the part of the TATA ACE Load Van driver and fastened the entire liability on the appellant/2nd respondent Insurance Company in CMA(MD)No.510 of 2016. But in respect of MCOP No.25 of 2015, the tribunal fixed the negligence on the part of the Mahendra Van driver and fixed the liability on the appellant Insurance Company in CMA(MD)No.973 of 2016.

9.In respect of the accident, in the case of CMA(MD)No.510 of 2016, PW1 and PW2 were examined. PW1 and PW2 categorically stated during their chief examination that there was head on collision between the both TATA Ace Load Van TN-49-AC-6574 and the Mahendra Van TN-49-C-8456 and only due to it, the persons travelled in the above two vehicles were sustained injuries. But in respect of the accident, FIR was registered only as against the driver of the TATA ACE Load Van TN-49-AC-6574. Hence, from the evidence of PW1 and PW2, it reveals that the accident occurred both the composite negligence on the part of the both the vehicles at the ratio of 50:50. But the tribunal, in respect of MCOP No.99 of 2010 came to the conclusion that only due to the rash and negligent driving of the driver of TATA ACE Load Van TN-49-AC-6574, the accident occurred. But in MCOP No.25 of 2010, the tribunal came to the conclusion that the accident occurred due to the driver of the Mahendra Van TN-49-AC-8456.

10.On careful perusal of the evidence of PW1 and PW2, it reveals that there was head on collision between the above vehicles and only due to it, the accident occurred. Hence, it is held that there was composite negligence on the part of the drivers of the above two vehicles in the ratio of 50:50.

11.The next contention raised on the side of the appellant/2nd respondent Insurance Company in CMA(MD)NO.510 of 2016 is that there was no proof for the income for the deceased Banumathi and hence, the claimants are not entitled to claim compensation as claimed for. As per **Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd., (2014(1) TN MAC 459 (SC)**, when there was no proof for occupation and income, the tribunal can fix the monthly income of the deceased at Rs.6,500/-.

12.In the instant case on hand, to prove the age of the deceased Banumathi, no document was filed in CMA(MD)No.510 of 2016. Hence, for fixing the age of the deceased, the age found in the postmortem certificate was taken. It is settled law that when no relevant document was filed to prove the age of the deceased, the age found in the postmortem certificate can be taken into account. Hence, in CMA(MD)No.510 of 2016, the age of the deceased Banumathi was shown as 45, but no relevant document was filed to prove the age of the deceased. Therefore, the tribunal for arriving loss of income has correctly taken into account the age found in the postmortem certificate. On perusal of the postmortem certificate of the deceased Banumathi, it is found that the age of the deceased was shown as 45. Hence, the age of the deceased is fixed at 45 years, as per the postmortem certificate. Considering the above facts and keeping in view of the decision of the Hon'ble Apex Court in the case of **Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd., (2014(1) TN MAC 459 (SC)**, this court fixed the notional income of the deceased at Rs.6,500/- per month.

13.It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 25% of the established income should be the warrant where the deceased was between 40-50 years. In the instant case, the tribunal has wrongly added 30% towards future prospects. Hence, this court is of the considered view that 25% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493 *(National Insurance Company Limited vs. Pranay Sethi and others)***. By doing so, the monthly loss of income of the deceased is calculated at Rs.8,125/- (Rs.6,500/- + Rs.1,625/-). After deducting 1/3rd towards her personal and living expenses, the monthly income is arrived at Rs.5,417/- (Rs.8,125/- Less Rs.2,708/-). By applying proper multipler 14, this court awards **Rs.9,10,056/-** (Rs.5,417/- x 12 x 14) towards loss of income. In addition to that, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards Rs.40,000/- towards loss of consortium to the 3rd claimant; Rs.40,000/- each to the claimants 1 and 2 towards finial consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for Rs.10,60,056/- rounded off to **Rs.10,60,000/-** together with interest @ 7.5% p.a. As this court fixed the negligence at the ratio of 50:50, the appellant in CMA(MD)No.510 of 2016 (Royal Sundaram Alliance Insurance Company) and the 6th respondent Bajaj Alliance Insurance Company are equally liable to pay the modified compensation amount at the ratio of 50:50 together with interest at the rate of 7.5% p.a.

14.In so far as CMA(MD)No.973 of 2016 is concerned, the tribunal based on the evidence, has awarded reasonable award and it is confirmed. In respect of negligence, it is held that there was composite negligence on the part of the drivers of both the Mahindra Van and TATA ACE Load Van at the ratio of 50:50.

15.In the result, both the Civil Miscellaneous Appeals are disposed of. In respect of CMA(MD)No.510 of 2016, the award passed in MCOP No.99 of 2010 is enhanced to **Rs.10,60,000/-** from Rs.6,81,800/- and the Appellant Insurance Company and the 6th respondent Insurance Company are directed to deposit their share of the modified award amount, together with interest @ 7.5% p.a. from the date of claim petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. In respect of CMA(MD)No.973 of 2016, the award of the tribunal is confirmed. It is made clear that as this court fixed the negligence on the part of the drivers of both the Mahendra Van and TATA ACE Load Van at the ratio of 50:50, both the Royal Sundaram Alliance Insurance Company and the Bajaj Alliance Insurance Company are equally liable to pay compensation amount at the ratio of 50:50 together with interest at the rate of 7.5% pa. The claimants in respect of MCOP No.99 of 2010 shall pay the additional court fee for the enhanced amount.. Excess amount if any, the Insurance Companies are at liberty to get back the same from the tribunal, in the manner known to law. No costs Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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<u>Note :</u>In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1.The Motor Accident Claims Tribunal/
Special District Judge, Thanjavur.

2.The Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Thanjavur at Kumbakonam

3.The Section Officer,(2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-20997[F] dated 02/07/2021)

+2 CC to M/s.J.S.MURALI, Advocate (SR-21100[F],21101 dated 02/07/2021)

+1 CC to M/s.G.KARNAN, Advocate (SR-21166[F] dated 05/07/2021)

CMA(MD)Nos.510 and 973 of 2016
01.07.2021

PK(CO)
KB(03.09.2021) 6P 9C