



C.M.A.(MD)Nos.1073 and etc of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.02.2023

CORAM

**THE HON'BLE MRS.JUSTICE N.MALA**

C.M.A.(MD)Nos.1073, 722, 744, 881, 895, 923, 929, 933, 934, 935, 936,  
962, 963, 969, 970, 978, 1009, 1012, 1025, 1026, 1027, 1028, 1029, 1030,  
1031 of 2022

and

C.M.P.(MD)Nos.10043, 10153, 10155, 8452, 9099, 9202, 9217, 9236,  
9238, 9239, 9564, 9570, 9618, 9619, 9648, 10002, 10156, 10160, 10161,  
10162, 10164, 10832 of 2022

**C.M.A.(MD)No.1073 of 2022**

United India Insurance Company Limited,  
Represented through its Divisional Manager,  
K.A.R.Towers, II Floor, R.S.Road,  
Dindigul Town, Dindigul District.

... Appellant

Vs.

1.A.Kiruba Jonapark Rani

2.Saint Joseph Polytechnic College,  
Representing through its Secretary,  
Pappu Nagar, Near RMTC Nagar,  
Reddiapatti Village,  
Dindigul East Taluk,  
Dindigul District.

3.Tamil Nadu Transport Corporation,  
Representing through its Managing Director,  
Virudhunagar.

... Respondents

**PRAYER :** Civil Miscellaneous Appeal filed under Section 173 of Motor



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Vehicles Act, to set aside the Judgment and Decree dated 02.08.2021 made in M.C.O.P.No.18 of 2018 on the file of the Motor Accidents Claims Tribunal/Special Sub-Court to deal with MCOP cases Dindigul.

|               |                          |
|---------------|--------------------------|
| For Appellant | : Mr.I.Suthakaran        |
| For R1        | : Mr.J.Lawrance          |
| For R2        | : Mr.A.Ajith Prakash     |
| For R3        | : Mr.K.A.Thirumalaiappan |

### **COMMON JUDGMENT**

These batch of appeals arise out of one and the same accident and the point raised in these appeals is also common to all cases, hence the same are disposed of by this common judgment.

2.The petitioners about 36 of them, who are all staff and faculty of the first respondent, travelled in the college bus TN 57 AL 3773 on 01.06.2017, to attend the marriage function of their colleague in Chatrapathi. At about 03.15 pm., near Arasampatti, the college bus which was driven by its driver rashly and negligently hit the barricade posted there and dashed against the transport corporation bus which came in the opposite direction. Due to the impact, the college bus turned turtle and all the



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passengers in the college bus sustained injuries. They filed claim petitions claiming compensation for the injuries sustained by them in the accident. In the claim petitions, the claimants specifically pleaded that the college bus driver was negligent and that the third respondent Transport Corporation bus was impleaded only as a formal party.

3.Both the first and second respondents viz the owner of the college bus and the insurer filed counter denying all the allegations/averments raised in the claim petition. Whereas it was the contention of the insured that even if the college bus driver was held to be negligent, the second respondent as insurer was liable to indemnify him for the compensation amount, the second respondent's specific contention was that there was a violation of the policy as the vehicle was used for a purpose not related to the activities of the college and that the negligence was only that of the transport corporation bus and hence, the liability if any, had to be imposed on the third respondent Transport corporation.

4.The third respondent Transport corporation contented that even as per the averments in the claim petitions, negligence was attributed only to driver of the college bus and hence the transport corporation was added



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only as formal party and hence the liability was that of the respondents 1 and 2.

5.The Tribunal on the basis of the pleadings and the evidence on record returned a finding of negligence against the driver of the college bus and mulcted the liability on the insurance company.

6.Aggrieved by the judgment and decree of the Tribunal, the Insurance company has filed the above appeals.

7.The counsel for the appellant at the time of arguments submitted that in the appeal he would restrict his arguments only to the issue of negligence. As regards quantum and liability, he submitted that the appellant has no grievance as the compensation awarded towards injuries sustained by the claimants was fair.

8.The counsel for the appellant submits that from the evidence on record it is clear that this was case of composite negligence as both the drivers were negligent and as both the vehicles were of the same size and class, the negligence ought to be apportioned at 50:50. According to the



counsel, the tribunal failed to note that the FIR was filed against the driver of the bus and in the referred to charge sheet it was stated that as the final report was not filed in time the case was closed under Section 468 Cr.P.C. Therefore, the counsel strenuously argued that the tribunal ought to have apportioned the liability on the basis of the composite negligence of both the drivers.

9.The counsel for the third respondent on the other hand submitted that the finding of the tribunal was perfectly legal as it was based on proper appreciation of the evidence on record. The counsel further submitted that the plea of composite negligence was not raised before the tribunal as the case of the appellant before the tribunal was that the driver of the third respondent alone was negligent. In the absence of a plea of composite negligence and in the light of the evidence on record, the tribunal was justified in its finding on negligence.

10.I have heard both counsels and I have perused the records. As already stated the only point agitated in this appeal is whether the liability should be apportioned at 50:50 on the basis of the negligence of the drivers of both the vehicles.



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11.To start with the averments in the claim petitions are referred to.

It is pertinent to note that similar averments are raised in all the petitions. In the claim petition in MCOP.No.18 of 2018, the following is stated:

மனுதாரர் திருமதி A.கிருபா ஜோன் பார்சு ராணி அவர்கள் திண்டுக்கல் சேயின்ட் ஜோசப் பால்டெக்னிக் கல்லூரியில் விரிவுரையாளராக பணியாற்றி வருகிறார். கடந்த 01.06.2017 - ம் தேதியில் சத்திரப்பட்டி அருள்மொழி என்பவரின் திருமண விழாவில் கல்லூரியில் பணியாற்றும் சக ஆசிரியர்கள் மற்றும் பணியாளர்களுடன் கலந்து கொண்டு பின் கல்லூரி வாகனமான TN 57 AL 3773 என்ற ஈசர் பஸ்சில் கல்லூரியில் பணிபுரியும் 36 நபர்களுடன் பழனி to திண்டுக்கல் ரோட்டில் மேற்கில் இருந்து கிழக்கு நோக்கி பயணம் செய்தார். மேற்படி பஸ் மாலை 03.15 மணியளவில் ஓட்டன்சத்திரம் காவல் நிலையம் சரகம் அரசபிள்ளை பட்டி பிரிவு அருகில் வரும் பொழுது மேற்படி கல்லூரி வாகனத்தை ஓட்டிய டிரைவர் அதிவேகமாகவும், கவனக்குறைவாகவும், ஓட்டி வந்து மெதுவாக பஸ்ஸை ஓட்டுங்கள் என பஸ்ஸில் பயணம் செய்த அனைவரும் சத்தம் போட்டு கூறியும் கேட்காமல் காவல் துறையினரால் வைக்கப்பட்டு இருந்த பாதுகாப்பு இரும்பு தடுப்பு சுவர் (Barry Guard)களுக்குள் நுழைந்து அதிவேகமாக சென்று வெளிபேறும் போது எதிரே மெதுவாக வந்த TN 67 N 0848 என்ற எண்ணுள்ள அரசு பேருந்தில் கல்லூரி வாகனத்தின் நடுப்பகுதியை மோதச்செய்ததால் கல்லூரி பேருந்து ரோட்டின் இடது பக்கமாக கவிழ்ந்துவிட்டது.

மேற்படி விபத்து 1 - ம் எதிர்மனுதாரரின் ஓட்டுநரின் கவனக்குறைவாலும், அதிவேகத்தாலும் கல்லூரி வாகனத்தை ஓட்டி தமிழ்நாடு அரசு போக்குவரத்து கழக பஸ்சின் மீது மோதியதால் ஏற்பட்ட விபத்து ஆகும். ஆனால் தமிழ்நாடு அரசு போக்குவரத்து கழக பஸ் எண்.TN 67 N 0848 என்ற



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பஸ்சின் ஓட்டுனர் மீது ஓட்டன்சுத்திரம் காவல் நிலைய குற்ற  
எண்.200/2017-ல் சட்ட பிரிவுகள் 279, 337, IPC-யின்  
படி வழக்கு பதிவு செய்யப்பட்டுள்ளது. உண்மையில் மேற்படி  
விபத்திற்கு கல்லூரி வாகனத்தை ஓட்டிய டிரைவரே காரணம்  
ஆகும். தமிழ்நாடு அரசுப் போக்குவரத்துக் கழகம் பார்மல்  
பார்மடாக வழக்கில் சேர்க்கப்பட்டுள்ளது.

12. According to the claim petition inspite of the warning by the staff & teachers of the college bus, the driver without heeding their warnings drove the bus rashly and negligently, hit the stationed barricades, dashed against the transport corporation bus and turned turtle due to the impact. In this context it would be relevant to find out what is negligence and how it has to be determined in the facts and circumstances of a case. The Hon'ble Supreme Court in the case of ***Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and another*** reported in (2003)8 SCC 731, succinctly described negligence. The relevant paragraph reads as follows:

*...Though there is no statutory definition, in common parlance 'negligence' is categorized as either composite or contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by*



*doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not.*

13.In the light of the pleadings of the claimants can it be said that the



driver of the college bus was not negligent. The very fact that the passengers shouted and warned the driver of the college bus to be cautious proves that he had failed to exercise care, caution and vigilance for their protection. Just because the vehicles are of equal size and there was head on collision, it cannot be presumed that there was composite negligence of the bus driver. Further the reliance placed by the appellant on the FIR which was filed against the bus driver is also misplaced. It is pertinent to note here that the author of the FIR was the college bus driver and also in the referred charge sheet it was stated that the case was closed under Section 468 Cr.P.C. It is trite that FIR cannot be taken as gospel truth and the statements made in the FIR have to be proved by corroborative evidence. Useful reference can be made to the judgment of this Court in the case of *The Oriental Insurance Co.Ltd, Coimbatore Vs. Vasugi and others* reported in *2015 SCC Online Mad 9590*. The relevant paragraph reads as follows:

*3.A perusal of the records would reveal that after the accident, the driver of the lorry, insured with the appellant, had lodged the complaint, based on which Ex.P1, FIR came to be registered and as rightly observed by the Tribunal, the same cannot be accepted, as the driver of the lorry, in an attempt to safeguard himself, could have lodged the*



*complaint against the deceased, as it is normal human tendency to shift the blame on the opposite side, especially, when the other person, involved in the accident, died. Besides, the FIR is not an encyclopedia and it is the first document to set the law in motion and the statements in the FIR cannot be taken as gospel truth.*

In this case also neither the author of the FIR ie the driver of the college bus or the owner of the college bus were examined. The insurance company in this case has neither adduced any evidence nor taken steps to examine the driver or the owner of the college bus. The driver of the transport corporation has examined himself as RW3 and has adduced evidence that the negligence of the college bus driver resulted in the accident. Absolutely no contra evidence is filed by the appellant to rebut the evidence of the claimants, who were passengers in the college bus or RW3 the driver of the transport corporation bus. RW3 has categorically stated that the college bus hit the transport corporation bus and due to the impact the college bus turned turtle, causing injuries to the passengers. RW3 further stated that no damage was caused to the transport corporation bus but the college bus turned upside down due to the impact of the collision. When the categorical evidence of the TNSTC bus driver is available in the absence of contra evidence, the contention of the learned counsel for the appellant cannot be



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accepted. The learned counsel for the appellant would then rely on the evidence of claimants to show that the bus driver was also negligent. I am afraid that this contention is also untenable as it is made in ignorance of the further statement that, had the college bus driver exercised caution he could have averted the accident. One more vital aspect is that it was the case of the insurance company in its counter that the entire negligence was that of the college bus driver, it is only in the appeal for the first time that the insurance company has come up with the plea of composite negligence and that too on the basis of the FIR. I am therefore of the view that the insurance company in the absence of a plea and evidence cannot in the appeal pray for apportionment of negligence at 50:50. On a conspectus of the entire case, I am of the view that there is absolutely no impropriety or illegality in the tribunal's finding on negligence. In sum the appeals are dismissed confirming the judgments and decrees dated 02.08.2021 of the tribunal. In the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**14.02.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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**N. MALA, J.,**

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To

The Motor Accidents Claims Tribunal/Special Sub-Court  
to deal with MCOP cases Dindigul.

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895,923, 929, 933, 934, 935,  
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