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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)Nos.525 and 526 of 2015

and

M.P(MD)Nos.2 and 2 of 2015

CMA(MD)No.525 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
Ltd., (Madurai Division-1),
Madurai-625 010.

... Appellant/Respondent

vs.

1)R.Jaganathan
2)M.Kumar
3)The Branch Manager,
United India Insurance Company Ltd.,
114/20, Super Bazar,
Trichy.

...1st Respondent/1st Petitioner

... 2nd & 3rd Respondents/
1st & 2nd Respondents

Appeal filed under Section 173 of the Motor Vehicles Act,
against the judgment and decree dated 22.03.2010 passed in
MCOP.No.181 of 2008 on the file of the Motor Accident Claims
Tribunal cum Chief Judicial Magistrate Court, Theni.

For Appellant	: Mr.M.Prakash
For R3	: Mr.A.S.Mathiyalagan
For R1 & R2	: No Appearance

CMA(MD)No.526 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
Ltd., (Madurai Division-1),
Madurai-625 010.

... Appellant/3rd Respondent

vs.

1)M.Eswaran
2)M.Kumar
3)The Branch Manager,
United India Insurance Company Ltd.,
114/20, Super Bazar,
Trichy.

..1st Respondent / Petitioner

..2nd & 3rd Respondents/
1st & 2nd Respondents



Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 22.03.2010 passed in MCOP.No.186 of 2008 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Theni.

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For Appellant : Mr.M.Prakash
For R3 : Mr.A.S.Mathiyalagan
For R1 & R2 : No Appearance

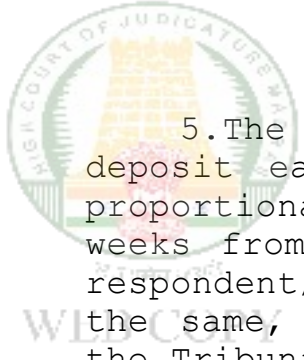
COMMON JUDGMENT

These appeals arose out of the same accident, in which there was a head-on collision between a Lorry insured with the 3rd respondent insurance company and the appellant/transport corporation bus. The appellant/transport corporation filed these appeals, mainly on the ground that the Tribunal in the claim petition in MCOP.No.186 of 2008 made a finding that both the drivers of Lorry as well as the transport corporation bus were equally committed the act of negligence resulted the accident. Therefore, both are responsible for the accident and consequently, 50% negligence liability was fixed on the transport corporation and the remaining 50% on the insurance company.

2.Learned counsel for the appellant contended that when the Tribunal found that both the drivers of Lorry and the transport corporation bus were equally responsible for the accident, has rightly fixed the liability in the ratio of 50:50 as between the insurance company and the appellant transport corporation. Such being the finding in MCOP.No.186 of 2008, the Tribunal has committed an error in fixing the entire liability on the transport corporation in MCOP.No.181 of 2008.

3.When the Tribunal has considered 50:50 negligence in MCOP.No.186 of 2008, ought to have adopted the same ratio in MCOP.No.181 of 2008 also, since both the claim petitions arose out of the same accident and different yardstick cannot be adopted. Accordingly, the Tribunal has committed an error in fixing 100% liability in MCOP.No.181 of 2008. Hence, the award passed in MCOP.No.186 of 2008 dated 22.03.2010 is confirmed and CMA(MD) No.526 of 2015 is dismissed.

4.In respect of the award in MCOP.No.181 of 2008, dated 22.03.2010, the award is set aside and CMA(MD)No.525 of 2015 is allowed and the award is modified by fixing 50% liability on the appellant transport corporation and remaining 50% liability on the 3rd respondent insurance company and the award passed in MCOP.No.186 of 2008 shall be followed in all other respects in MCOP.No.181 of 2008 also.



5.The appellant as well as the 3rd respondent are directed to deposit each 50% of the award amount in both the claims with proportionate accrued interest and costs, within a period of four weeks from the date of receipt of a copy of this order and the respondent/claimant in both the cases are permitted to withdraw the same, through RTGS, by filing necessary applications before the Tribunal.

In the result, CMA(MD)No.525 of 2015 is allowed and CMA(MD) No.526 of 2015 is dismissed. No costs. Consequently, M.P(MD)Nos.2 and 2 of 2015 are closed.

Sd/-
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To
The Chief Judicial Magistrate Court cum
Motor Accident Claims Tribunal,
Theni.

+1 CC to Mr.M.PRAKASH, Advocate, SR No.74365

+1 CC to Mr.A.S.MATHIALAGAN, Advocate, SR No.74639

CMA(MD)Nos.525 and 526 of 2015
30.11.2016

nbj
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