



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2016

CORAM

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THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.M.A(MD)No.77 of 2016

and

C.M.P(MD)No.1485 of 2016

The United India Insurance Co. Ltd.,
Chennai

.. Appellant

Versus

1.The Managing Director,
Tamil Nadu Government Transport Corporation,
Kumbakonam.

Premkumar(died)

2.Navaneetham Ammal

3.Lakshmikumar

4.V.Aishwarya Sathiyayanayaki

5.P.Mangalanayaki

6.Vathsala Nayagi

7.Gokulnathan

.. Respondents

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 Motor Vehicle Act, 1988, against the Judgment and Decree dated 31.12.2014 passed in M.C.O.P.No.555 of 2003 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Thanjavur.

For Appellant : Mr.G.Prabhu Rajadurai

JUDGMENT

The appellant has come up with the present appeal on the ground to set aside the Judgment and Decree dated 31.12.2014 passed in M.C.O.P.(MD).No.555 of 2003 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Thanjavur.

2. The appellant is the insurance company and the second respondent in M.C.O.P.No.555 of 2003. The first respondent, Transport Corporation is the petitioner in M.C.O.P.555 of 2003. The respondents 2 to 7 are the legal heirs of the owner of the Toyato Qualis Car involved in the accident. The first respondent filed a petition claiming a sum of Rs.19,523/- for the damages caused by the accident, due to the rash and negligent driving by the driver of the Toyato Qualis Car belonging to the first respondent in M.C.O.P.No.555 of 2003.



3. According to the first respondent herein, the driver of the vehicle Toyato Qualis Car drove the car in a rash and negligent manner and while trying to overtake a Maurthi Car dashed against the bus belonging to the first respondent and cause damage on the left side of the bus. The complaint was given to the police against the driver of the Toyato Qualis Car. In the facts and circumstances the first respondent filed claim petition for a sum of Rs.19,523/-.

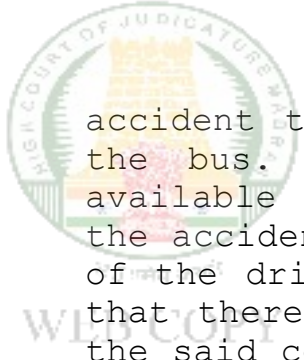
3. The owner/the first respondent in M.C.O.P.No.555 of 2003 and appellant filed their counter statement. Thet owner of the vehicle denied the allegations made by the Transport Corporation. They contented that the accident did not take place due to rash and negligent driving by the driver of Toyato Qualis Car. On the other hand, the driver of the bus suddenly turned and caused accident. The officials of the Transport Corporation using their influence, registered a case against the driver of the Toyato Qualis Car and the driver was included in a criminal case. The respondents 2 to 8 were implicated as legal representatives of the owner of the Toyato Qualis Car after his death.

4. Before the Tribunal the first respondent examined Pws 1 to 4 and marked 5 documents as Exs. A1 to A5. Two documents as Ex.C1 and Ex.C2 were marked. The appellant examined one Sathiyamoorthy as RW1 and marked one document Ex.B1.

5. The learned Judge considering all the pleadings, evidences, documents and arguments, came to the conclusion that the accident took place only due to the rash and negligent driving by the driver of the Toyato Qualis Car and awarded a sum of Rs.15,000/- as compensation. Aggrieved by the award passed by the Tribunal, Insurance Company is before this Court with this Civil Miscellaneous Appeal.

6. The accident took place in the Highways and it was occurred on collusion between two vehicles and in the circumstances, the learned Judge ought to have apportioned the negligence on the part of both the drivers. The learned Judge failed to consider the evidence of the eyewitnesses of that accident. The eyewitnesses deposed that the accident took place only due to the rash and negligent driving of the bus. The learned Judge erred on passing such award.

7. From the evidence let in by the first respondent/Transport Corporation, it is clear that the accident took place only due to the rash and negligent driving by the driver of the Toyato Qualis Car. There is no contra evidence let in to prove that accident took place only due to the rash and negligent driving of the driver of the bus. The driver of the car was not examined. The owner of the car did not let in any evidence to show that the



accident took place by the rash and negligence of the driver of the bus. The learned Judge has considered all the materials available on record in proper perspective and has concluded that the accident took place only due to the rash and negligent driving of the driver of Toyato Qualish Car. Therefore, this court finds that there is no reason warranting interference by this Court to the said conclusion and hence this Civil Miscellaneous Application is liable to be dismissed.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
(The Chief Judicial Magistrate)
Thanjavur at Kumbakonam

+One cc to M/s.G.Prabhu, Advocate, SR.No.10410

PJL
RL/3C/NGM/SS/SARI/18/3/2016

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