

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.Nos.760 to 766 of 2013
and MP.Nos. 1 to 1 of 2013

Tamil Nadu State Transport Corporation Ltd.,
Pollachi.
Rep by its Managing Director.

...Appellant in all CMAs/3rd Respondent

Vs.

- 1.Andal ... 1st respondent in CMA.No.760 of 2013
- 2.Minor Anirudhan
Minor Rep by father & Next friend Balaji
... 1st respondent in CMA.No.761 of 2013
- 3.Bokkisham Vijaya Narasimha Battachari
... 1st respondent in CMA.No.762 of 2013
- 4.Kalyani ... 1st respondent in CMA.No.763 of 2013
- 5.Minor Sruthi @ Aparna Devi
Minor Rep. by Father & Next friend R.Nagarajan
... 1st respondent in CMA.No.764 of 2013
- 6.Latha ... 1st respondent in CMA.No.765 of 2013
- 7.Minor Aravinth
Minor Rep. by Father & Next friend R.Venkatesan
... 1st respondent in CMA.No.766 of 2013
- 4.M.Senthilnathan ... 2nd respondent in all CMAs/
Respondents 1 & 2
- 6.The New India Assurance Company Ltd.,
T.Nagar, Chennai - 600 017. ... 3rd respondent in all CMAs/
Respondents 1 & 2

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order dated 12.11.2010 passed in MCOP.No.910 of 2006, MCOP.No.911 of 2006, MCOP.No.912 of 2006; MCOP.No.913 of 2006; MCOP.No.930 of 2006; MCOP No.973 of 2006 and MCOP.No.974 of 2006 respectively on the file of the Motor Accident Claims Tribunal, [Additional District Judge, Fast Track Court], Namakkal.

For Appellants :Mr.S.S.Swaminathan
(in all CMAs)

For Respondents :Mr.S.Kalyanaraman [R1]
(in all CMAs) Mr.M.Krishnamoorthy [R3]
R2 - Exparte

COMMON JUDGMENT

This batch of seven cases arise out of a common award passed in seven independent claims seeking compensation for the injuries suffered by the victims of a road accident in which involved were a van, and a bus belonging to the appellant, the State Transport Corporation. The passengers of the van are the claimants before the Tribunal.

CMA. No.	MCOP. No.	Award Amount (Rs.)
760 of 2013	MCOP. No.910 of 2006	16,700/-
761 of 2013	MCOP. No.911 of 2006	92,200/-
762 of 2013	MCOP. No.912 of 2006	19,400/-
763 of 2013	MCOP. No.913 of 2006	84,900/-
764 of 2013	MCOP. No.930 of 2006	81,600/-
765 of 2013	MCOP. No.973 of 2006	60,800/-
766 of 2013	MCOP. NO.974 of 2006	38,200/-

2. In passing the said award the Tribunal found that both the drivers of the van as well as of the bus were negligent in equal terms and accordingly apportioned the negligence equally between them. It is stated that the Insurance Company of the van (third respondent herein) had already satisfied their part of the liability and have deposited the amount before the Tribunal in each of the above said cases. The State Transport Corporation alone appears to have been aggrieved by the award passed and has preferred these appeals.

3. The learned counsel for the appellant submitted that it is a case where the driver of the van was entirely at fault and no part of negligence has to be attributed to the driver of the bus. He took this Court through the evidence of P.W.7, one of the seven claimants and indicate that she, a passenger of the van has admitted to the negligence of her driver. He also added that the conductor of the bus who was always provided with a

seat adjacent to the driver in the front of the bus had deposed categorically as to how the accident had taken place. He however conceded that the driver of his bus was not examined, but argued that the conductor of the bus is indeed a competent witness and his evidence cannot be brushed aside and here the Tribunal was at fault in ignoring the same. He also added that in this case not even the FIR was marked on the side of the claimants and this was purposely done only to shift the burden on the appellant, and hence adverse inference need to be drawn against them.

4. Per contra, the learned counsel for the complainants argued that one solitary statement in the evidence of P.W.7, cannot decide the issue in this case.

5. The submissions of the learned counsel for the appellant appears perfect in a laboratory situation. However, dynamics of accident has to be understood more in live situation. Here is an accident that took place in the early hours of the day. P.W.7, admittedly is a passenger of a van and nobody knows where she was seated at the relevant time when the accident took place and the same was not borne out by evidence. It must be added that she was travelling without any anticipation of an impending accident. Even if P.W.7's evidence has to be assigned some weight she had stated that both the drivers were at fault. This Court has to determine who then had the best opportunity to avoid the accident. This aspect of the matter cannot be resolved by the solitary evidence of P.W.7, if one were to rely on it. In reading the evidence of R.W.1, the conductor of the bus, the Tribunal has ignored it and considered him incompetent to speak. It is true that in State Transport Corporation buses the conductor's seat is provided right in the front, adjacent to the driver's seat on the other side of aisle. But the very witness in his cross-examination has admitted that the driver would be a better candidate for tendering evidence as to how the accident took place. This driver was admittedly not examined and why his evidence was held back by the appellant is a mystery unresolved. There is yet another factor that possibly could have helped the Court in understanding who ought to have played a major part in causing the accident. The Motor Vehicle Inspector's reports are they. This Court has the advantage of laying its hands only on the M.V. report of the van involved in the accident and here again that which pertains to the appellant's bus is not made available. In the final analysis this Court finds that all that the appellant ought to do to escape from liability founded on the determination of the negligence of its driver has not been done and necessarily has not proved them. Can it now expect the result to be different from the one that the Tribunal has justly arrived?

6. In conclusion, I find no merit in any one of the appeals and the same are dismissed but without costs. The appellant is directed to deposit its share of the liability as determined by the Tribunal, if not already deposited within four weeks from the date of receipt of a copy of this order, whereupon the claimants are permitted to withdraw the compensation sum forthwith. Consequently connected miscellaneous petitions are closed.

7. It is advisable for State run Transport Corporations to ascertain the probability of sustaining an appeal on pragmatic parameters since preferring this sort of appeals prove to be unnecessary experiments and a burden on public funds.

8. The lower Court records are directed to be transmitted to the Tribunal without any loss of time.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
Additional District Judge,
Fast Track Court,
Namakkal.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.8793
+7cc to Mr.Swaminathan, Advocate, S.R.No.8744 TO 8750
+7cc to Mr.Kalyanaraman, Advocate, S.R.No.8636 to 8642

NM(CO)
RS (13/03/2017)

CMA.No.760 to 766 of 2013