

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 23.11.2017****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****C.M.A. (MD) No.1307 of 2015****and****M.P. (MD) No.1 of 2015**

Reliance General Insurance Company Limited,
Sri Lakshmi Complex,
I-Floor, Parthi Street,
Omalur Main Road,
Swarnapuri, Salem District
Represented by its Branch Manager.

... Appellant/Respondent-2

Vs.

1.Ayyadurai

...1st Respondent/Petitioner

2.Rengachari

...2nd Respondent/1st Respondent

3.The Tamil Nadu State Transport Corporation,
Thiruvalluvar House,
Pallavan Salai, Chennai-2
Represented by its Managing Director

... 3rd Respondent/3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the fair and decreetal order dated 21.01.2015 made in M.C.O.P.No.1121 of 2013 by the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli.

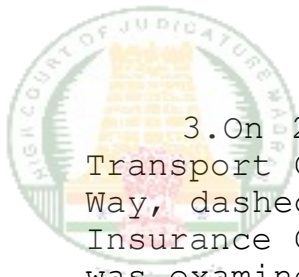
For Appellant : Mr.K.R.Shiva Shankari
for Mr.S.Srinivasa Raghavan

For R-1 & R-2 : Mr.V.SasiKumar
For R-3 : Mr.P.Prabhakaran

JUDGMENT

Heard the learned counsel on either side.

2.The appellant / Insurance Company has filed this Civil Miscellaneous Appeal questioning the impugned award dated 21.01.2015 made in M.C.O.P.No.1121 of 2013 by the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli, on the ground of quantum as well as liability.



3. On 24.09.2013, the bus, belonging to the third respondent / Transport Corporation, was plying on Trichy to Madurai National High Way, dashed against the lorry which was insured with the appellant / Insurance Company. The said lorry was driven by one Mohanraj and he was examined R.W.1. According to the said Mohanraj, the tyre of the said lorry had burst and therefore, he parked the lorry in the road. As per the contents of the FIR / Ex.P1, the said lorry was parked by flashing the danger lights. However, it was not visible and therefore, the driver of the bus unable to see the parked lorry, caused the accident. The driver of the bus died and the claimant Ayyadurai suffered injuries.

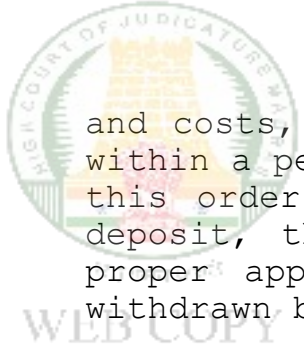
4. The learned counsel appearing for the appellant / Insurance Company placed reliance on the decision of the Honourable Supreme Court of India in **Raj Rani Vs. Oriental Insurance Company Limited and others reported in 2009(1) TNMAC 638(SC)**. The Honourable Supreme Court took the view that when vehicle is parked on the road without parking indication and if the other vehicle dashed against the parked vehicle, contributory negligence has to be fixed.

5. The FIR given by the conductor of the bus mentions that the bus dashed against the lorry. If the bus driver was alert and vigilant, he would have noticed the lorry, and the accident in question would not have occurred. It is seen from the evidence that the brake was not applied. Therefore, some negligence has to be fixed on the part of the bus driver. Therefore 10% contributory negligence is fixed on the driver of the bus belonging to the third respondent and apportioned in the ratio 90:10 between the appellant / Insurance Company and third respondent / Transport Corporation.

6. The claimant suffered injury in the said accident. The Tribunal taking into account the nature of disability and other relevant aspects, awarded a sum of Rs.2,27,820/- as compensation. The claim arrived at by the Tribunal cannot be said to be excessive. Hence, the same is confirmed. By applying the contributory negligence between the appellant Insurance Company and the third respondent Transport Corporation in the ratio of 90:10, the impugned award.

7. In this case, this Court will have to take note of the reasons which led to the break down of the lorry. According to the lorry driver, the tyre got burst. If during a hot after noon the tyre had burst, one can understand that it was due to the weather condition. But, in this case the tyre burst in the middle of the night. Therefore, the tyre must be so worn out that it burst. This Court can only come to the conclusion that the lorry was maintained in such a poor condition that it led to bursting of the tyre.

8. The Appellant / Insurance Company is directed to deposit <https://hcservices.ecourts.gov.in/hcservices/> Rs.2,05,038/- and third respondent corporation is directed to deposit Rs.22,782/- , with interest at the rate of 7.5% per annum



and costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the same by filing proper application before the Tribunal, less the amount already withdrawn by him, if any.

9.This Civil Miscellaneous Appeal is partly allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Special subordinate Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

2.The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.SRINIVASA RAGHAVAN Advocate in SR. No. 89033

+1cc to Mr.V.SASIKUMAR Advocate in SR. No. 89181

+1cc to Mr.P.PRABHAKARAN Advocate in SR. No. 88996

SMI

JS/SV.MMS/SAR.4/29.12.2017/3P-6C

C.M.A. (MD) No.1307 of 2015
23.11.2017