



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.624 of 2014

and

M.P. (MD) .No.1 of 2014

The Managing Director,
Tamil Nadu State Transport Corporation,
51/1, Pillai Thanneer Pandal,
Thirumayam Road,
Pudukkottai

... Appellant/1st Respondent
Vs.

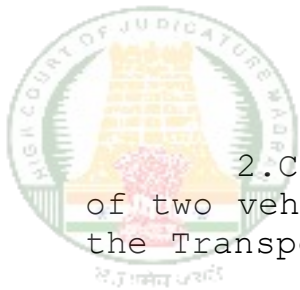
1.Rasu
2.Rukmani
3.Thiruppathy ... Respondents 1 to 3 /Petitioner
4.Guna
5. The Branch Manager,
The Oriental Insurance Company Limited,
No.3607/21, 2nd floor,
Sathiamoorthy Road,
Pudukkottai. ... Respondents 4&5/Respondent 2 & 3

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 19.12.2013 passed in M.C.O.P.No.627 of 2011 on the file of the Motor Accident Claims Tribunal/Additional District Court cum Special Court, Pudukkottai.

For Appellant	: Mr.P.Prabhakaran
For R.1 to R.3	: Mr.N.Rahamadullah
For R5	: Mr.C.Jawahar Ravindran
For R4	: No appearance

J U D G M E N T

The State Transport Corporation has filed this appeal questioning the impugned award primarily on the ground of negligence. On 22.01.2010, in Pudukkottai-Manaparai Road, the bus belonging to the appellant Corporation was going from Vembanoor to Pudukkottai. It was involved in a collision with the Mahindra van coming from the opposite direction. One Koothayee, who was the passenger in the van died. Her legal heirs filed M.C.O.P.No.627 of 2011 before the Motor Accident Claims Tribunal/Additional District Court cum Special Court, Pudukkottai. The Tribunal awarded a sum of Rs.2,68,964/-. The entire negligence was fastened on the bus driver.



2. Contending that since this is a case, involving collision of two vehicles, the negligence must have been equally apportioned, the Transport Corporation has filed this appeal.

3. Heard the learned counsel appearing for the appellant Transport Corporation as well as the learned counsel appearing for the insurer of the van.

4. It is seen that P.W.2, occurrence witness lodged the complaint. The best witness on the side of the claimant would have been the van driver. The insurer of the van ought to have examined the van driver. He was obviously the best witness. Likewise, the rough sketch was not marked. In this case, the bus driver as well as the claimants had come with opposing versions. The bus driver was examined as R.W.1. Therefore, non-examination of the van driver is definitely a point that goes against the insurer of the van.

5. In these circumstances, I am of the view that negligence could be fixed at 75% on the bus driver and 25% on the van driver. The quantum awarded by the Tribunal is very nominal. It does not call for any interference. The modification of award is only in respect of the apportionment of liability alone.

6. Therefore, the appellant Transport Corporation is directed to deposit 75% of the award amount and the fifth respondent/ insurance company is directed to deposit 25% of the award amount 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 twelve weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants are entitled to withdraw the entire amount in equal shares as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

7. Therefore, the award dated 19.12.2013 in M.C.O.P.No.627 of 2011 on the file of the Motor Accident Claims Tribunal/Additional District Court cum Special Court, Pudukkottai, is modified as indicated above. This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, M.P.(MD).No.1 of 2014 is closed.

Sd/-

Assistant Registrar

/True copy/



To

The Additional District and Special Judge,
Motor Accident Claims Tribunal,
Pudukkottai.

Copy to

The Section Officer, (2 copies)
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.P.Prabhakaran, Advocate Sr.No.93477
+1cc to Mr.C.Jawahar Ravindran, Advocate Sr.No.93385

KMI

VB/VR/SAR2/18.07.2018/3P/6C

C.M.A. (MD) No.624 of 2014
18.12.2017