

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

CMA.Nos.2094 and 2095 of 2015
and M.P.No.1 of 2015

C.M.A.No.2094/2015

M/s.The New India Assurance Co. Ltd.,
Divisional Office, (710700),
Sundaram Finance Building,
2nd Floor, B Block,
No.21 Pattulos Road,
Chennai 600 002.

..... Appellant/2nd
Respondent

-VS-

1.Thulasiammal
2.Vennila
3.Sudha
4.The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
No.31/137, Salamedu,
Valudhareddy Post,
Villupuram 605 602.

..... Respondents 1 to 4/
Petitioners 1 to 3 & 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 09.12.2014 made in M.C.O.P.No.66 of 2014 on the file of the Principal District Judge, (Motor Accidents Claims Tribunal), Perambalur.

For Appellant : Ms.C.Harini
for Mr.N.Vijayaraghavan

For R1 to R3 : Mr.T.Gobinath

For R4 : Mr.K.J.Sivakumar

C.M.A.No.2095/2015

M/s.The New India Assurance Co. Ltd.,
Divisional Office, (710700),
Sundaram Finance Building,
2nd Floor, B Block,
No.21 Pattulos Road,
Chennai 600 002.

.... Appellant

-vs-

1.Mangudi
2.Muniammal
3.Minor Sathiya
4.Minor Kavitha
(Minor respondents 3 & 4 rep. By Next
Friend, Natural Guardian and Mother Muniammal)
5.The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
No.31/137, Salamedu, Valudhareddy Post,
Villupuram 605 602.

.... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 09.12.2014 made in M.C.O.P.No.89 of 2014 on the file of the Principal District Judge, (Motor Accidents Claims Tribunal), Perambalur.

For Appellant : Ms.C.Harini
for Mr.N.Vijayaraghavan

For R1 to R4 : Mr.T.Gobinath

For R5 : Mr.K.J.Sivakumar

C O M M O N J U D G M E N T

Both the appeals are arising out of the same accident and hence, they are disposed of by this common judgment.

2.The parties are referred to as per their rank in the claim petitions.

3.The appellant is the 2nd respondent in M.C.O.P.Nos.66 and 89 of 2014. The claimants filed the said claim petitions, claiming a sum of Rs.20,00,000/- and Rs.15,00,000/- for the death of Sivakumar and Sathappan respectively, who died in the accident that took place on 12.06.2013.

4.The Tribunal considering the oral and documentary evidence, held that accident occurred only due to the rash and

negligent driving by the driver of the bus belonging to the 1st respondent and insured with the 2nd respondent and directed the 2nd respondent to pay the compensation. The Tribunal considering the evidence let in by the claimants, awarded a sum of Rs.9,24,000/- and Rs.10,42,000/- respectively as compensation under different heads in the claim petitions.

5. Aggrieved by the said award, the 2nd respondent-Insurance Company has come out with the present two appeals.

6. The learned counsel appearing for the 2nd respondent-Insurance Company contended that the 1st respondent violated policy condition as they operated without valid permit. The 1st respondent had permit only to operate the bus in question between Chennai and Ambur, but the bus was operated between Chennai and Trichy. The 1st respondent has not produced any temporary permit or special permission/orders from the Government, for operation of such bus outside the permit area. The 1st respondent has not pleaded that they have operated the bus as per Section 101 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) and Tribunal erred in relying on Section 101 of the Act and the bus in question was used for additional service on special occasions. Further, the learned counsel for the 2nd respondent submitted that the driver of the bus is not responsible for the accident. The driver of the lorry drove the same in a rash and negligent manner and caused the accident. In any event, the 1st respondent has insured the vehicle with the 2nd respondent and on the date of accident, the policy was in force. The compensation awarded by the Tribunal is unsustainable and liable to be interfered.

7. The learned counsel for the claimants in both the claim petitions contended that it is proved that accident occurred only due to the rash and negligent driving by the driver of the bus belonging to the 1st respondent. The Tribunal elaborately, considering the evidence let in by the claimants, has awarded the compensation, which is not excessive and prayed for dismissal of both the appeals. The 1st respondent is entitled to operate the additional services in public interest and convenience of passengers on special occasions. The Tribunal has rejected the contention of the learned counsel for the 2nd respondent and rightly directed the 2nd respondent to pay the compensation on behalf of the 1st respondent-Transport Corporation and prayed for dismissal of both the appeals.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. The main contention of the learned counsel for the 2nd respondent is that, Section 101 of the Act is not applicable to the facts of the present case as the 1st respondent has not

pleaded that the bus was on special trip as per Section 101 of the Act and the 1st respondent has not produced any temporary or special permit for plying the bus from Chennai to Trichy. This contention is contrary to scope of Section 101 of the Act. The 1st respondent is entitled to operate additional services for the convenience of the passengers on special occasions. As per the proviso to said Section, the 1st respondent has to inform the concerned Transport Authority, without any delay, about the operation of additional services. Section 101 of the Act does not contemplate obtaining temporary or special permit before operating such additional services. The only condition imposed on the Transport Corporation is that they must inform the concerned Transport Authority about the additional services. The Tribunal has properly appreciated the scope of Section 101 of the Act and held that the 2nd respondent-Insurance Company is liable to pay compensation on behalf of the 1st respondent-Transport Corporation. The 2nd respondent even though examined its Executive Officer, Perambalur Branch as R.W.2, has failed to prove that there is no provision to operate additional services as per Section 101 of the Act.

10.The learned counsel for the 2nd respondent except contending that the total compensation awarded is excessive, has not made out any case for modifying the award of the Tribunal. The Tribunal has given valid and cogent reason for fixing the liability on the 2nd respondent and also considering all the materials on record, awarded compensation, which is not excessive and there is reason to interfere with the award of the Tribunal.

11.In the result, both the Civil Miscellaneous Appeals are dismissed and the compensation amounts awarded by the Tribunal are confirmed. It is submitted by the learned counsel for the claimants that the entire award amounts have been deposited by the 2nd respondent. In view of the said submission, the claimants are permitted to withdraw their share, as per the ratio of apportionment fixed by the Tribunal, by filing necessary application before the Tribunal. The share of the minor claimants is directed to be deposited in any one of the Nationalised Bank, till they attain majority. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

gsa

To

1.The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
No.31/137, Salamedu,
Valudhareddy Post,
Villupuram 605 602.

2.The Principal District Judge,
(Motor Accidents Claims Tribunal),
Perambalur.

copy to

The Section officer
VR Section, High Court, Madras 104.

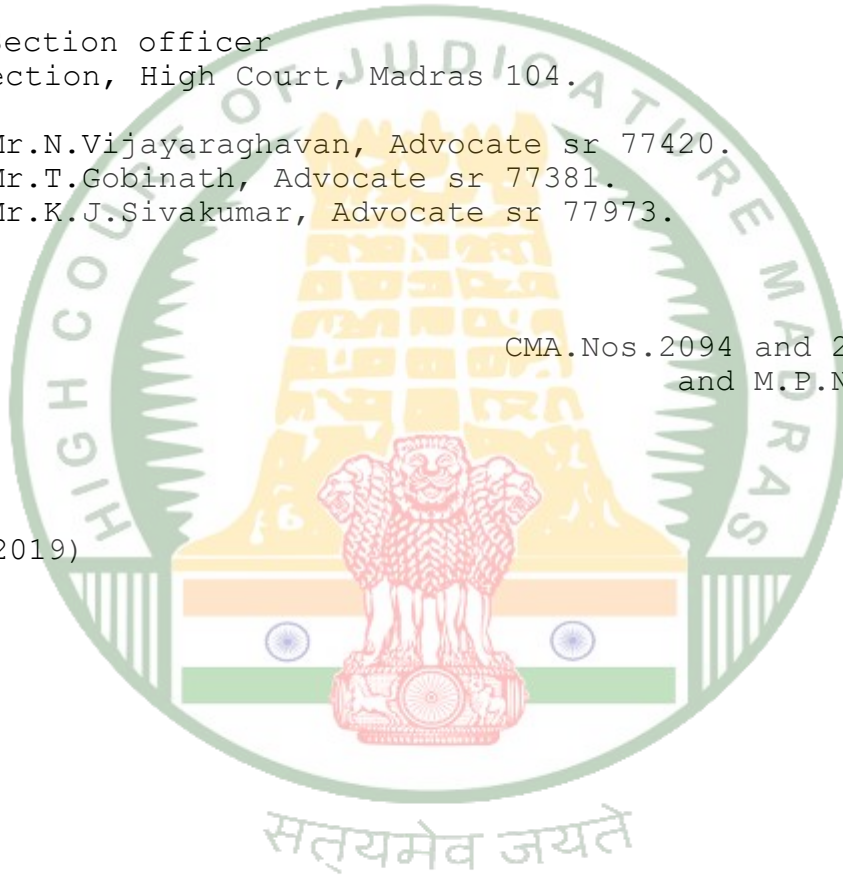
+1 CC to Mr.N.Vijayaraghavan, Advocate sr 77420.

+1 CC to Mr.T.Gobinath, Advocate sr 77381.

+1 CC to Mr.K.J.Sivakumar, Advocate sr 77973.

CMA.Nos.2094 and 2095 of 2015
and M.P.No.1 of 2015

PPA (CO)
SP (10/05/2019)



WEB COPY