

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 27.08.2018

JUDGMENT PRONOUNCED ON : 07.09.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.Nos.1400 to 1403 of 2011
and M.P.Nos.1 to 1 of 2011

The Divisional Manager,
United India Insurance Co. Ltd.,
Motor Third Party Claim Office,
No.66-68, Gandhi Road,
Kancheepuram. ... Appellant / 2nd respondent
[in all C.M.A.s]

versus

1.G.Saradha ... 1st Respondent / Petitioner
[in C.M.A.No.1400 of 2011]

1.B.Elumalai ... 1st Respondent / Petitioner
[in C.M.A.No.1401 of 2011]

1.R.Selvi ... 1st Respondent / Petitioner
[in C.M.A.No.1402 of 2011]

1.P.Palani ... 1st Respondent / Petitioner
[in C.M.A.No.1403 of 2011]

2.A.M.Munusamy Mudaliar ... 2nd Respondent/1st Respondent
[in all C.M.A.s]

3.The Managing Director,
Tamil Nadu State Transport
Corporation Ltd.,
Division-II, No.1 & 2,
Sheikpet Nadu Street,
Kancheepuram. .. 3rd Respondent/3rd Respondent
[in all C.M.A.s]

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgments and decrees dated 31.03.2010 in M.C.O.P.Nos.162, 179, 121 and 274 of 2008 on the file of the Motor Accidents Claims Tribunal

[Subordinate Court], Kancheepuram.

For Appellant : Mr.S.Arun Kumar
[in all C.M.A.s]
For Respondent No.1 : Mr.M.Sivakumar
[in all C.M.A.s]
For Respondent No.3 : Mr.V.Ramesh
[in all C.M.A.s]

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

Since all the four Civil Miscellaneous Appeals are arising out of the same accident and disposed on the same day by the same Tribunal, all are jointly taken up for consideration. These Appeals are filed by the appellant [Insurance Company], challenging the judgments and decrees dated 31.03.2010 in M.C.O.P.Nos.162, 179, 121 and 274 of 2008 on the file of the Motor Accidents Claims Tribunal [Subordinate Court], Kancheepuram respectively.

2. For the sake of convenience, the parties are referred to herein, as per their litigative status before the Tribunal.

3. The case of the petitioners in all the four claim petitions are that, on 30.11.2007 at about 5.00p.m., when the petitioner in M.C.O.P.No.162 of 2008 was travelling in a Government bus bearing registration No.TN-32-N-2034 owned by the third respondent, the petitioners in M.C.O.P.Nos.179, 121 and 274 of 2008 were all travelled in a private bus bearing registration No.AP-03-W-7575 owned by the first respondent and insured with the second respondent. Both the buses were proceeding against each other in north-south road near Kooram Gate in Kancheepuram-Arakonam High Road. Prior to the occurrence, the driver of the first respondent's bus, drove the bus with uncontrollable speed in a rash and negligent manner and at the same time, the driver of the third respondent Government bus was driven by its driver in opposite direction with normal speed after observing the traffic rules and regulations.

4. Before the occurrence, the driver of the private bus driven the bus in a rash and negligent manner and attempted to overtake the bullock cart, which was proceeded in front of the bus in a same direction, after seeing the uncontrollable speed of the private bus, the driver of the third respondent, who came from opposite direction parked the vehicle on the extreme left side of the road near to the railway gate. But without seeing the Government bus, the driver of the private bus driven his vehicle on the western side of the north-south main road, dashed against the Government bus. In the accident, both the bus drivers and 7 other passengers were died. According to the

petitioners, the accident had happened only due to the rash and negligent act of the driver, who drove the private bus.

5. For the said accident, a case has been registered in Crime No.1197 of 2007 under Sections 297, 337, 338 and 304[A] of IPC by the Kancheepuram Police. After completing the investigation, since both the drivers are died, charge sheet has been filed as "charge abates". It is the contention of the respective petitioners that due to the injury suffered, they are not able to attend the regular work and hence, sought for compensation from the respondents.

6. On the other hand, opposing the claim of the petitioners, by filing counter, the second respondent [Insurance Company] denied the accident itself and stated that only due to rash and negligent act of the driver, who drove the Government bus the accident occurred.

7. Per contra, the third respondent, by filing counter stated that the driver of the private bus bearing registration No.AP-03-W-7575 alone is responsible for the accident now stated by the claimants in the claim petitions. However, both the respondents sought for the dismissal of the Claim Petitions.

8. Before the Claims Tribunal in each claim petition, after examining two witnesses on the side of the petitioners as P.W.1 and P.W.2 and after marking 5 exhibits as P.1 to P.5 in M.C.O.P.Nos.162, 179 and 274 of 2008 and 9 exhibits as P.1 to P.9 in M.C.O.P.No.121 of 2008, two witnesses were examined on the side of the respondents as R.W.1 and R.W.2. Further, 3 documents were exhibited on the side of the respondents as R.1 to R.3. The first respondent remained exparte.

9. The Claims Tribunal, on the basis of the available records came to the conclusion that the driver of the first respondent [private bus] driven the vehicle in a rash and negligent manner and causing this accident. Further, came to the conclusion that the first and second respondent jointly and severally liable to pay the compensation to the claimants. Finally, passed award as follows:

M.C.O.P.No.162 of 2008	Rs.53,000/- along with interest @ 7.5% as compensation to the injured [petitioner, G.Saradha]
M.C.O.P.No.179 of 2008	Rs.95,000/- along with interest @ 7.5% as compensation to the injured [petitioner, B.Elumalai]
M.C.O.P.No.121 of 2008	Rs.32,475/- along with interest @ 7.5% as compensation to the injured [petitioner, R.Selvi]

M.C.O.P.No.162 of 2008	Rs.53,000/- along with interest @ 7.5% as compensation to the injured [petitioner, G.Saradha]
M.C.O.P.No.274 of 2008	Rs.56,000/- along with interest @ 7.5% as compensation to the injured [petitioner, P.Palani]

10. Further, the Claims Tribunal directed the second respondent [Insurance Company] to pay the compensation. Aggrieved over the said findings, the second respondent [Insurance Company] has come forward with the present Appeals.

11. When the appeals are taken up for hearing, I have heard the arguments of Mr.S.Arun Kumar, learned counsel appearing for the appellants/second respondent/Insurance Company, Mr.M.Sivakumar, learned counsel appearing for the first respondent/petitioners, Mr.V.Ramesh, learned counsel appearing for the third respondent [owner of the Government bus] and also perused the records carefully.

12. The learned counsel appearing for the second respondent [Insurance Company] contended that the Claims Tribunal failed to note that the accident occurred only due to the negligent act of both the drivers and fastened the liability on the vehicle owned by the first respondent private bus is not legally sustainable. Further, he would contend that in the accident both the buses are dashed against each other as like head-on-collision. In the said circumstances, penalising the respondents 1 and 2 alone is legally not sustainable and prayed to fix the some proportionate liability on the third respondent to some extent. In otherwise, the Insurance Company did not challenge the quantum of compensation fixed by the Claims Tribunal.

13. Per contra, the learned counsel appearing for the petitioners [injured] would contend that in order to prove the negligence of the third respondent [owner of the Government bus], no document was produced on the side of the second respondent [Insurance Company]. According to them, the Claims Tribunal correctly appreciated the evidence given by the petitioners and passed the award. The award amount passed by the Claims Tribunal is just and fair, no interference is required and thus, the petitioners sought for dismissal of these appeals.

14. In the Claims Tribunal, all the respective petitioners were examined as P.W.1 and all of them have stated in their evidences that only due to the rash and negligent act of the driver, who drove the private bus bearing registration No.AP-03-W-7575, the accident occurred. In support of their

contentions, in all the cases, the copy of the First Information Report registered by the Kancheepuram Police was marked as Ex.P.1. In the said document, it was averred that the de facto complainant came to the occurrence place, after completion of accident. So, the averments mentioned in the First Information Report did not indicate the manner of accident, as well as about the negligence of the bus drivers. The other documents exhibited on the side of the petitioners are all related to the treatment given to the petitioners. So, in order to accept the case of the petitioners, the evidence given by P.W.1 alone is available.

15. In the said circumstances, on the side of the respondents, the officers of the respondent nos.2 and 3 were examined as R.W.1 and R.W.2, they have stated in their evidence in support of their contention made in the counter. In the said circumstances, the documents available for fixing the liability are Ex.R.1 to Ex.R.3. Ex.R.1 is the history of the case prepared by the Investigating Officer, Ex.R.2 is the copy of the final report filed by the police officer, and Ex.R.3 is the rough sketch prepared by the very same officer.

16. In respect to Ex.R.3, the learned counsel appearing for the second respondent [Insurance Company] would contend that it is not a reliable document to accept the case of the petitioners as true one.

17. In the said circumstances, it is an admitted fact before the occurrence, the private bus was proceeded from north to south, and the bus owned by the third respondent was proceeded from south to north. Therefore, both the buses are coming in the opposite direction. It is a common rule that the bus came from north to south direction is proceeded only on the eastern side of the north-west road. But in this occurrence, the accident had happened on the extreme western side of the north-south road. Actually, if the driver of the bus which proceeded from north to south has driven his bus after observing the traffic rules, there is no necessity for entering into the western side of the road, which shows the driver of the bus owned by the first respondent alone drove the vehicle in wrong side and committed the occurrence. The said particulars available in the rough sketch are proved through oral evidence of P.W.1. Apart from that in order to dispute the said fact, no other documents were produced on the side of the second respondent. Further, the rough sketch marked in these claim petitions are prepared by the Investigating Officer in the earliest time of investigation. So, we cannot disbelieve the said document entirely. So, the said circumstances clearly established that only due to the rash and negligent act of the driver of the bus bearing registration No.AP-03-W-7575 the

accident had happened. The Claims Tribunal also came to the same conclusion and fastened the liability on the second respondent [Insurance Company].

18. Since the second respondent[Insurance Company] did not challenge the quantum of compensation, the findings arrived at by the Claims Tribunal with regard to the quantum is confirmed.

19. In the result,

[i] These Civil Miscellaneous Appeals are dismissed.

[ii] The second respondent [Insurance Company] is directed to deposit the award amount along with accrued interest and cost within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the respective petitioners [claimants] in these appeals are permitted to withdraw the same, by filing necessary application before the Tribunal. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sri

To

The Motor Accidents Claims Tribunal
[Subordinate Court],
Kancheepuram.

+4 cc's to Mr.S.Arunkumar, Advocate Sr.Nos.62709 to 62712

+4 cc's to Mr.C.Prabakaran, Advocate Sr.Nos.62023 to 62026

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

Common Judgment in
C.M.A.Nos.1400 to 1403 of 2011

GP(CO)
CSL/10.12.2018