

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2754 and 2383 of 2018
and C.M.P.No.20932 of 2018

C.M.A.No.2754 of 2018

The Divisional manager,
United India Insurance Co. Ltd.,
(TP Hup)
No.4, Bharathidasan Salai,
Contonment, Trichy. ... Appellant /3rd Respondent

Vs.

1.Veeraragavan
2.Latha
3.Jeyalakshmi
4.Sulochana ... Respondents 1 to 4/Petitioners

5.The Managing Director,
T.N.S.T.C. Kumbakonam Ltd.,
Trichy Region,
Periyamilaguparai, Trichy-1. ...5th Respondent/1st Respondent

6.Kannaiyan ... 6th Respondent/2nd Respondent

C.M.A.No.2383 of 2018

The Branch Manager,
United India Insurance Co. Ltd.,
No.50A, Pallivasal street
Perambalur. ... Appellant/2nd Respondent

Vs.

1.M.Nithya ...1st Respondent/Petitioner
2.Kannaiyan ...2nd Respondent/1st Respondent

3.The Managing Director,
T.N.S.T.C. Kumbakonam Ltd.,
Trichy Region,
Periyamilaguparai, Trichy-1. .. 3rd Respondent/3rd Respondent

Prayer: This Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 15.11.2017 made in M.C.O.P.Nos.13 and 153 of 2016 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Ariyalur.

In C.M.A.No.2754 of 2018

For Appellant : Mr.D.Bhaskaran

For R1 to R3 : Mr.C.Jagadish

For R5 : Mr.D.Venkatachalam

In C.M.A.No.2383 of 2018

For Appellant : Mr.D.Bhaskaran

For R3 : Mr.D.Venkatachalam

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

The Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company, challenging the liability fastened on them, by the award dated 15.11.2017, made in M.C.O.P.Nos.13 and 153 of 2016 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Ariyalur.

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

3.The appellant/Insurance Company is the third respondent in M.C.O.P.No.13 of 2016 and second respondent in M.C.O.P.No.153 of 2016 on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal), Ariyalur. The claimants in M.C.O.P.No.13 of 2016 filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of one Vaijeyanthi Mala, who died in the accident that took place on 15.10.2015. The claimant in M.C.O.P.No.153 of 2016 filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 15.10.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the second respondent in M.C.O.P.No.13 of 2016 (first respondent in M.C.O.P.No.153 of 2016) and the driver of the bus belonging to the first respondent/Transport Corporation in M.C.O.P.No.13 of 2016 (third respondent/Transport Corporation in M.C.O.P.No.153 of 2016) is not liable to pay compensation and directed the appellant/Insurance Company to pay a sum of Rs.2,59,000/- as compensation to the first claimant alone in M.C.O.P.No.13 of 2016 and Rs.1,11,500/- as compensation to the claimant in M.C.O.P.No.153 of 2016.

5.Against the said award dated 15.11.2017, made in M.C.O.P.Nos.13 and 153 of 2016, the appellant/Insurance Company has come out with these appeals challenging the liability fastened on them.

6.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal has erred in fixing negligence on the part of the driver of the lorry belonging to the second respondent in M.C.O.P.No.13 of 2016 (first respondent in M.C.O.P.No.153 of 2016). The Tribunal has not properly appreciated the materials on record and came to the conclusion to fix the negligence on the part of the driver of the lorry. The first respondent/Transport Corporation in M.C.O.P.No.13 of 2016 (third respondent/Transport Corporation in M.C.O.P.No.153 of 2016) has failed to produce spot sketch and Inspection Report, but filed only rough sketch. The Tribunal has failed to consider the admission of the driver of the bus that three buses can simultaneously proceed in the said route and driver of the bus failed to exercise caution and was responsible for the accident.

7.The learned counsel appearing for the first respondent/Transport Corporation in M.C.O.P.No.13 of 2016 (third respondent/Transport Corporation in M.C.O.P.No.153 of 2016) contended that considering the materials on record, the Tribunal has held that the driver of the bus belonging to the first respondent/Transport Corporation in M.C.O.P.No.13 of 2016 (third respondent/Transport Corporation in M.C.O.P.No.153 of 2016) is not responsible for the accident and the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the second respondent in M.C.O.P.No.13 of 2016 (first respondent in M.C.O.P.No.153 of 2016).

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first

respondent/Transport Corporation in M.C.O.P.No.13 of 2016 (third respondent/Transport Corporation in M.C.O.P.No.153 of 2016) and perused the materials available on record.

9.From the materials available on record, it is seen that the contention of the claimants is that the driver of the lorry belonging to the second respondent in M.C.O.P.No.13 of 2016 (first respondent in M.C.O.P.No.153 of 2016) came in reverse direction and dashed against the bus belonging to the first respondent/Transport Corporation in M.C.O.P.No.13 of 2016 (third respondent/Transport Corporation in M.C.O.P.No.153 of 2016). According to the claimants, both the drivers are responsible for the accident. The evidence deposed by the claimants is that the driver of the lorry came in the reverse direction and dashed against the bus. On the other hand, it is the contention of the learned counsel appearing for the appellant/Insurance Company that the lorry belonging to the second respondent in M.C.O.P.No.13 of 2016 (first respondent in M.C.O.P.No.153 of 2016) was not coming in the reverse direction in a rash and negligent manner to dash against the bus. On the other hand, the lorry was not moving, but it was stationed in the Amman diesel workshop. The driver of the bus in order to avoid head on collision with another oncoming lorry, dashed the bus against the backside of the lorry. From the materials on record, it is seen that the claimants herein and other claimants have stated that there was no oncoming another lorry and that the lorry belonging to the second respondent in M.C.O.P.No.13 of 2016 (first respondent in M.C.O.P.No.153 of 2016) and insured with the appellant/Insurance Company is not stationed, but the driver of the lorry was reversing the lorry. The Tribunal has considered these facts along with the report of the Motor Vehicle Inspector, wherein the Motor Vehicle Inspector has stated that if bus hit the lorry on the backside, the damages to the lorry would have been more, but when the lorry came on the reverse direction and dashed against the bus, damage to the bus will be more. The Tribunal also considered the deposition of the driver of the lorry that he did not put indicator as lorry was in workshop. From the materials available on record, the Tribunal found that the lorry was five feet inside the road. The Tribunal has elaborately considered as to whose negligence the accident had occurred and by giving cogent and valid reason, held that the driver of the lorry is responsible for the accident. There is no perversity in the finding of the Tribunal, warranting interference by this Court.

10.In the result, the Civil Miscellaneous Appeals are dismissed confirming the award of the Tribunal. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of

receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal), Ariyalur.

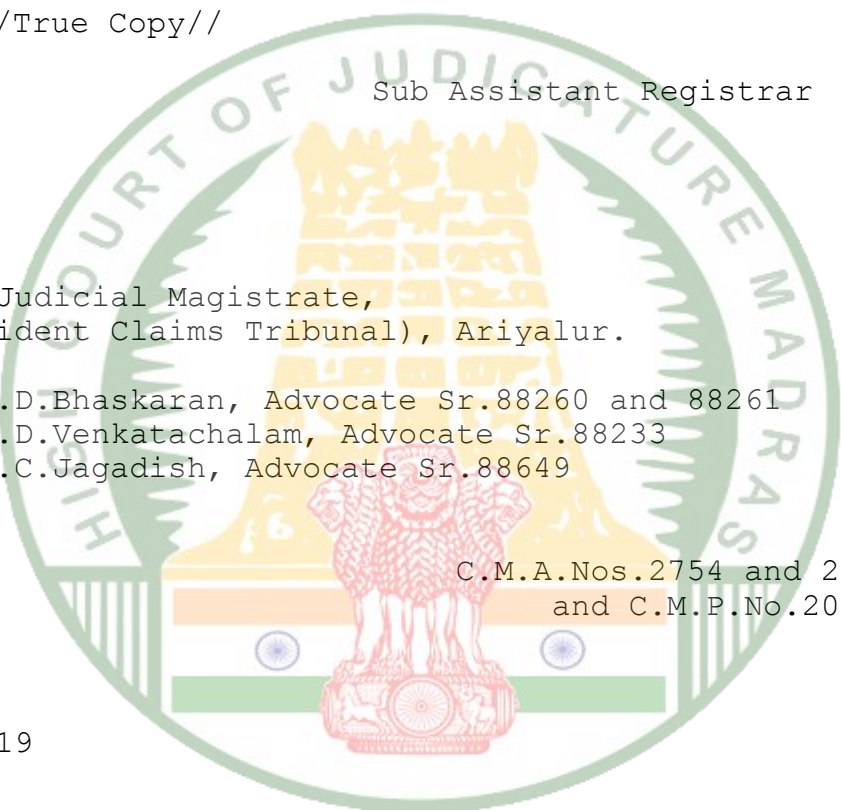
+2cc to Mr.D.Bhaskaran, Advocate Sr.88260 and 88261

+1cc to Mr.D.Venkatachalam, Advocate Sr.88233

+1cc to Mr.C.Jagadish, Advocate Sr.88649

C.M.A.Nos.2754 and 2383 of 2018
and C.M.P.No.20932 of 2018

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srg 7/5/2019



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