



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.777 of 2014

and

MP(MD) No.1 of 2014

Tamil Nadu State Transport Corporation Limited,
(Madurai Division - 1),
through its Managing Director,
Bye-Pass Road,
Madurai - 10.

... Appellant/1st Respondent

Vs.

1.M.Kaliselvan
2.M.Elazhelian
3.Porulselvi
4.Arulmozhi
5.Kayalvizhi
6.Karthikeyan
7.Senthil Athiban
8.Meenakshi

8th respondent given up by the other claimants
as per memo dated 13.02.2007. ... Respondents 1 to 8/Petitioners

9.V.Veerasamy

Ex-parte in the Tribunal - Given up.

... 9th Respondent/2nd Respondent

10.The Divisional Manager,
United India Insurance Co. Ltd.,
7-1, West Veli Street,
Madurai.

... 10th Respondent/3rd Respondent

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2007, passed in M.C.O.P.No.2253 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Judge cum Fast Track Court No.3, Madurai.

For Appellant	:	Mr.M.Prakash
For Respondents	:	Mr.N.Sivakumar - for R10
	:	No Appearance - for R1 to R8

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed challenging the award passed by the learned Subordinate Judge, Motor Accidents Claims Tribunal, Madurai in M.C.O.P.No.2253 of 2002, dated 09.04.2007.

2. Heard the learned Counsel appearing on either side and perused the records carefully.

3. It is a case of fatal and the tribunal has awarded a sum of Rs.1,10,000/- as compensation, against which, the Appellant/Transport Corporation company is before this Court.

4. Though several grounds are raised in the memorandum of grounds, the main ground on which the appellant Corporation has filed this appeal is on liability.

5. The learned Counsel for the appellant would submit that the issue involved in this appeal no more res integra, in view of the fact that in the appeal arises out of the very same accident, this Court has fixed 50% of liability upon the Transport Corporation and 50% of liability upon United India Insurance Company Ltd. He has also produced a copy of the said unreported decision in ***The Branch Manager, United India Insurance Company Ltd., Aruppukkottai Vs. Kalaiselvi & others*** in batch cases in ***CMA.Nos.1785 to 1787 of 2002, CMA(MD) Nos.1090, 1173 of 2006, 91 of 2011, 385 of 2007 & 907 of 2013, CRP(MD) Nos.1039 of 2006***, dated 22.04.2016, wherein it is held in paragraph No.13, as follows:

"13. Point No.(i):

(i) From the materials available on record, it is seen that in all the claim petitions, eyewitnesses were examined. All the eyewitnesses except the claimant in M.C.O.P.No.1373 of 2000, stated that both the drivers were driving the bus in a rash and negligent manner. They have also stated that the accident occurred when the driver of the bus belonging to the first respondent was trying to overtake an autorickshaw going in front of the bus. Evidence was also let in that the driver of the bus belonging to the first respondent gave signal to the bus coming in the opposite direction that he is overtaking the autorickshaw. The driver of the bus belonging to the second respondent deposed that on seeing the bus belonging to the first respondent, coming in a rash and negligent manner, he stopped the bus and in spite of the same, the driver of the bus belonging to the first respondent dashed against the bus belonging to the second respondent. The Tribunal considered these rival contentions of R.W.1, the conductor of the bus belonging to the first respondent as well as R.W.2, the driver of the



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bus belonging to the second respondent and the report of the Motor Vehicle Inspector and rough sketch of the place, where the accident took place, and came to the conclusion that the accident took place only due to rash and negligent driving by both the drivers. The Tribunal rightly rejected the evidence of R.W.1 and R.W.2, as they are interested witnesses. The Tribunal rejected the F.I.R. and the Judgment of the Criminal Court after properly appreciating the evidence, both oral and documentary, let in before it. The Tribunal has given valid reason for not accepting the F.I.R. and Judgments of Criminal Court. It is well settled that when two vehicles are involved in the accident, based on evidence, liability must be fastened on the owners of both the vehicles. In the present case, evidence available on record clearly shows that the drivers of both the vehicles are equally responsible for the accident. Therefore, the finding of the Tribunal that the first respondent is liable to pay 50% and the respondents 2 and 3 are to pay 50% is based on valid and cogent reasons and there is no infirmity in the said finding. Therefore, the said finding is confirmed.

(ii) As far as the award in M.C.O.P.Nos.909 of 2001 and 1373 of 2000 are concerned, the Tribunal has not properly appreciated the evidence. The Tribunal has erred in accepting the evidence of the claimant in M.C.O.P.No.1373 of 2000 to hold that only the driver of the first respondent alone was responsible for the accident. Similarly, the Tribunal failed to see the evidence of the claimant in M.C.O.P.No.909 of 2001, where the claimant had deposed that the driver of the first respondent gave signal, but the driver of the second respondent failed to react on the said signal. Therefore, the reasons given by the Tribunal fixing the liability only on the driver of the first respondent corporation bus are not valid and hence, the finding of the Tribunal in these two M.C.O.Ps are liable to be set aside and accordingly, set aside."

(emphasis supplied)

6. The present Civil Miscellaneous Appeal is arising out of the very same accident and this Court has elaborately discussed the same at paragraph No.13 of the judgment and therefore, the above judgment is squarely applicable to the present case also and therefore, following the same, this Civil Miscellaneous Appeal is allowed as under:

- the appellant is directed to pay 50% of the award amount and respondents 9 and 10 shall **jointly and severally** pay remaining 50% of the compensation amount awarded in



M.C.O.P.No.2253 of 2002 with interest @ 7.5% per annum from the date of petition till the date of deposit. The appellant and the respondents 9 and 10 shall deposit the entire award amount with accrued interest and cost, less the sum already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.

- On such deposit, the claimants are permitted to withdraw their respective shares with accrued interest and costs, as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.
- There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.
- If the entire compensation awarded by the tribunal has already been deposited, the appellant/Transport Corporation is at liberty to withdraw the excess amount, if any.

Sd/-

Assistant Registrar(T & P)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Additional District & Sessions Judge
cum Fast Track Court No.3,
Motor Accidents Claims Tribunal,
Madurai.

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

+1 CC to Mr.M.PRAKASH, Advocate in SR.No.71754

+1 CC to Mr.N.SIVAKUMAR, Advocate in SR.No.72662

RM

RJ/RP/SAR-2/27/07/2018 - 4P/6C

C.M.A(MD) .No.777 of 2014

09.07.2018