



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2018

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) Nos.861 to 864 of 2018

and

C.M.P. (MD) Nos.9483 to 9486 of 2018

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Siva Complex,
2nd Floor,
22/C, Saradha College Main Road,
Salem.

... Appellant
in all the C.M.As.

Vs.

A.Maharajan	... 1 st Respondent in C.M.A. (MD) No.861/2018
Ponniah Nadar	... 1 st Respondent in C.M.A. (MD) No.862/2018
Sakthikani	... 1 st Respondent in C.M.A. (MD) No.863/2018
Thillaikani	... 1 st Respondent in C.M.A. (MD) No.864/2018
K.P.Natarajan	... 2 nd Respondent in all the C.M.As.
[2 nd respondent remained exparte before the lower Court]	

The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai Division),
Ranithottam, Nagercoil - 629 001.

... 3rd Respondent
in all the C.M.As.

Common Prayer: Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common award, dated 27.08.2014, made in M.C.O.P.Nos.267 of 2008, 376 of 2010, 377 of 2010 and 379 of 2010, on the file of the Motor Accident Claims Tribunal-cum-Additional Subordinate Court, Tirunelveli.

For Appellant : Mr.K.Bhaskaran
(in all the C.M.As.)
<https://hcservices.ecourts.gov.in/hcservices/>

**COMMON JUDGMENT**

Claim Petitions were filed arising out of the same accident. Upon consideration of evidence, the Motor Accidents Claims Tribunal, Additional Subordinate Court, Tirunelveli, passed a common award dated 27.08.2014 in all the claim petitions. The present appeals are against the common award dated 27.08.2014 passed by the Tribunal. Hence, they were heard together and decided by this common judgment.

2.The appellant is the Insurance Company. The first respondent in all the C.M.As. are the claimants, whereas the second respondent is the owner of the Omni Bus, bearing Registration No.TN-28-M-9199, which was insured with the appellant Insurance Company and a bus bearing Registration No.TN-74-N-0800 was belonging to the third respondent Transport Corporation.

3.The facts of the case are that on 05.02.2007 about 8.20 a.m., while the claimants were travelling in the bus bearing Registration No.TN-74-N-0800 belonging to the third respondent Transport Corporation from Nagercoil to Tirunelveli, an omni bus bearing Registration No.TN-28-M-9199 belonging to the second respondent herein, insured with the appellant Insurance Company, came in a rash and negligent manner and dashed against the right side of the Transport Corporation bus, in which, the front side of both the buses got damaged and the claimants, who were travelling in the Transport Corporation bus sustained injuries. They filed their respective claim petitions before the Tribunal claiming compensation for the injuries sustained by them in the accident.

4.The appellant Insurance Company filed counter contending that the accident occurred only due to rash and negligent driving by the driver of the Transport Corporation bus. It is the specific case of the appellant in the counter that the place of accident is a slight curve and the expansion of the existing NH Road into four way track was progressing at the time of accident and therefore, the existing service road was very narrow and almost a single road upto Pattarpuram Diversion Bridge. Though the driver of the Corporation bus had seen that the second respondent's bus is entering into the single road without observing the traffic rules in a high speed drove the Corporation bus and dashed against the second respondent's bus.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the second respondent and awarded compensation in all the claim petitions.

6. Aggrieved by the said award, the appellant has filed these Civil Miscellaneous Appeals.

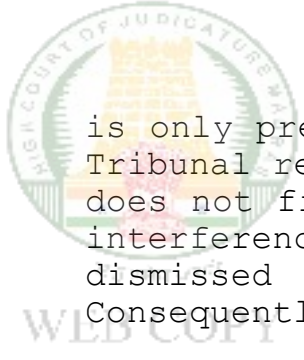


7. Though the appellant filed these appeals challenging the negligence and quantum, during the course of hearing, the learned counsel appearing for the appellant restricted the relief only to the aspect of negligence.

8. The contention of the learned counsel appearing for the appellant that the learned II Additional District Judge, Motor Accident Claims Tribunal, Tirunelveli, in the claim petition filed by another person, namely, Harish, for the injuries sustained by him in the very same accident, fixed the negligence on both the drivers of the respective vehicles.

9. Before the Tribunal, the counsel for the third respondent contended that the learned IV Additional District Judge, Motor Accident Claims Tribunal, Tirunelveli, in the claim petitions filed by two other persons for the injuries sustained by them in the very same accident, fixed liability only on the appellant and the second respondent. The Tribunal considering the evidence of Exs.P.1, P.2 and P.5 and the contentions of the counsel for the appellant and the third respondent independently and considering the pleadings and oral and documentary evidence let in by the parties, held that the accident took place only due to rash and negligent driving by the driver of the Omni bus belonging to the second respondent and directed the appellant Insurance Company to pay compensation on behalf of the second respondent.

10. Further, from the materials available on record, it is seen that the claimants/injured examined themselves as witnesses and reiterated the manner of accident as averred in their respective claim petitions. Based on the complaint given by the Village Administrative Officer, Rajakkamangalam, Ex.P.1 - FIR has been registered against the driver of the Omni bus under Sections 279, 337, 338 and 304(A) IPC on the file of the Nanguneri Police Station. The Report of the Motor Vehicle Inspector in respect of both the buses involved in the accident has been marked as Ex.P.2. On investigation, the police laid a charge sheet against the driver of the Omni bus. From Ex.P.5 - Rough Sketch, it is seen that the Omni bus belonging to the second respondent is beyond the center-median and hit the Transport Corporation bus and from the edge of the road upto the Omni bus, there was a distance of 7 feet, which clearly proves that the driver of the Omni bus drove the same in a rash and negligent manner and hit the Transport Corporation bus. Even assuming as contended by the appellant in the counter, there was expansion of work of the existing NH Road into four way track in process and therefore, existing service road was very narrow, a perusal of the rough sketch shows that the Omni bus hit the front right side of the Transport Corporation bus, which clearly shows that without giving space for the vehicles coming on the opposite direction, the driver of the Omni bus drove the same in a rash and negligent manner and caused the accident. The evidence of the claimants as to the manner of accident is duly supported by Ex.P.1 - FIR. Needless to say, in claim cases, the test to prove negligence,



is only preponderance of probability and testing the finding of the Tribunal regarding negligence on the abovesaid principle, this Court does not find any perversity or infirmity in the finding warranting interference. Hence, all the Civil Miscellaneous Appeals are dismissed confirming the award of the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-)

To

1. The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai Division),
Ranithottam, Nagercoil - 629 001.
3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

SMN2

TE/SKN/SAR-1 : 19/12/2018 : 4P/5C

Common Judgment in
CMA(MD)Nos.861 to 864 of 2018
25.09.2018