

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 11.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A. No.1325 of 2007
and M.P.No.2 of 2007

M/s National Insurance Company
Limited, Promenade Road,
Trichy. Appellant/Respondent-3

Versus

1. Bhoopathy 1st Respondent/Petitioner
- 2.The Managing Director,
TamilNadu State Transport Corporation Ltd.,
Trichy. 2nd Respondent/1st Respondent
3. A. Ramasami 3rd Respondent/2nd Respondent
(R3 Exparte in the tribunal)

Prayer: This Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 24.07.2002 made in M.C.O.P.No. 429 of 2000 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Perambalur.

For Appellant : Mrs. R. Sreevidya
For Respondent -1 : Ex-parte
For Respondent -2 : Mr.D.Venkatachalam

J U D G M E N T

The appellant has filed this appeal against the Judgment and Decree dated 24.07.2002 made in M.C.O.P.No. 429 of 2000 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Perambalur.

2. It is the case of fatal accident which happened on 22.07.1997. When the first respondent was travelling in the Transport Corporation bus between Thirumanur to Kilazpur, the third respondent herein was riding his tractor and came in the opposite direction and dashed the bus. In the result the first respondent herein sustained greivous injuries, hence he filed

M.C.O.P.No. 429 of 2009 on the file of Motor Accident Claims Tribunal (Principal District Judge) seeking Rs.5,00,000/- as compensation.

3. After considering the rival submissions made on either side and the documents available on record the Tribunal awarded Rs.1,70,000/- as compensation and the said compensation should be divided equally between the appellant/Insurance company, the Transport Corporation/second respondent and the third respondent/owner of the Tractor.

4. Challenging the same as excessive and disproportionate, the Insurance Company has filed this appeal.

5. Heard the arguments of both sides and perused the materials available on record.

6. Today, when the matter is taken up for hearing the learned counsel for the appellant/Insurance company produced a copy of the Judgment in C.M.A.No.2958 of 2008, in which the case is filed arising out of the same accident, wherein this Court has held that the entire liability is fixed on the Transport Corporation. The relevant portion in para no.7 is extracted here under:

"It is stated that to the knowledge of the appellant no appeal has been filed by the Transport corporation against the award in M.C.O.P.No.496 and 503 of 2000. The Transport corporation having failed to challenge the finding of negligence fixed entirely on the driver of the bus and based on the evidence adduced by the appellant before the Tribunal establishing that the negligence of the bus driver on the basis of the first information report, charge sheet and this Court has no hesitation to come to the conclusion that the finding of negligence on the part of the driver of the tractor insured with the negligence as against driver of tractor is set aside and the negligence is fixed entirely on the driver of the transport corporation bus. The entire compensation is liable to be paid by the Transport Corporation. The appeal is allowed. The appellant is entitled to refund of the amount already deposited. Consequently, connected miscellaneous petition in C.M.P.No.16674 of 2004 is closed. No costs"

5. In view of the Judgment pronounced by this Court in

respect of the same accident, this Court does not intend to take a different view in this matter. In the result, this appeal is allowed and the entire compensation is liable to be paid by the Transport Corporation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

smn

To.

The Principal District Judge/
Motor Accident Claims Tribunal at Perambalur.

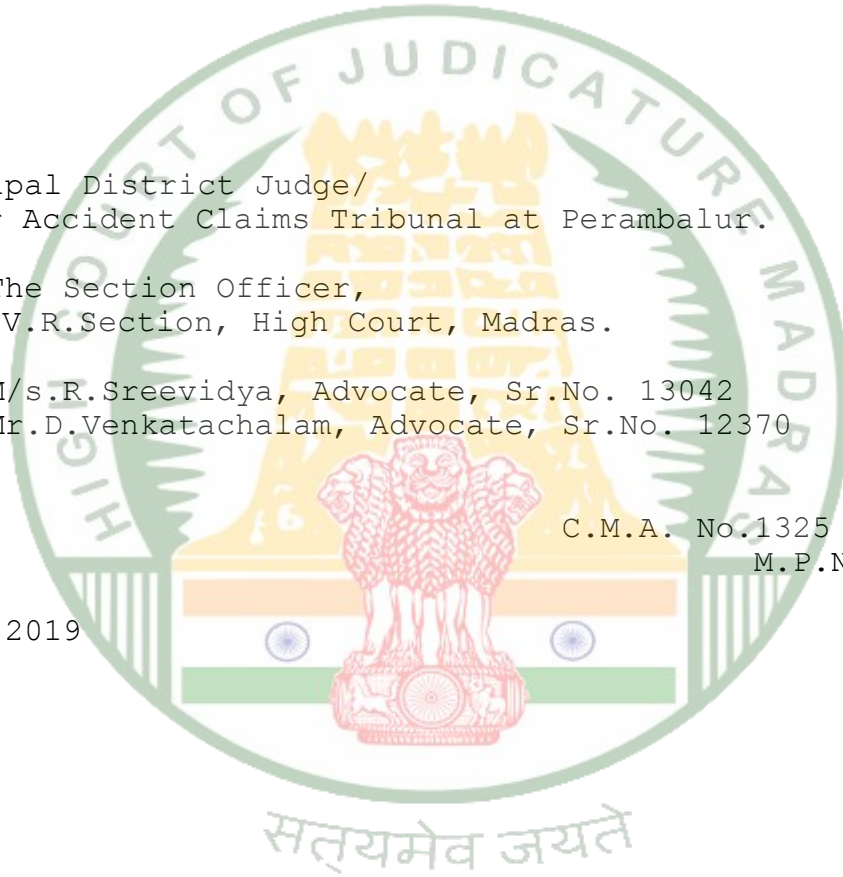
Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.R.Sreevidya, Advocate, Sr.No. 13042

+1 cc to Mr.D.Venkatachalam, Advocate, Sr.No. 12370

C.M.A. No.1325 of 2007 and
M.P.No.2 of 2007

EV(CO)
CSL/09.07.2019



WEB COPY