

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.1068 and 1069 of 2010

Manager,
New India Assurance Co. Ltd.,
Chennai.

... Appellant in both C.M.As/
3rd Respondent in MCOP.Nos.92 & 93/06

vs.

1.Minor Sudarkodi.1st Respondent in C.M.A.No.1068 of
2010/Petitioner in MCOP.No.92/06
(Rep. by his guardian father
Maharajan)

1.Selvi1st Respondent in C.M.A.No.1069 of 2010/
Petitioner in MCOP.No.93/06

2.Managing Director,
Tamil Nadu Transport Corporation,
Periyar Milaguparai, Trichy.

3.Elangovan Respondents 2&3 in both C.M.As/
Respondents 1 & 2 in MCOP.No.92/2006
(R3 Exparte before the Tribunal)

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 05.11.2008 passed in MCOP.Nos.92 and 93 of 2006, on the file of the Motor Accidents Claims Tribunal, Sub Court, Ariyalur.

In Both C.M.As :
Appellant : Mr.S.Dineshkumar

Respondents : No appearance

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

The appeals are filed by the New India Assurance Company Limited, Chennai questioning the negligence fixed on the part of the driver of the Mahindra van bearing Registration No. TN 46 9433, to an extent 50% by the learned

Subordinate Judge / Motor Accidents Claims Tribunal, Ariyalur
in MCOP.Nos.92 and 93 of 2006.

2. In the instant case, on 09.10.2005, at about 07.30 a.m, on Kunnam - Perambalur road, a bus belonging to the Tamil Nadu State Transport Corporation bearing Registration No. TN 45 N 1854 hit a Mahindra Van bearing Registration No. TN 46 9433 in which all the claimants were travelling, due to which, the van came to a halt after hitting a tamarind tree and all the claimants sustained injuries. They all filed claim petitions under Section 166 of the Motor Vehicles Act, 1988 seeking compensation.

3. Heard Mr.S.Dineshkumar, learned counsel appearing for the appellant. No appearance on behalf of the respondents.

4. In the instant case, the First Information Report was registered against the driver of the bus belonging to the Tamil Nadu State Transport Corporation Limited. However, the final report filed by the police has not been produced before the Tribunal. Merely, based on the First Information Report, it cannot be concluded that the driver of the bus was rash and negligent. The claimants have deposed that the driver of the bus hit the van. On the contrary, the driver of the bus had deposed that the van over took the bus and hit the tamarind tree abutting the road on the extreme left side and as a result of the impact came back and hit the bus. While the claimants have blamed the driver of the bus, the driver of the bus had blamed the driver of the van. No independent witness was examined on both sides and in the facts and circumstances, the Tribunal had fixed composite negligence on the part of the drivers of both the van and the bus based on the evidence in the ratio 50 : 50 which cannot be found fault with.

5. All the observations made by the Tribunal are perfectly in order and I do not see any reason to interfere with the same. Therefore both the appeals are dismissed.

6. In the result, the Civil Miscellaneous Appeals are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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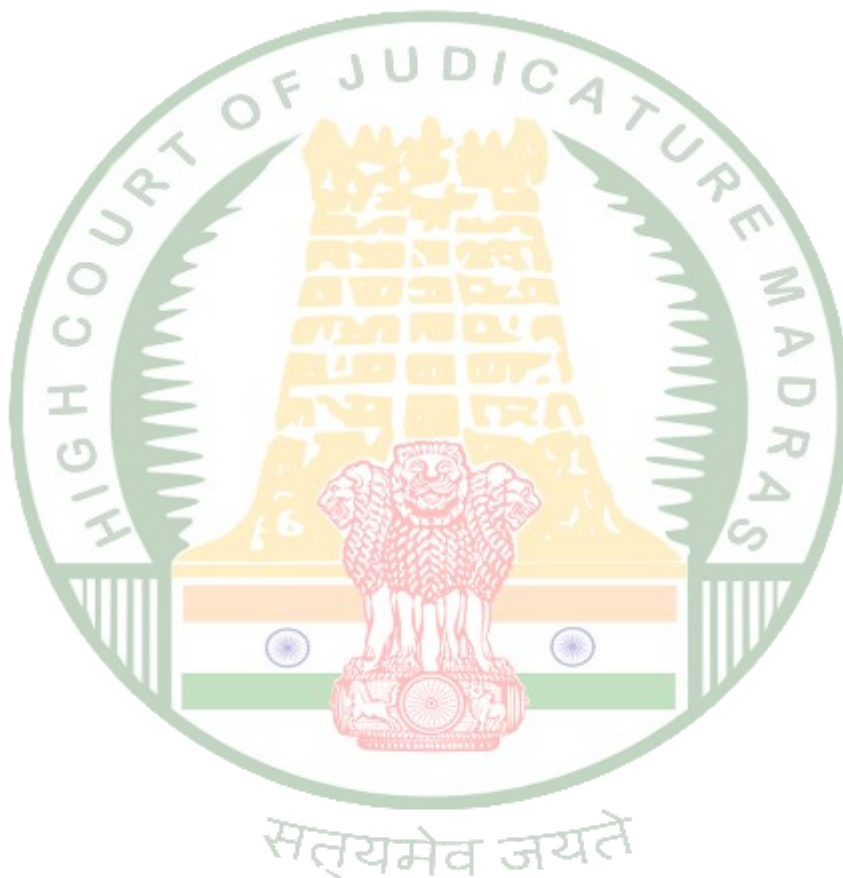
The Motor Accident Claims Tribunal,
The Subordinate Judge,
Ariyalur.

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The Section Officer,
VR Section, High Court,
Madras-104.

+2cc to Mr.S.Jayasankar, Advocate SR.95491,95493

CMA.Nos.1068 and 1069 of 2010

SAI (CO)
CB(04/09/2020)



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