

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.1325 to 1327 of 2016

and C.M.P.Nos.10319 to 10321 of 2016

Divisional Manager,

The New India Assurance Company Ltd.

Bharathi Road, Woodlands Building 3rd Floor,

Cuddalore - 1

... Appellant in all the CMAs

...vs..

1. Kathiravan ... R-1 in CMA No.1325/2016
2. Sivaprakasam ... R-1 in CMA No.1326/2016
3. Minor. Balaprakash
Rep. by his Next Friend,
Mother Abirami ... R-1 in CMA No.1327/2016
4. Mrs. K.Jyothilakshmi ... R-2 in all CMA's 1327 of 2016
5. The Managing Director,
State Express Transport Corporation,
Pallavan Salai, Chennai ... R-2 and R-3 in
CMA 1325 & 1326 of 2016
(R-2 set exparte before the Tribunal)
6. The Divisional Manager
State Express Transport Corporation
Pallavaram Salai Chennai ... R-3 in CMA.No.1327 of 2016

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 17.11.2015 made in MCOP Nos.1026, 1027, 1028 and of 2010 respectively on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Cuddalore.

(In all CMAs)

For Appellant : Mr. G.Udayasankar
For R-1 : Mr. D.S.Thirumavalavan
For R-3 : Mr. S.V.Vasanthakumar.

COMMON JUDGMENT

On 03.12.2009 at about 02.45 pm, while the claimants / respective R-1 herein were travelling in the TATA Indica Car bearing No.PY01-AV-6352, in Trichy Chennai National Highway, near Trichy Engineering College, Koonamalai Village, the driver

of the TATA Indica Car drove the same, in a rash and negligent manner and when he was trying to overtake a container lorry, the car dashed against the bus bearing Registration No.TN01-N-5479, owned by the R-5 herein, thereby the persons travelling in the car (claimants) got injured making the claim against the owner of the Car, i.e, R-4 herein, whose vehicle is insured with the appellant herein. The claimants / respective R-1 herein have filed claim petitions seeking compensation of Rs.15,00,000/-, Rs.15,00,000/- and Rs.5,00,000/- respectively.

2. The claimants contended that the accident had occurred due to the negligent driving of the TATA Indica Car and hence the Insured and the Insurer of the Car are liable to compensate the claimants.

3. The appellant herein, as Insurer of the said vehicle (car) bearing Registration No.PY01-AV-6352, defended the claim/case of the claimants by contending that the indemnification of the claim amount is subject to the policy conditions and the provisions of the Motor Vehicles Act, 1988.

4. The Tribunal, after a full-fledged trial, found that the accident had happened only on account of the negligence on the part of the TATA Indica Car, by its driver, and awarded sums of Rs.4,36,233/-, Rs.8,54,207/- and Rs.1,00,394/-, respectively, as total compensation amounts, payable with interest at the rate of 7.5% per annum from the date of petitions. As against the fixing negligence on the driver of the TATA India Car totally, the Insurer of the Car is before this Court, apart from challenging the quantum of compensation.

5. Heard the learned counsel for the appellant (Insurer of the Car), respective first respondent (claimants) and the third respondent herein (Transport Corporation).

6. The main contention of the learned counsel for the appellant / Insurer is that the Tribunal has failed to consider Ex.R-1-Criminal Court judgment in a proper perspective; that the Tribunal has failed to consider that the composite negligence was on the part of the bus driver also, who was also negligent in contributing to the accident; and that in any event the award passed by the Tribunal on all the heads is on the higher side, which needs significant reduction.

7. Per contra, the respective first respondent(s) / claimants as well as the learned standing counsel for the R-5 / Transport Corporation submitted that based on the evidence on

record the Tribunal has fastened the liability on the appellant herein and hence, the same should be confirmed as such; in any event the quantum arrived at by the Tribunal does not require any interference, since the same is passed based on the settled principles of law and weightage of evidence.

8. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

9. A careful perusal of Ex.P-1-FIR and averments contained therein manifest that on the four-way road, at the place of occurrence, due to maintenance work, the TATA Indica car was diverted to the track of the bus and while the TATA Indica car was trying to overtake the container, which was preceding it, the bus came from the opposite direction and there was head-on-collision of both the vehicles. It is seen from the materials that if both the tracks are in order and if the Bus was plying on the right (correct) side of its track, then there is no negligence on the part of the Bus. Since the vehicle is diverted from one track to other due to maintenance work as seen from Ex.P-1-FIR, the TATA Indica belongs to the second respondent was allowed to ply on the track of the Bus. If any vehicle is diverted to the other side of the four-way line/lane, it is the duty of the drivers to take the last lane abutting the mud road in a slow speed with lights fully on. Admittedly, the TATA Indica was plying on the track of the Bus at the time of accident and it is not the case of the third respondent that at the place of accident, the Bus was driven on the last lane of the road that too abutting the mud road with head lights fully on. At least the TATA Indica Car driver ought to have driven the vehicle with head lights burning. Though P.Ws.1 and 2 (eye-witnesses to the accident) and R.W.1 (conductor of the bus) have been examined before the Tribunal, it is not elicited by any of them that neither of the vehicles (TATA Indica as well as Bus) was driven with headlights on, at the time of accident. Admittedly both the vehicles had head-on-collision in the accident. Under such circumstances, this Court is inclined to hold that both the vehicles contributed negligence equally for the cause of accident. Thus, the findings on negligence by the Tribunal, fixing the negligence totally on the Insured and Insurer of the TATA Indica Car is set-aside and the negligence is fixed on both the drivers of the vehicles, viz., TATA Indica Car and the Transport Corporation Bus at the ratio of 50 : 50.

10. As far as the quantum of compensation awarded by the Tribunal is concerned, it has awarded Rs.4,36,233/-, Rs.8,54,207/- and Rs.1,00,394/- as total compensation amounts

payable to the each of the claimants / respective R-1 herein. The heads under which the compensation have been awarded by the Tribunal are based on II Schedule of the Motor Vehicles Act. The loss of income, loss of future earnings on account of disability, loss of amenities and injuries are awarded by the Tribunal based on the documents and evidence produced by the claimants. Further, the compensation awarded under other heads, viz., Transportation, Extra Nourishment, Attendant Charges and pain and sufferings by the Tribunal are based on settled principles of law, weightage of evidence and probabilities of the case. Hence, this Court finds no reason whatsoever to interfere with the findings on quantum rendered by the Tribunal.

11. In the result, this Civil Miscellaneous Appeals filed by the appellant / Insurance Company / Insurer are partly-allowed by fixing 50% liability on the appellant and balance 50% on the third respondent herein / Transport Corporation, while confirming the quantum as such. No costs. Consequently, the connected CMPs are closed.

12. The appellant herein (Insurer of the TATA Indica Car) and the third respondent herein (Transport Corporation) are directed to deposit the entire compensation amount, as awarded by the Tribunal, along with interest and costs (in the ratio of 50:50) within a period of six weeks, from the date of receipt of a copy of this judgment. The appellant and the Transport Corporation are directed to deposit the amounts, as ordered above, after deducting the amounts, if any, already deposited. On such deposits being made, the Tribunal shall transfer the entire amount to the Savings Bank Account(s) of the claimants / respective first respondent(s) herein, through RTGS, within one week thereafter.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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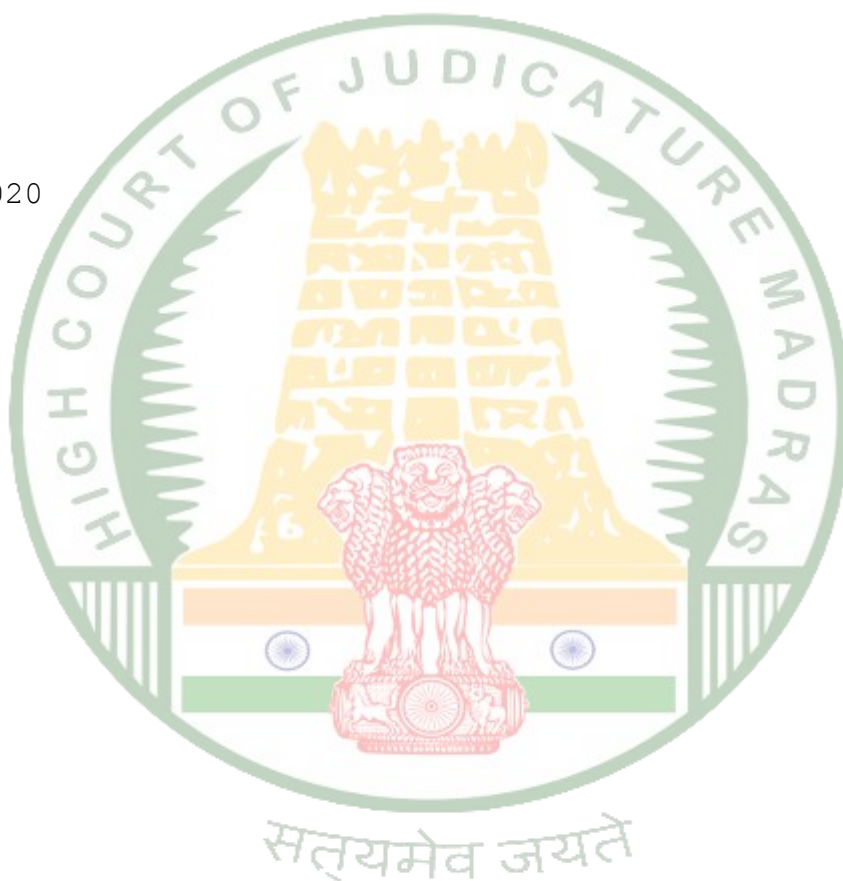
To

Motor Accident Claims Tribunal, Special Sub Judge, Cuddalore

+3 ccs to G.Udayasankar Advocate sr97446

C.M.A.Nos.1325 to 1327 of 2016
and C.M.P.Nos.10319 to 10321 of 2016

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