

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 01.07.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) .No.226 of 2018
and
C.M.P. (MD) .No.3423 of 2018

The Divisional Manager,
United India Insurance Company Limited,
61/2694, Annam Arcade 1st Floor,
South Street,
Thanjavur.

... Appellant/3rd respondent

Vs.

1.Deivanai

... 1st respondent/ Claimant

2. The Managing Director,
Tamil Nadu Transport Corporation,
Periyamilagupparai,
Tiruchirapalli District.

... 2nd respondent/
1st respondent

3. M/s.Sri Balaji Transport,
No.39, Kannaki Street,
Erode.

... 3rd respondent/
2nd respondent

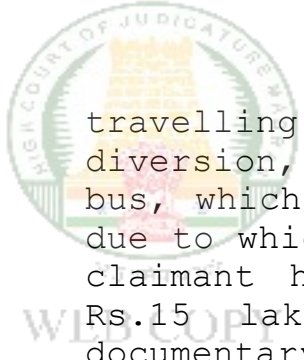
PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 04.03.2017, passed in M.C.O.P.No.730 of 2016 by the Motor Accident Claims Tribunal / Special Subordinate Court, Thanjavur.

For appellant : Mr.I.Suthakaran

For respondents 1 & 3 : No appearance

For 2nd respondent : Mr.D.Sivaraman**JUDGMENT**

It is a case of injury. On 23.04.2016, the claimant had boarded in the bus bearing Registration No.TN-45-N-3217 belonged to the Transport Corporation at Karur to reach Trichy. While



travelling so, on Karur-Trichy Main Road near Kulithalai-Vathiyam diversion, the Transport Corporation bus and the 3rd respondent's bus, which insured with appellant herein, had dashed each other, due to which the claimant sustained multiple injuries. The injured claimant has filed the claim petition claiming compensation of Rs.15 lakhs. The Tribunal, after considering the oral and documentary evidence, fixed liability on the Transport Corporation as well as on the 3rd respondent herein and awarded Rs.72,000/- towards partial permanent disability; Rs.25,000/- towards pain and sufferings; Rs.13,832/- towards medical expenses; Rs.15,000/- towards nutrition; Rs.5,000/- towards assistant; Rs.5,000/- towards transportation and Rs.24,000/- towards loss of income, totalling Rs.1,59,382/- as compensation. The Tribunal has directed the appellant and the 2nd and 3rd respondents to deposit the entire compensation with 7.5% interest from the date of petition till the date of realization. The appellant / Insurance Company has filed this appeal only questioning the liability.

2. The learned counsel appearing for the appellant / Insurance Company would submit that as the FIR has been registered only against the 2nd respondent's driver, the Tribunal ought not to have fixed liability on the 3rd respondent and vicariously on the appellant/Insurance company. On the other hand, he would submit that even though the Tribunal has held that both the drivers of the bus owned by the 2nd and 3rd respondents herein have caused the accident, it has failed to apportion the liability and therefore, the award is liable to be set aside. Thus, he prayed to allow this petition.

3. The learned counsel appearing for the Transport Corporation would submit that based on the registration of FIR, the liability cannot be fixed and that the Transport Corporation is not liable to pay the entire compensation.

4. Heard the learned counsel appearing for the parties and perused the records carefully.

5. It is seen that the accident had occurred at a turning place. Merely because FIR has been registered only against the driver of the Transport Corporation bus, the entire liability cannot be fixed on the Transport Corporation. The claimant, who examined as PW1, has categorically stated in her evidence that the accident had occurred due to rash and negligent driving of the drivers of the 2nd and 3rd respondents. On the side of the Transport Corporation, the driver of the Transport Corporation was examined as RW1. RW1 has stated in his evidence that due to rash and negligent driving of the driver of the 3rd respondent herein, the accident had occurred. But, no independent witness was examined on the side of the Transport Corporation, in order to



substantiate the same. Considering the place of the accident and also considering the version of PW1, the Tribunal has rightly fixed the liability on the drivers of the 2nd respondent/ Transport Corporation as well as the 3rd respondent herein.

6. It is seen that mainly relying upon the decision of the Hon'ble Supreme Court in **Khenyei Vs. New Indian Assurance Company Ltd., and others**, reported in **2015 (1) TN MAC 801 (SC)**, the Tribunal has not apportioned the liability, but directed the appellant, 2nd and 3rd respondents to pay the compensation. In that case, the Hon'ble Supreme Court itself has held that "in case, all the joint tort-feasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine inter se extent of Composite Negligence of the drivers. However, determination of the extent of negligence between the joint tort-feasors is only for the purpose of their inter se liability so that one may recovery the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other".

7. Admittedly, in this case, both the owners of the buses have already been impleaded as the respondents and the appellant / Insurance Company, which is vicariously liable to pay the compensation on behalf of the 3rd respondent herein, has also been impleaded. The Tribunal, without considering the above aspects, has omitted to apportion the liability. Considering the accidental spot, damages caused to both the buses and the evidences of PW1 and RW1, this Court is of the view that it would be appropriate to fix equal liability on the 2nd and 3rd respondents herein ie., 50% on the 2nd respondent and 50% on the 3rd respondent herein and accordingly, both the 2nd respondent herein and the appellant/Insurance Company have to equally satisfy the award. In other respects, the award passed by the Tribunal is confirmed.

8. In view of the above, both the appellant/Insurance Company and the 2nd respondent/Transport Corporation are directed to equally satisfy the award. It is represented that the appellant/Insurance Company has already deposited the entire award amount with accrued interest and costs. Hence, the 2nd respondent/Transport Corporation is directed to deposit 50% of their liability amount with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. The appellant/Insurance Company shall withdraw the excess amount, if any, already deposited. On such deposit, the first respondent/claimant is permitted to withdraw the same by filing an application before the Tribunal.



allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur.

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

+1 CC to M/s.I.SUTHAKARAN, Advocate (SR-72403[F] dated
01/07/2019)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-73054[F] dated
03/07/2019)

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