

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1946 to 1950 of 2012

The Divisional Manager,
United India Insurance Co. Ltd.
D.O.13A, Nethaji Road,
Cuddalore - 607 001.

...Appellant(in all Cases)

(In all Cases)

Versus

Suresh S/o. Iyyar ...R1 in CMA.No.1946/2012

A. Sharmila Banu ...R1 in CMA.No.1947/2012

R. Sathish S/o. N.Ravi ...R1 in CMA.No.1948/2012

D.Singaravelan ...R1 in CMA.No.1949/2012

Minnalkodi W/o. Arumugam ...R1 in CMA.No.1950/2012

2. The Managing Director
T.N.S.T.C. Ltd.,
Railway Station New Road,
Kumbakonam - 612 001.

3.A.Nagarasu
S/o.Agotharan

... Respondents 2 & 3
(In all Cases)

(R2 & R3 set exparte in
Lower Court)

Prayer: Civil Miscellaneous Appeals filed against the order and
decree dated 17.10.2011 made in M.C.O.P.Nos.846, 850, 855, 857
and 1353 of 2008 on the file of the Motor Accident Claims
Tribunal, Chief Judicial Magistrate, at Cuddalore.

For Appellant : E.Rajadurai

(for Mr.M.B. Raghavan)

For Respondents-1 : Mrs. Ramya V. Rao

For Respondents-2&3 : Ex-parte

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

These appeals have been filed by the Insurance Company against the common Judgment and order in M.C.O.P.Nos.846, 850, 855, 857 and 1353 of 2008 dated 17.10.2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, at Cuddalore.

2. Since the facts of the case are connected and related to the same accident, these appeals are being disposed by this common Judgment.

3. The facts of the case briefly are as under:

On 13.01.2008, at about 5.am, when the State-owned-transport carrying the passengers proceeded from Chennai towards Kumbakonam, it dashed the stationed lorry which was standing without parking light or any other signal on the road side whereby the four person were injured and one died due to impact of the accident. The claimants who are the 1st respondent herein in each appeal filed the claim petitions in M.C.O.P.Nos.846, 850, 855, 857 and 1353 of 2008 respectively before the Tribunal for the injuries sustained in the accident and succumbed to the injuries by the deceased. The claimants were awarded accordingly after having taken into consideration both oral and documentary evidence placed before the Tribunal and facts and circumstances of the case fixing liability on the Lorry owner who is 3rd respondent herein and on the appellant who is the insurer of the lorry. Against which, the Insurance company/appellant herein has filed these appeals questioning the entire liability fastened on it and exoneration of the Transport Corporation from the liability.

4.The learned counsel for the appellant/Insurance Company would submit that the Tribunal has erred in holding that the state transport vehicle dashed the stationed lorry since it was parked without proper light signal on the road side. Hence, the owner of the lorry and the Insurer of the Lorry are responsible and liable to pay the compensation. The Tribunal did not consider the negligence on the part of the bus driver when the lorry was standing on the road side without moving, the public

transport bus hit the stationed lorry being carried a lot of passengers in the state owned bus due to rash and negligent driving of the bus driver. As the driver of the bus is guilty of contributory negligence to the tune of 90%, it ought to have apportioned the liability @90% on the Transport Corporation and @10% on the owner and insurer of the Lorry. Even most of the claimants have averred that the driver of the state owned bus, drove it in a rash and negligent manner, and dashed against the parked lorry, the Tribunal has fastened entire liability on the Insurer of the lorry without considering the averments of the claimants who were travelling in the Transport Corporation bus at the time of accident. Hence, this Court may be pleased to apportion in a proper way and award accordingly after considering the facts and circumstances of the case and he prays to pass award on the basis of contributory negligence since the driver of the bus without noticing the standing lorry on the road side, hit the lorry due to rash and negligent driving of him thereby the passengers sustained grievous injuries and one passenger succumbed to fatal injuries.

5. The learned counsel for the 1st respondents in all the appeals would submit that the driver of the public transport drove the state owned bus in a rash and negligent manner without obeying the traffic rules and hit behind the stationed lorry standing on the road side thereby the claimants sustained injuries and one person died due to impact of the accident. Hence, the claimants are entitled to get compensation either through Transport Corporation or through the Insurance Company.

6. Heard the learned counsel on both sides and perused the entire oral and documentary evidence placed before this Court. Despite notice served on 2nd and 3rd respondents, they remained absent and none appeared on their side. Hence, they were set exparte before the Tribunal as well as before this Court.

7. During the trial, P.W.1 to P.W.7 were examined and Ex.P1 to Ex.P27 were marked on the side of the claimants. Neither oral evidence was examined nor documentary evidence was marked on the other side.

8. On perusal of the record, it is seen that the Tribunal has corroborated through oral evidence of P.W.2, P.W.3, P.W.5 and P.W.6 that transport corporation driver has driven the vehicle in a rash and negligent manner and dashed against the parked lorry. During the cross examination before the Tribunal, all of them have deposed with regard to the rash and negligent driving of the bus driver and the case has been registered only against the State owned Transport driver. Hence, it is clear case where the state owned bus driver drove the bus in a rash

and negligent manner and hit behind the stationed lorry whereas the Tribunal has taken different view by fastening entire liability on the side of the Lorry Driver and the Insurer of the Lorry after taking into consideration the Motor Vehicles rules and various Judgments against the parking vehicles without lighting signal lamps.

9. Such being the factual matrix of the accident, the act of negligence was caused certainly by Transport Corporation bus driver, accordingly, this Court is of the considered view that the unfortunate accident was occurred due to rash and negligent driving of the bus driver without considering the passengers were travelling in the bus. Since it is clear negligence committed by the bus driver, the Transport Corporation cannot be exonerated from the liability.

10. In spite of this factum, at the same time, it is necessary to consider that the lorry driver who parked the vehicle without following traffic regulation, cannot be exempted by negligence. However, the Tribunal has committed a gross error in coming to the conclusion that the driver of the lorry alone had committed negligence and accordingly, fixed the entire liability on the United India Insurance Company Limited, in which the lorry was insured. The Tribunal also erroneously came to the conclusion that there is no contributory negligence and that the accident occurred only due to the negligence of the lorry driver. Such a finding of the Tribunal was not supported by the available evidence on record.

11. Since this Court has come to the conclusion that the active role of the Transport Corporation bus driver in committing the act of negligence causing the accident, the quantum of compensation ought to be arrived under the composite negligence basis. Now, the percentage of contributory negligence is to be fixed on the ground of whose act of negligence was more cause for the accident. After taking into consideration all above facts and circumstances of the case, it is unambiguously clear that when the transport corporation was carrying the passengers, the driver of the transport Corporation was driving the bus in a rash and negligent manner and hit the stationed lorry which was standing on the road side. The Public Transport Driver should drive very carefully and cautious manner when the passengers were travelling in the State-owned-bus. Then only, the passengers will travel the public transport with faith and fearless. In the poor financial situation of the Transport Corporation, the Driver and the Conductor should maintain traffic rules and regulation to avoid unnecessary damages of the public property. At the same time, the act of the

lorry driver cannot be neglected. As per traffic rules, person requires to park the vehicle more specifically on the Highways has to be take extra caution, since other vehicles plying on the main road will be reasonably speeding the vehicle on the presumption that the main roads will be clear. Therefore, a lorry was parking on the road side without any parking signal is also to be construed as negligence on the part of the lorry driver. Therefore, the act of the lorry driver cannot be neglected. Hence, this Court is of the opinion that as the Transport Corporation driver's act is the main cause of the accident, the Transport corporation is liable to pay 75% and the Lorry owner and the Insurer is liable to pay @25% of compensation awarded by the Tribunal.

12. In view of the above, the Transport Corporation is directed to pay 75% and the appellant/Insurance Company is directed to pay 25% out of total compensation awarded to the claimants as per the award passed by the Tribunal. If the Insurance Company has paid entire award amount before the Tribunal, it shall withdraw the balance amount after deducting 25% of the liable award amount from the Tribunal. This Court is not inclined to interfere with the award amount entitled by the Claimants since the Tribunal has awarded the compensation to the Claimants after perusing the entire oral and documentary evidence.

13. Accordingly, these appeals are partly allowed. The Claimants/respondents 1 in all appeals are entitled to get the compensation as per the terms rendered by the Tribunal. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True copy
Sub-Assistant Registrar

ibm

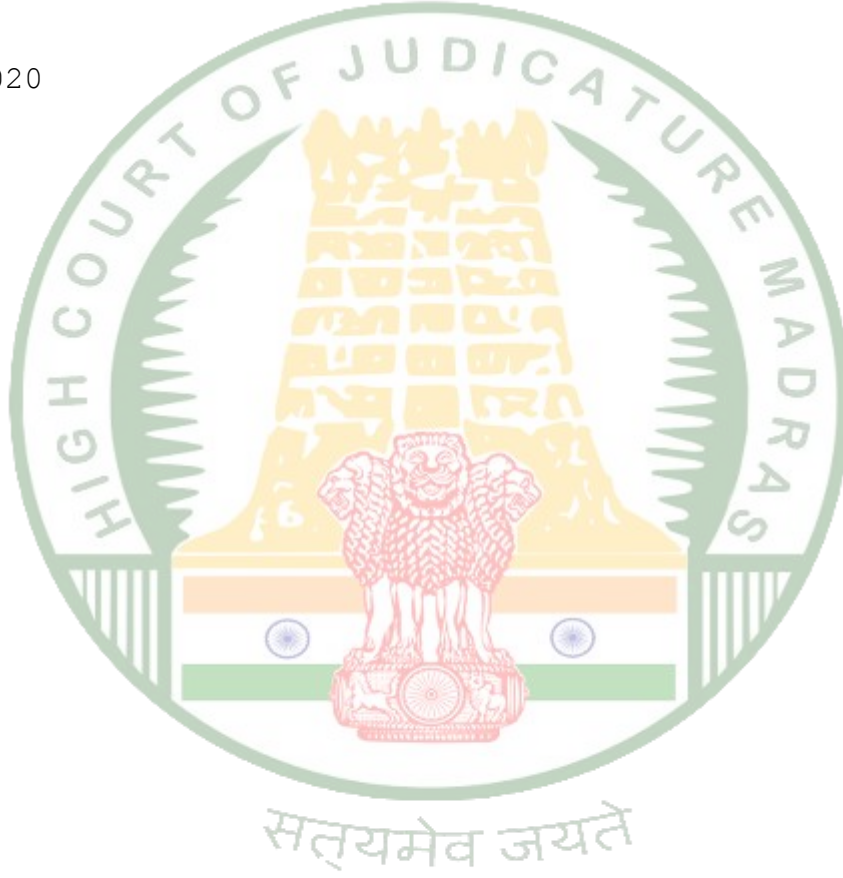
Copy to:

1. Motor Accident Claims Tribunal,
Chief Judicial Magistrate, at Cuddalore.
2. The Section Officer,
V.R. Section, High Court, Madras.

+5 ccs to M/s.A.N.Viswanatha Rao Advocate sr10488,
10491,10491,10490, 10489 & 10492
+5 ccs to Mr.Vijayaraghavan Advocate sr11532,
11533,11534,11535 & 11531

C.M.A.No.1946 to 1950 of 2012

mg (co)
aa23/07/2020



WEB COPY