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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

C.M.A.NOS.2023, 2024 & 2025 OF 2009

AND

M.P.NOS.1,1 AND 1 OF 2009

The National Insurance Company Limited,
Divisional Office at
No.11, Sakthi Road,
Lalbagh Mission Road,
Bangalore - 560 027.

... Appellant in all appeals

Vs.

1.Minor. Hariprakash
[Minor represented by the natural
guardian father Chandrasekaran]

2.Kantharaj

3.Meera Suresh

4.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem.

5.P.Easwaran

6.P.Rajagopalan

... Respondents in
C.M.A.No.2023 of 2009



1.Chandrasekaran

2.Minor Jothi prakash

3.Minor Hariprakash

[2nd and 3rd minor petitioners represented
by their guardian father Chandrasekaran]

4.Kantharaj

5.Meera Suresh

6.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem.

7.P.Easwaran

8.P.Rajagopalan

...Respondents in
C.M.A.No.2024 of 2009

1.Minor. Jothiprakash
[Minor represented by his natural
guardian father Chandrasekaran]

2.Kantharaj

3.Meera Suresh

4.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem.

5.P.Easwrran

6.P.Rajagopalan

...Respondents in
C.M.A.No.2025 of 2009



COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 24.10.2008 and made in M.A.C.T.O.P.Nos.113, 114 & 115 of 2005 on the file of the Motor Accident Claims Tribunal, Pollachi (Motor Accident Claims Tribunal cum Subordinate Judge of Pollachi).

For Appellant : Mr. S.Vadivel

For Respondents
In CMA.Nos.2023
& 2025/2009

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: Mr.D.Raghu [for R4]
  R1 - No Appearance
  R2 - Notice unserved
  RR3, 5 & 6 - Notice served
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In CMA.No.2024/2009

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: Mr.D.Raghu [for R6]
  RR1 to 3    - No Appearance
  R4          - Notice unserved
  RR5, 7 & 8  - Notice served
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COMMON JUDGMENT

The Appellant/Insurance Company has filed these appeals against the judgment and decree dated 24.10.2008 made in M.A.C.T.O.P.Nos.113, 114, & 115 of 2005 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Pollachi.

2. The respondents/claimants have filed a claim petition before the Tribunal, for claiming compensation amount for the accident happened on 07.05.2005, involving the bus bearing Registration No.TN-27-N-1166. According to the claimants, the deceased Vijayarani and minor sons were returning back from Salem in bus bearing Registration No.TN-27-N-1166. While the bus was proceeding towards Sangakiri to Salem road, another bus bearing Registration No.TN-27-N-0870 came from opposite direction, at that time the driver of the motor car bearing registration No.KA-03-B-6773 suddenly overtook the town bus bearing Registration No.TN-27-N-0870 coming in the opposite direction and came extreme right side of the road. The driver of



the bus TN-27-N-1166, in which the petitioners were travelling, on seeing the car coming at a great speed on the extreme right side, turned the bus in order to avoid hitting the car. But the car driven in a rash and negligent manner and the accident had happened.

3. Based on the aforesaid said statement of the claimants, the Tribunal awarded compensation amount of Rs.1,60,000/- and fixed the liability as against the appellant/Insurance Company and the respondent/Transport Corporation. Challenging the said award of the Tribunal, the appellant/Insurance Company has preferred the appeals before this Court.

4. According to the learned counsel for the appellant/Insurance Company, the Tribunal after considering the oral and documentary evidence and based on the report of the police however gave its finding that there is contributory negligence on the part of the appellant/Insurance Company and the respondent/Transport Corporation, but the grievance of the appellant/Insurance Company is that the Tribunal has fixed 75% liability towards the compensation to the claimants payable by the appellant/Insurance company and 25% liability to the respondent/Transport Corporation. The evidence marked before the Tribunal clearly prove that it is contributory negligence on both sides and the Tribunal ought to have fixed 50% liability on the appellant/Insurance Company as well as the respondent/Transport Corporation.

5. Learned counsel for the respondent/Transport Corporation strongly objected the contention of the appellant Insurance company and submitted that the motor car was mechanically overtaking the bus bearing Registration No.TN-27-N-0870 without noticing the respondent/Transport Corporation vehicle and thereby caused the accident and the passengers in the respondent/Transport Corporation also have sustained injury. Therefore, the Tribunal has rightly fixed the liability.

6. On analyzing the aforesaid submission of the rival parties and also perusing the materials on record, this Court finds that P.W.2, eye-witness to the accident stated that on 07.05.2005 at about 3.30 p.m. he was talking with his sister in her house which is situated near Akkammappettai slope; that the



TNPSC Bus bearing Registration No.TN-27-N-1166 came from left side of the road, another bus bearing Registration No.TN-27-N-0870 came from opposite direction, the driver of the car bearing Registration No.KA-03-B-6773 over took the bus bearing Registration No.TN-27-N-0870, resulting in both the drivers of the buses losing their control and dashed against each other. Therefore, from the evidence of P.W.2 it is clear that the said accident occurred due to overtaking of the car driver. Based on the evidence, the Tribunal has rightly come to the conclusion that there was contributory negligence on both the vehicle and accordingly, fixed the liability as 75% on the appellant/Insurance Company and 25% on the respondent /Transport Corporation. The appeals preferred by the Transport Corporation in CMA.No.927 to 929 of 2010 in respect of quantum have been settled in a Mega Lok Adalat. Now the present dispute among the appellant / Insurance Company and the respondent / Transport Corporation is with regard to the percentage of liability to pay the compensation amount.

7. In my view, P.W.2 has clearly stated that insured vehicle of the appellant/Insurance Company has attempted to overtake the vehicle bearing Registration No.TN-27-N-0870. Therefore, the Tribunal rightly came to the conclusion by fixing as against the appellant / Insurance Company and no other materials are placed before this Court to absolve the appellant/Insurance Company from being liable for 75%. Therefore, in such circumstances, this Court rejects the contention of the learned counsel for the appellant/Insurance Company.

8. Accordingly, these Civil Miscellaneous Appeals are liable to be dismissed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
cum Subordinate Judge,
Pollachi.

2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem.

3. The Section Officer,
V.R.Section, High Court,
Madras.

+3ccs to Mr.S.Vadivel, Advocate, S.R.No.11294, 11293, 11292

+3ccs to Mr.D.Raghu, Advocate, S.R.No.11365, 11364, 11363

C.M.A.Nos.2023, 2024 & 2025 of 2009
and M.P.Nos.1,1 and 1 of 2009

SSN(CO)
RLP(13/09/2021)