

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.1361 of 2020
and C.M.P. No.7842 of 2020

The Managing Director,
KSRTC, Ltd., R.H.Road,
Bengaluru - 560 027.

Petitioner /
Respondent

versus

Murugavel

Respondent /
Petitioner

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.12.2019 passed in I.A.No.1 of 2019 in M.C.O.P.No.598 of 2018 on the file of the learned Special Sub Judge (Motor Accident Claims Tribunal) at Krishnagiri.

For Petitioner : Mr.T.Thiyagarajan

For Respondent : Mr.SP.Yuaraj

ORDER

This Civil Revision Petition is filed challenging the order passed by the Special Sub Judge (Motor Accident Claims Tribunal), Krishnagiri in I.A.No.1 of 2019 in M.C.O.P.No.598 of 2018 dated 07.12.2019.

2. The learned counsel for the petitioner submitted that, the respondent filed Claim Petition in O.P.No.598 of 2018 claiming compensation for the grievous injuries suffered by him in the road accident. It is the submission of the learned counsel for the petitioner that, he filed counter in the main O.P. contending that, the petitioner, namely, Karnataka State Road Transport Corporation bus driver was not responsible for the accident and the driver of the lorry bearing Registration No.TN-31-BA-6835 was alone responsible for the accident. The First Information Report was also registered against him. However, the claimant / respondent has not taken any steps to implead the owner and insurer of the lorry bearing Registration No.TN-31-BA-6835. In the said circumstances, the petitioner filed I.A.No.1 of 2019 under Order 1 Rule 10 r/w Section 151 of C.P.C. for impleading the owner and insurer of the lorry bearing Registration No.TN-

31-BA-6835. However, the learned Special Sub Judge, dismissed the petition. Against the said dismissal order, this Civil Revision Petition is preferred.

3. The learned counsel for the petitioner fairly submitted that, it is the case of composite negligence and it is just and necessary that, both the vehicles involved in the accident, that is, the owner and insurer are to be impleaded for the purpose of apportioning the liability.

4. In response, the learned counsel for the respondent submitted that, even in the case of the composite negligence, the claimant can choose the vehicle of his choice and it is not necessary to implead both the vehicles involved in the accident. Therefore, he prays for confirming the order of the learned Special Sub Judge and for dismissal of this Civil Revision Petition.

5. Considered the rival submissions and perused the records.

6. The perusal of the First Information Report shows that, the claimant complained about the rash and negligent driving of the lorry driver bearing Registration No.TN-31-BA-6835. It was clearly stated that, the lorry driver was with his rash and negligent driving, dashed against the bus, in which, the claimant with his family members were travelling. The F.I.R. was registered against the driver of the lorry bearing Registration No.TN-31-BA-6835. On the premise that the claimant can choose the vehicle of his choice in the case of composite negligence, the claimant filed the petition against the Karnataka State Road Transport Corporation. However, as seen from the First Information Report that the lorry driver was said to be primarily responsible for the accident. It is the case of composite negligence. This Court is of the considered view that both the vehicles involved in the accident ought to have been impleaded as respondents for fixing and if necessary, apportioning the liability. It is not just and proper to burden only one of the vehicles involved in the accident.

7. In such view of the matter, the order of the learned Special Sub Judge (Motor Accident Claims Tribunal), Krishnagiri, in I.A.No.1 of 2019 in M.C.O.P.No.598 of 2018 dated 07.12.2019, is set aside and the petitioner is permitted to implead the lorry owner and insurer and I.A.No.1 of 2019 is allowed.

8. Accordingly, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

21.09.2021

Speaking order / Non-speaking order

Index : Yes / No

psa / sri

To

The Special Sub Judge (Motor Accident Claims Tribunal),
Krishnagiri.

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G.CHANDRASEKHARAN, J.

This matter was taken up today under the caption "for being mentioned."

2. The learned counsel for the petitioner submitted that, in para 3 of the order passed in C.R.P.(PD)No.1361 of 2020 on 21.09.2021, it was observed that "*The learned counsel for the petitioner fairly submitted that, it is the case of composite negligence and it is just and necessary that, both the vehicles involved in the accident, that is, the owner and insurer are to be impleaded for the purpose of apportioning the liability.*" It is his submission that, the observation made by this Court that the learned counsel for the petitioner fairly submitted that, it is the case of "*composite negligence*", is not correct. According to the learned counsel for the petitioner, he has not made such submission and it is his case that, it is the case of "*contributory negligence*".

3. However, this Court is not inclined to accept the submission made by the learned counsel for the petitioner for the reason that, the order was dictated in the open Court and the objection now raised, is not raised at the time of dictating the order. Therefore, this Court is not inclined to make any changes in the order dated 21.09.2021 passed in C.R.P.(PD)No.1361 of 2020.

21.10.2021

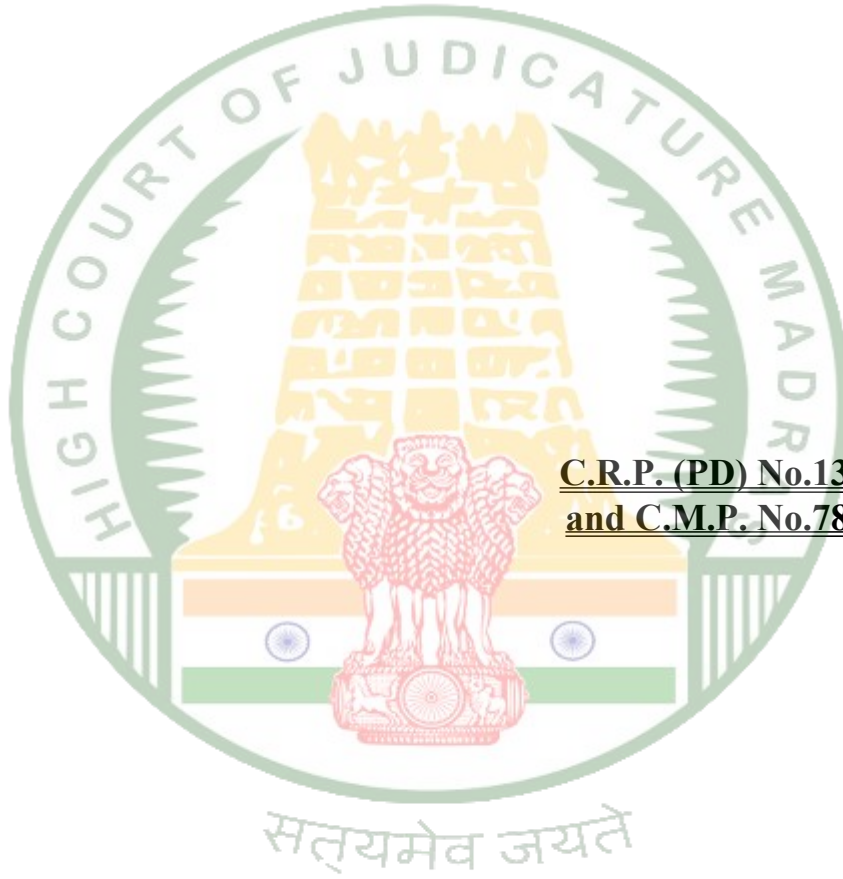
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G.CHANDRASEKHARAN, J.

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