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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.4222 & 4227 of 2019
and
C.M.P.Nos.23882 & 23892 of 2019

C.M.A.No.4222 of 2019:

Branch Manager,
United India Insurance Company Limited,
No.171/2, R.K.S. Complex, Nehruji Road,
Villupuram.

.. Appellant/3rd Respondent

Vs.

1.Kaliyamoorthy

2.Sivashankari ... 1st & 2nd Respondent/Petitioner

3.The Managing Director,
Tamil Nadu State Transport Corporation,
Salamedu, Villupuram District.

...3rd Respondent/1st Respondent

4.Shanmugavelu ...4th Respondent/2nd Respondent

C.M.A.No.4227 of 2019:

Branch Manager,
United India Insurance Company Limited,
No.171/2, R.K.S. Complex, Nehruji Road,
Villupuram.

...Appellant/3rd Respondent

Vs.

1.Lakshmanan

2.Minor. Vijay

3.Minor. Vignesh



4.Minor. Vishnu

(Minor respondents 2 to 4 are represented by their
Guardian, Lakshmanan, 1st respondent herein)

5.Asalambal

6.Nagamuthu

... Respondent 1 to 6/Petitioners

7.The Managing Director,
Tamil Nadu State Transport Corporation,
Salamedu, Villupuram District.

8.Shanmugavelu

.. Respondent 7 & 8/Respondent 1 & 2

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of the Motor Vehicles Act, 1988, against the common
Judgment and Decree dated 28.08.2018 made in M.C.O.P.Nos.103 &
84 of 2017 on the file of the Motor Accident Claims Tribunal,
Special District Court, Villupuram.

In C.M.A.No.4222 of 2019:

For Appellant	:	Mr.S.Arunkumar
For RR 1 & 2	:	Mr.V.S.Sivasundaram
For R3	:	Mr.K.J.Sivakumar
For R4	:	No appearance

C.M.A.No.4227 of 2019:

For Appellant	:	Mr.S.Arunkumar
For RR 1 to 6	:	Mr.V.S.Sivasundaram
For R7	:	Mr.K.J.Sivakumar
For R8	:	No appearance

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

The matter is heard through "Video Conferencing/Hybrid mode".

2.These Civil Miscellaneous Appeals have been filed to set
aside the common award dated 28.08.2018 made in M.C.O.P.Nos.103
& 84 of 2017 on the file of the Motor Accident Claims Tribunal,
Special District Court, Villupuram.



3. Both the appeals arise out of the same accident and common award and hence disposed of by this common order. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

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4. The appellant is the 3rd respondent in M.C.O.P.Nos.103 & 84 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Villupuram. The respondents 1 & 2 in C.M.A.No.4222 of 2019 and the respondents 1 to 6 in C.M.A.No.4227 of 2019 are the claimants in M.C.O.P.Nos.103 & 84 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Villupuram respectively. They filed the above said claim petitions claiming a sum of Rs.45,00,000/- and Rs.20,00,000/- respectively as compensation for the death of one Porkodi and one Lakshmi, who died in the accident that took place on 30.11.2016.

5. According to the claimants in both the appeals, on 30.11.2016 at about 01.30 P.M., while the deceased persons were travelling as passengers in the bus bearing Registration No.TN 32 N 3398 from Chennai to Ulundurpet near Mundiambakkam, the driver of the TNSTC bus bearing Registration No.TN 32 N 3373 who was driving the bus from the opposite direction, drove the same in a rash and negligent manner and to avoid dashing against another private R.T.S. Bus bearing Registration No.PY 01 CJ 5649, suddenly turned the bus bearing Registration No.TN 32 N 3373 to the right side of the road and came to the wrong route and dashed against the bus bearing Registration No.TN 32 N 3398, in which the deceased persons were travelling as passengers and caused the accident. In the accident, the said Lakshmi died on the spot and the said Porkodi sustained multiple grievous injuries all over the body and immediately she was taken to Government Hospital, Villupuram. Thereafter she was taken to Apollo Hospital. In spite of treatment, the said Porkodi succumbed to injuries on 02.12.2016. Therefore, the claimants filed the above said claim petitions claiming the sum of Rs.45,00,000/- and Rs.20,00,000/- respectively as compensation for the death of the said Porkodi and the said Lakshmi against the respondents.

6. The 2nd respondent in both the claim petitions, being the owner of the bus bearing Registration No.PY 01 CJ 5649 remained exparte before the Tribunal.

7. The 1st respondent-Transport Corporation in both the claim petitions filed separate counter statements and commonly denied all the averments made by the claimants in both the claim petitions. The 1st respondent denied the manner of accident as alleged by the claimants in both the claim petitions. According



to the 1st respondent, the accident has occurred only due to the negligence on the part of the driver of the RTS bus bearing Registration No.PY 01 CJ 5649 and the F.I.R. is also registered against the driver of the said bus. Hence, the 1st respondent is not liable to pay any compensation to the claimants in both the claim petitions. The 1st respondent denied the age, avocation and income of the deceased. The quantum of compensation claimed by the claimants in both the claim petitions are highly excessive and prayed for dismissal of both the claim petitions against the 1st respondent-Transport Corporation.

8.The 3rd respondent/Appellant/Insurance Company, being the insurer of the bus owned by 2nd respondent filed separate counter statements in both the claim petitions and commonly denied all the allegations made by the claimants in both the claim petitions. According to the 3rd respondent, as per F.I.R, the driver of the bus bearing Registration No.TN 32 N 3398 was driving the same from Chennai to Kallakurichi in the four way lane. At that time, the driver of the bus bearing Registration No.TN 32 N 3373, who was driving the same from Villupuram to Chennai, drove the same in a rash and negligent manner in a great speed, unable to control the bus, crossed the median and dashed against the bus bearing TN 32 N 3398 in which the deceased persons were travelling as passengers which was coming in the opposite direction and caused the accident. Therefore, the accident has occurred only due to rash and negligent driving by the driver of the bus bearing Registration No.TN 32 N 3373 and had the driver of the bus driven the same carefully, the accident could have been avoided. As per F.I.R., after alighting the passengers from the bus, the driver of the bus owned by 2nd respondent was moving ahead and at that time only, the driver of the bus bearing Registration No.TN 32 N 3398, who drove the bus at a great speed, unable to slow down the same, went to the extreme right side of the road, crossed the median and dashed against the vehicle coming in the opposite direction and caused the accident. Hence, the bus owned by 2nd respondent had no role in the accident and the 3rd respondent is an unnecessary party in the claim petitions. This respondent denied the insurance policy of the bus owned by 2nd respondent and also the fact that the driver of the bus owned by 2nd respondent was possessing valid driving license at the time of accident. This respondent denied the age, avocation and income of the deceased in both the claim petitions. The compensation claimed by the claimants in both the claim petitions are highly excessive and prayed for dismissal of both the claim petitions against the 3rd respondent.

9.Before the Tribunal, the 1st claimant in M.C.O.P.No.84 of 2017 was examined as P.W.1, the 1st claimant in M.C.O.P.No.103 of 2017 was examined as P.W.2 and one Sudhakar, eyewitness to the



accident was examined as P.W.3 and 22 documents were marked as Exs.P1 to P22. On behalf of the respondents 1 & 3, one Mariyapillai, driver of the bus belonging to 1st respondent-Transport Corporation was examined as R.W.1 and no document was marked.

10.The Tribunal considering the pleadings, oral and documentary evidence, held that both the driver of the bus belonging to 1st respondent-Transport Corporation as well as the driver of the bus owned by 2nd respondent were responsible for the accident, awarded a sum of Rs.23,48,482/- and Rs.16,25,200/- respectively as compensation to the claimants in M.C.O.P.Nos.103 & 84 of 2017 and directed the 1st respondent-Transport Corporation and 3rd respondent-Insurance Company to pay 50% each of the award amount i.e., Rs.11,74,241/- & Rs.8,12,600/- as compensation to the claimants in M.C.O.P.Nos.103 & 84 of 2017 respectively.

11.To set aside the said common award dated 28.08.2018 made in M.C.O.P.Nos.103 & 84 of 2017, the 3rd respondent/appellant/Insurance Company has come out with the present appeals.

12.The learned counsel appearing for the appellant/3rd respondent/Insurance Company contended that P.W.2 deposed that the driver of the bus insured with them just started the bus after alighting the passengers. While so, the question that the driver of the bus suddenly took the bus is invented only for the purpose of claiming compensation against this respondent. The accident has occurred only due to uncontrollable speed by the driver of the bus owned by 1st respondent bearing Registration No.TN 32 N 3373 and consequently ran over the centre median and dashed against the bus in which the deceased traveled coming from opposite direction. The complainant who is the conductor of the bus owned by 1st respondent in which the deceased traveled is the co-employee of the driver of the bus bearing Registration No.TN 32 N 3373. He alleged that driver of bus insured with 3rd respondent was responsible for the accident. The Tribunal ought not to have relied on the F.I.R. which has been registered based on the complaint given by the co-employee of the Government bus bearing Registration No.TN 32 N 3373. The Tribunal having come to the conclusion that the accident has occurred only due to the driver of the Government bus, erroneously relied on the F.I.R. and charge sheet and fixed negligence on both the drivers of the Government bus bearing Registration No.TN 32 N 3373 and the bus insured with 3rd respondent. The Tribunal ought to have appreciated the fact that the bus insured with the 3rd respondent has just alighted its passengers in the bus stop and started. The accident has occurred in the bright day light at about 01.30 P.M. in a National Highway having sufficient space for three to



four big vehicles to pass on freely at a time on one side, admittedly the bus insured with the 3rd respondent did not hit the Government bus. The Tribunal ought to have fixed entire negligence on the part of the driver of the Government bus bearing Registration No.TN 32 N 3373 alone and prayed for setting aside the award passed by the Tribunal.

13.Mr.K.J.Sivakumar, learned counsel appearing for the 1st respondent-Transport Corporation made his submissions in support of the common award passed by the Tribunal and prayed for dismissal of both the appeals.

14.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

15.Heard the learned counsel appearing for the appellant/3rd respondent/Insurance Company as well as the learned counsel appearing for the 1st respondent-Transport Corporation and perused the entire materials on record.

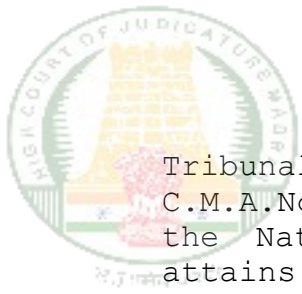
16.It is the case of the claimants in both the appeals that when the deceased was travelling in the TNSTC bus bearing Registration No.TN 32 N 3398 from Chennai to Ulundurpet, the other TNSTC bus bearing Registration No.TN 32 N 3373 driven by its driver in a rash and negligent manner came from opposite direction, to avoid dashing against the bus insured with the 3rd respondent, suddenly turned to the right side and came to the wrong side of the road and dashed against the bus bearing Registration No.TN 32 N 3398 in which the deceased were travelling as passengers. Due to the said impact, the said Lakshmi and Porkodi died. To substantiate their claim, the 1st claimant in M.C.O.P.No.1073 of 2017 examined himself as P.W.1 and the 1st claimant in M.C.O.P.No.84 of 2017 examined himself as P.W.2 and one Sudhakar, eyewitness to the accident was examined as P.W.3 and marked F.I.R. as Ex.P1, which was registered against the driver of the bus insured with 3rd respondent as well as the driver of the bus bearing Registration No.TN 32 N 3373. On the other hand, it is the case of the 3rd respondent that while the bus insured with them started from the bus stop after alighting the passengers, the driver of the bus bearing Registration No.TN 32 N 3373, due to his rash and negligent driving driving, unable to control the bus, crossed the centre median and dashed on the other bus bearing Registration No.TN 32 N 3398, in which the deceased traveled and caused the accident. The complaint was given by the co-employee of the driver of the bus bearing Registration No.TN 32 N 3373 and in order to help his employee falsely implicated the driver of the bus insured with the 3rd respondent. The driver of the bus or the owner of



the bus insured with the 3rd respondent did not give any complaint against the driver of the bus bearing Registration No.TN 32 N 3373 or filed any objection to the contents of F.I.R. being registered against the driver of the bus insured with the 3rd respondent. Further, they did not examine any driver or eyewitness in support of their case. It is the case of the claimants in both the claim petitions that the bus insured with 3rd respondent was stopped at the bus stop to alight the passengers and started the bus suddenly. To avoid the bus insured with 3rd respondent, the driver of the bus bearing Registration No.TN 32 N 3373 turned the bus to the right side and dashed on the centre median and dashed on the bus bearing Registration No.TN 32 N 3398, which was coming in the opposite direction.

17.From the material on record, it is seen that the driver of the bus insured with 3rd respondent started the bus after alighting the passengers. When the bus starts from the bus stop and coming from the road, the driver of the bus must be aware whether any vehicle is coming behind. In the present case, the driver of the bus insured with 3rd respondent suddenly started the bus without seeing the bus bearing Registration No.TN 32 N 3373 coming from behind. The Tribunal considering the materials placed before it, pleadings, oral and documentary evidence, in the absence of any contra evidence, held that accident has occurred due to negligence on both the driver of the bus insured with 3rd respondent as well as the driver of the bus owned by TNSTC bearing Registration No.TN 32 N 3373. There is no error in the said finding of the Tribunal warranting interference by this Court.

18.In the result, both the Civil Miscellaneous Appeals are dismissed and the compensation awarded by the Tribunal at Rs.23,48,482/- and Rs.16,25,200/- together with interest and costs is hereby confirmed. The 1st respondent and the 3rd respondent are directed to deposit the 50% each of award amount i.e., Rs.11,74,241/- & Rs.8,12,600/- respectively as compensation to the claimants in M.C.O.P.Nos.103 & 84 of 2017, along with proportionate interest and costs, less the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.Nos.103 & 84 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Villupuram. On such deposit, the respondents 1 & 2 in C.M.A.No.4222 of 2017 and respondents 1, 5 & 6 in C.M.A.No.4227 of 2017 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the



Tribunal. The share of the minor respondents 2 to 4 in C.M.A.No.4227 of 2019 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 to 4 attains majority. On such deposit, the 1st respondent in C.M.A.No.4227 of 2019 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 to 4. Consequently the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (L.A)

//True Copy//

Sub Assistant Registrar

krk

To

The Special District Judge,
Motor Accident Claims Tribunal,
Villupuram.

Copy to:

The Section Officer,
VR Section,
High Court,
Madras.

+1CC to Mr.S.Arunkumar, Advocate, Sr.No.19969
+2CCs to Mr.V.S.Sivasundaram, Advocate, Sr.Nos.19999, 20000
+1CC to Mr.K.J.Sivakumar, Advocate, Sr.No.20014

C.M.A.Nos.4222 & 4227 of 2019

SRA (CO)
K.RK. (22.11.2021)