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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3372 & 3538 of 2017 & 350 of 2018
&
CMP.Nos.21372 & 22723 of 2017 & 3404 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram ...Appellant in all CMAs/2nd Respondent

Vs.

1. Minor Anuvarshini
Rep by Next Friend Father
K. Palanisamy ... 1st respondent/Petitioner in CMA No.3372 of 2017

1. K.M.R. Eswaran ….1st Respondent/Petitioners in CMA.No.3538/2017

2. Susila Eswaran ... 2nd Respondents in in CMA No.3538 of 2017

1. K.Palanisamy ... 1st respondent/Petitioner in CMA No.350 of 2018

2. S.M. Sivalingam .. 2nd respondent/1st Respondent in CMA No.3372 of 2017, CMA No.350 of 2018 and 3rd respondent in CMA No.3538 of 2017

3. Rasi Enterprises
Rep. by its Share Holder
K. Senthilkumar ....3rd respondent/3rd Respondent in CMA No.3372 of 2017, CMA No.350 of 2018 and 4th respondent in CMA No.3538 of 2017

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4. ICICI Lombard General Insurance Company Ltd.,
Reg. Office, ICICI Bank Towers,
Pandara- Kurla Complex, Pandara West,
Mumbai - 400 051
Branch Office
Sornambiga Plaza, Omaloor Main Road,
Bus Stand Near, Salem - 9 ..... 4th respondent/
4th Respondent in CMA No.3372 of 2017,
CMA No.350 of 2018
and 5th respondent in
CMA No.3538 of 2017

Common prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 16.09.2016 made in M.C.O.P. Nos.175, 176 & 177 of 2008 on the file of the Motor Accident Claims Tribunal, III Additional District cum Session Judge, Gobichettipalayam.

For Appellant in all CMAs : Mr. K.J. Sivakumar

For Respondent / claimant in all CMAs : Mr.Ma.Pa.Thangavel

For Respondent / Insurance Company in all CMAs : Ms.R.Sreevidhya

COMMON JUDGMENT

(This case was heard through Video Conferencing)

These appeals have been filed by the Transport Corporation challenging the impugned award dated 16.09.2016 passed by the learned III Additional District cum Session Judge, Motor Accident Claims Tribunal, Gobichettipalayam in M.C.O.P. Nos.175, 176 & 177 of 2008.

2. Heard Mr.K.J.Sivakumar, learned counsel for the appellant / Transport Corporation in all Civil Miscellaneous Appeals, Mr.Ma.Pa.Thangavel, learned counsel for the first respondent and Ms.R.Sreevidhya, learned counsel for the fourth respondent.

3. This Court has perused the materials and evidence available on record before the Tribunal.

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4. The only ground raised by the appellant Transport Corporation is that the Tribunal has erroneously fixed the composite negligence on the driver of the bus owned by the appellant /Transport Corporation at 70%. According to them, the composite negligence fixed on the part of the opposite insured vehicle which is insured with the respondent / Insurance Company at 30% is incorrect assessment made by the Tribunal. As seen from the evidence available on record, the bus owned by the appellant / Transport Corporation which was involved in the subject accident was taking a U-turn in the Highways. The Tribunal has observed that the Driver of the bus was negligent in taking U-turn as he ought to have taken sufficient precautions and ought to have seen whether any vehicle is on the right side of the vehicle before taking a U-turn. The sketch for the accident has also been filed by the Police, which has been marked as Ex.P3 before the Tribunal. After perusing the sketch as well as the evidence available on record, this Court is of the considered view that the composite negligence fixed by the Tribunal on the part of the Driver of the bus owned by the appellant / Transport Corporation at 70% cannot be considered to be wrong as alleged by the Transport Corporation. Therefore, the assessment made by the Tribunal that there is 70% composite negligence on the part of the Driver of the bus is a correct assessment.

5. For the foregoing reasons, there is no merit in these appeals filed by the appellant / Transport Corporation. Accordingly, all these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

6. It is represented by the learned counsel for the Insurance Company that they have already deposited 30% of the award amount, as determined by the Tribunal on the file of the Motor Accident Claims Tribunal, III Additional District cum Session Judge, Gobichettipalayam in respective M.C.O.P. Nos.175, 176 & 177 of 2008.

7. The Appellant / Transport Corporation is directed to deposit the entire award amount (70%) awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP Nos.175, 176 & 177 of 2008 on the file of the Motor Accident Claims Tribunal, III Additional District cum Session Court, Gobichettipalayam, within a period of four weeks from the date of receipt of a copy of this Judgment respectively.

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8. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respective respondents / claimants through RTGS, within a period of two weeks thereafter as per the ratio of apportionment fixed by the Tribunal. Insofar as the share of the respondent / minor claimant in CMA No.3372 of 2017 is concerned, the same shall be deposited in Fixed deposit in any one of the Nationalised Banks, till she attains the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. If the minor claimant has attained the age of majority, it is open to her to file formal petition before the Tribunal to get her share of apportionment.

Sd/-
Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

vsi2

To
1. The Motor Accidents Claims Tribunal,
III Additional District cum Session Judge,
Gobichettipalayam

Copy to:
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.51792
+1cc to M/s.R.Sreevidhya, Advocate SR.No.51951
+3cc to Mr.K.J.Sivakumar, Advocate SR.No.51663, 51664, 51665

CMA.Nos. 3372 & 3538 of 2017 & 350 of 2018
&
CMP.Nos.21372 & 22723 of 2017 & 3404 of 2018

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