

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.384 to 388 of 2017
and C.M.P.Nos.1746 to 1750 of 2017

United India Insurance Co., Ltd.,
Old No.139, New No.50,
North Usman Road,
T.Nagar, Chennai 17.

.. Petitioner in
all C.R.Ps.

Vs.

1.B.Gopalakrishnan
2.G.Kalarani
3.S.Jagadeesan
4.A.Nagappan
5.State Express Transport Corporation Ltd.,
Rep. By its Managing Director,
Pallavana Salai,
Chennai 600 002.

.. Respondents
in C.R.P.No.384/2017

1.V.Jacob Ruban
2.S.Jagadeesan
3.State Express Transport Corporation Ltd.,
Rep. By its Managing Director,
Pallavana Salai,
Chennai 600 002.

.. Respondents
in C.R.P.No.385/2017

1.Indirani
2.S.Jagadeesan
3.State Express Transport Corporation Ltd.,
Rep. By its Managing Director,
Pallavana Salai,
Chennai 600 002.

.. Respondents
in C.R.P.No.386/2017

1.V.Arockia Mary
2.S.Jagadeesan
3.State Express Transport Corporation Ltd.,
Rep. By its Managing Director,
Pallavana Salai,
Chennai 600 002.

.. Respondents
in C.R.P.No.387/2017

1.Indira
2.S.Jagadeesan
3.State Express Transport Corporation Ltd.,
Rep. By its Managing Director,
Pallavana Salai,
Chennai 600 002.

.. Respondents
in C.R.P.No.388/2017

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal orders dated 15.09.2015 made in M.P.Nos.46 to 50 of 2015 respectively in M.C.O.P.Nos.5276 of 2013, 7701 of 2013, 248 of 2014, 371 of 2014 and 738 of 2014, on the file of the II Special Sub Court, MACT, Chennai.

(In C.R.P.No.384/2017)

For Petitioner : Mr.K.Padmanabhan
for M/s.M.J.Vijayaraaghavan

For Respondents : Mr.Arunkumar (For R1 & R2)
for M/s.Sampathkumar & Associates

Mr.K.J.Sivakumar (For R5)

(In C.R.P.Nos.385 to 388/2017)

For Petitioner : Mr.K.Padmanabhan
for M/s.M.J.Vijayaraaghavan

For Respondents : Mr.F.Terry Chellaraja (For R1)
for M/s.Malar

Mr.K.J.Sivakumar (For R3)

COMMON ORDER

(The matter is heard through 'video conferencing/hybrid mode')

These Civil Revision Petitions are filed against the fair and decretal orders dated 15.09.2015 made in M.P.Nos.46 to 50 of 2015 respectively in M.C.O.P.Nos.5276 of 2013, 7701 of 2013, 248 of 2014, 371 of 2014 and 738 of 2014, on the file of the II Special Sub Court, MACT, Chennai.

2.The issues and parties involved in all the Civil Revision Petitions are one and the same and hence, they are disposed of by this common order.

3.The claimants in all the Civil Revision Petitions filed the said M.C.O.P.Nos.5276 of 2013, 7701 of 2013, 248 of 2014, 371 of 2014 and 738 of 2014, claiming compensation against one S.Jagadeesan/owner of the Lorry bearing Registration No.TNS 6939, United India Insurance Company Limited/insurer of the said Lorry and A.Nagappan/driver of the said Lorry, for the death of one G.Karthikeyan in M.C.O.P.No.5276 of 2013 and injury of claimants in other claim petitions viz., M.C.O.P.Nos.7701 of 2013, 248 of 2014, 371 of 2014 and 738 of 2014, alleging that the accident occurred due to rash and negligent driving by the driver of the Lorry. In the said M.C.O.Ps., the Insurance Company filed separate counter statements and denied that the accident occurred due to rash and negligent driving by the driver of the Lorry. According to the Insurance Company, the driver of the bus bearing Registration

No.TN-01-N-8013, owned by the State Express Transport Corporation Limited, was responsible for the accident and hence, the driver and owner of the Bus are necessary parties.

4.The Insurance Company filed M.P.Nos.46 to 50 of 2015, to implead the State Express Transport Corporation Limited as 4th respondent in all the M.C.O.Ps. According to the Insurance Company, in the FIR, it has been stated that the victim in M.C.O.P.No.5276 of 2013 died as the Bus, owned by the State Express Transport Corporation Limited, ran over his head. In view of the same, the State Express Transport Corporation Limited is necessary and proper party. The claimants in all the claim petitions filed separate counter statements and denied the averments in the affidavits filed in support of the above M.Ps. According to the claimants in C.R.P.(PD).No.384 of 2017 (M.C.O.P.No.5276 of 2013), the Bus owned by the State Express Transport Corporation Limited in which the deceased G.Karthikeyan was travelling as a passenger, broke down due to mechanical defect and was stopped and parked in the extreme left side mud portion of the road. The

passengers alighted and were waiting on the mud portion in the extreme left side of the road to travel by another Bus. At that time, the driver of the Lorry drove the Lorry, insured with the United India Insurance Company, in a rash and negligent manner, lost control of the vehicle and dashed against the deceased from backside. As a result, the deceased sustained multiple injuries and died on the spot. In other Civil Revision Petitions (M.C.O.P.Nos.7701 of 2013, 248 of 2014, 371 of 2014 and 738 of 2014), the injured claimants have stated that the Lorry, driven by its driver, in a rash and negligent manner, dashed on the back side of the Bus. Due to the impact, the Bus moved and claimants who were standing in front of the Bus got injured.

5.The learned Judge, considering the materials in the affidavit filed in support of the above M.Ps., counter affidavits and stage of the M.C.O.Ps., held that the Miscellaneous Petitions filed by the Insurance Company is only to protract the claim petitions and dismissed all the Miscellaneous Petitions by separate orders.

6. Against the said orders dated 15.09.2015 made in M.P.Nos.46 to 50 of 2015 respectively in M.C.O.P.Nos.5276 of 2013, 7701 of 2013, 248 of 2014, 371 of 2014 and 738 of 2014, the Insurance Company has come out with the present Civil Revision Petitions.

7. The learned counsel appearing for the Insurance Company contended that there are two vehicles involved in the accident. The claimants have filed the claim petitions only against the owner, driver and insurer of the Lorry. After trial, if the Tribunal comes to the conclusion that the driver of the Bus also is responsible for the accident, the claimants will be entitled only to a portion of the award amount fixed by the Tribunal. On the other hand, if the State Express Transport Corporation Limited is impleaded as a party respondent in M.C.O.Ps., the claimants will receive the entire compensation awarded by the Tribunal. Only when the State Express Transport Corporation is impleaded, the Tribunal can fix intense liability between the drivers of two vehicles. The Insurance Company has filed M.P.Nos.46 to 50 of 2015 only for the benefit of the claimants and he relied on the following judgments in

support of his contentions:

(i) **2015 (1) TN MAC 801 (SC) [Khenyei Vs. New India Assurance Company Ltd., and others]:**

“18. This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tortfeasor is joint and several.

In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle – trailer-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law. What emerges from the

aforesaid discussion is as follows :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feason can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award.”

(ii) **2005 (2) TN MAC (Ker.) (DB) 390 [Sasidharan Vs.**

Sukumaran]:

“4.....In the case decided in 1993 (2) KLT 777, only driver was not impleaded. But, owner was impleaded. Owner is liable for the liability only to the extent of negligence of the driver. Therefore, driver and owner of the same vehicle are the joint tortfeasors. Owner and driver of another vehicle involved in the accident can only be one of the several tortfeasors. If two vehicles are involved and only if one vehicle's driver and owner are made parties, no liability can be cast on the other party directly or indirectly without impleading them.....”

8.Per contra, the learned counsel appearing for the claimants in C.R.P.Nos.384 to 388 of 2017 separately submitted that according to the claimants, the accident occurred only due to rash and negligent driving by the driver of the Lorry. The driver of the Lorry dashed on the backside of the Bus which was parked on the mud road, with triangle signal. Due to the said impact, the claimants in C.R.P.Nos.385 to 388 of 2017 got injured and one person died. Even if the Tribunal comes to the conclusion that both the driver of the vehicles are responsible for the

accident, the claimants can claim entire award amount from the Insurance Company, owner and driver of the Lorry and it is for the Insurance Company to claim the amount from the State Express Transport Corporation Limited. For this proposition, the learned counsel appearing for the claimants relied on the very same judgment reported in **2015 (1) TN MAC 801 (SC)** (cited supra) and submitted that the Insurance Company filed the present petitions only to protract the proceedings. The learned counsel appearing for the claimants further contended that as per the judgment of the Hon'ble Apex Court referred to above, the claimants in case of composite negligence is entitled to sue both or any one of the Joint Tort feasors and to recover the entire compensation as liability of Joint Tort feasors is joint and several. The learned counsel appearing for the claimants further contended that in the instant case, the accident occurred only due to rash and negligent driving by driver of the Lorry and only respondents in claim petitions are liable to pay compensation.

9.The learned counsel appearing for the State Express Transport Corporation Limited contended that the Bus owned by the State Express

Transport Corporation Limited, due to mechanical defect, broke down, driver of the Bus parked the Bus on the extreme left side of the road with triangle signal to indicate parking of the Bus. The accident occurred only due to rash and negligent driving by driver of the Lorry. The driver of the Bus was not responsible for the accident and prayed for dismissal of the Civil Revision Petitions.

10. Heard the learned counsel appearing for the Insurance Company, claimants as well as the State Express Transport Corporation Limited and perused the entire materials available on record.

11. It is the specific case of the claimants that when the Bus in which the claimants and the deceased person were travelling broke down, the driver of the Bus parked the Bus in the extreme left side mud portion of the road and the claimants and the deceased person were waiting in the mud portion in front of the Bus for spare Bus. At that time, the driver of the Lorry dashed on the backside of the Bus, as a result, the Bus moved and the claimants and victim were injured. To prove the said contention,

it is for the claimants to let in acceptable evidence before the Tribunal. It is open to the petitioner to let in oral and documentary evidence to prove their case that the driver of the Lorry was not responsible for the accident and driver of the Bus alone was responsible for the accident. The claimants, on specific averments, have filed claim petitions against the driver, owner and insurer of the Lorry. It is for the claimants to choose the party against whom they make a claim and prove the averments made in the claim petition. The Insurance Company, who is the insurer of the Lorry has no *locus-standi* to seek to implead the State Express Transport Corporation Limited as a party respondent in the M.C.O.Ps. The learned counsel appearing for the Insurance Company contended that the Insurance Company has filed the present M.Ps. only for the benefit of the claimants. According to the learned counsel appearing for the Insurance Company, even if the Tribunal comes to the conclusion that both the drivers of the Lorry and Bus are responsible for the accident, the claimants will not receive the entire amount awarded. On the other hand, the learned counsel appearing for the claimants contended that even if the Tribunal fixes liability on both the drivers, the claimants can receive the

entire amount from any one of the tort-feasor. In view of the specific plea taken by the claimants, the judgments relied on by the learned counsel appearing for the Insurance Company do not advance their case. The judgment of the Hon'ble Apex Court, reported in **2015 (1) TN MAC 801 (SC)** cited supra, is squarely applicable to the proposition now advanced by the learned counsel appearing for the claimants. The learned Judge has considered all the materials in its proper perspective and dismissed all the M.Ps., filed by the Insurance Company. There is no error or irregularity in the orders of the learned Judge, warranting interference by this Court.

In the result, all the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index :: Yes/No
gsa

08.10.2021

To

1.The Managing Director,
State Express Transport Corporation Ltd.,
Pallavana Salai,
Chennai 600 002.

2.The II Special Subordinate Judge,
MACT, Chennai.



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C.R.P.(PD).Nos.384 to 388 of 2017

V.M.VELUMANI, J.

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