



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .Nos.320 to 324 of 2019

and

C.M.P. (MD) Nos. 4033 to 4037 of 2019

**C.M.A. (MD) .No.320 of 2019**

THE MANAGING DIRECTOR,  
TAMIL NADU STATE EXPRESS TRANSPORT  
CORPORATION PALLAVAN SALAI  
CHENNAI-2

..Appellant / Respondent

Vs

1 KALAPERUMAL @ HELAN,  
S/O.RAJAPANDIAN, EDALAKUDI PO, VADIVEESWARAM,,  
AGASTEESWARAM TK. NOW AT D.NO.11, M.O.C.,  
BUILDING, HIGH GROUND, TIRUNELVELI-11.

2 NAMBI, W/O.KALAPERUMAL @ HELAN,  
EDALAKUDI PO, VADIVEESWARAM,,  
AGASTEESWARAM TK. NOW AT D.NO.11, M.O.C.,  
BUILDING, HIGH GROUND,  
TIRUNELVELI-11

..Respondents / Petitioners

**C.M.A. (MD) .No.321 of 2019**

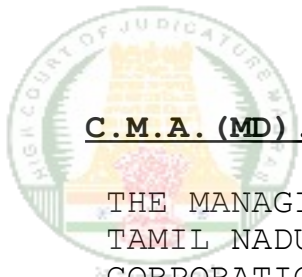
THE MANAGING DIRECTOR,  
TAMIL NADU STATE EXPRESS TRANSPORT  
CORPORATION PALLAVAN SALAI  
CHENNAI-2

..Appellant / Respondent

.Vs.

Anna Revathi @ Revathi,  
W/o.Ponraj,Formerly Resi.At No.28,  
Vattavilai,Edalakudi Po,  
Vadiveeswaram,Agasteeswaram Tk,Now at D.No.11,Moc Buld,  
High Ground,  
Tirunelveli-11.

.. Respondent / Petitioner

**C.M.A. (MD) .No.322 of 2019**

THE MANAGING DIRECTOR,  
TAMIL NADU STATE EXPRESS TRANSPORT  
CORPORATION PALLAVAN SALAI  
CHENNAI-2

..Appellant / Respondent

Vs

Deepa,D/o.Natarajan, formerly resi.at No.8A,  
Thanunadar Compound, Edalakudi Po,  
Vadiveeswaram,Agasteeswaram Tk,  
Now at D.No.11,Moc Buld, High Ground,  
Tirunelveli-11

..Respondent / Petitioner

**C.M.A. (MD) .No.323 of 2019**

THE MANAGING DIRECTOR,  
TAMIL NADU STATE EXPRESS TRANSPORT  
CORPORATION PALLAVAN SALAI  
CHENNAI-2

..Appellant / Respondent

Vs

1. Rajapandian,S/o.Karuppaiah,  
formerly resi at D.No.28,  
Vattavilai,Edalakudi Po, Vadiveeswaram,  
Agasteeswaram Tk,Now at D.No.11, Moc Buld,  
High Ground,  
Tirunelveli-11.

2. Thennagam, W/o.Natarajan,  
Formerly Resi.At D.No.28,  
Vattavilai,Edalakudi Po,  
Vadiveeswaram,Agasteeswaram Tk,  
Now at D.No.11, Moc Buld,  
High Ground,  
Tirunelveli-11.

3. Kalaperumal @ Helan,  
S/o.Rajapandian,Formerly Resi.At D.No.28,  
Vattavilai,Edalakudi Po,  
Vadiveeswaram,Agasteeswaram Tk,  
Now at D.No.11, Moc Buld High Ground,  
Tirunelveli-11



4. Thennarasi, W/o.Mahandran,  
Formerly Resi.At D.No.28,  
Vattavilai,Edalakudi Po,  
Vadiveeswaram,Agasteeswaram Tk,  
Now at D.No.11,Moc Buld, High Ground,  
Tirunelveli-11.

5. Anna Revathi,W/o.Ponraj,  
Formerly Resi.At D.No.28,  
Vattavilai,  
Edalakudi Po, Vadiveeswaram,  
Agasteeswaram Tk,Now at D.No.11,  
Moc Buld,High Ground,  
Tirunelveli-11.

.. Respondents / Petitioners

**C.M.A. (MD) .No.324 of 2019**

THE MANAGING DIRECTOR,  
TAMIL NADU STATE EXPRESS TRANSPORT  
CORPORATION PALLAVAN SALAI  
CHENNAI-2

.. Appellant / Respondent

Vs

1. Anna Revathi, @ Revathi,  
Formerly Resi.At D.No.28,  
Vattavilai,Edalakudi Po,  
Vadiveeswaram,Agasteeswaram Tk,  
Now at D.No.11,Moc Buld,High Ground,  
Tirunelveli-11.

2. Minor.Hansika,D/o.Late.Ponra J,  
Now at D.No.11,Moc Buld,  
High Ground,Tirunelveli-11.

Minor 2<sup>nd</sup> Respondent Rep Thro Her Mother and Friend Anna Revathi @  
Revathi)

... Respondents / Petitioners

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of Motor  
Vehicles Act, 1988 preferred against the award made in MCOP No.1453,  
1454, 1455,1456 and 1622 of 2016 dated 18.07.2018 respectively, on  
the file of the Motor Accident Claims Tribunal, III Additional  
District Court, Tirunelveli.

**In Both C.M.As.**

For Appellant : Mr. P. Prabhakaran  
For Respondents : No appearance

WEB COPY

**COMMON ORDER**

The appellant/Transport Corporation has filed these five appeals to set aside the order, dated 18.07.2018 in M.C.O.P.Nos.1453 to 1456 & 1622 of 2016, passed by the learned Motor Accident Claims Tribunal/III Additional District Court, Tirunelveli.

2.It is a case of fatal accident. On 08.08.2014, at about 17.30hrs., the deceased persons and the claimants were travelled in a Maruthi Car bearing Regn. No.TN-74-K-1292, Kavalkinaru - Nagercoil main road, in front of the Library Aralvaimozhi Perumalpuram, north to south, a bus belonging to the appellant/Transport Corporation which was driven by its driver with rash and negligent manner and dashed against the Maruthi car. Due to the accident, claimants have sustained injuries and three persons died.

3.The claimants have filed a petition in M.C.O.P.Nos.1453 to 1456 & 1622 of 2016, on the file of the learned Motor Accident Claims Tribunal/ III Additional District Court, Tirunelveli, seeking compensation.

4.Before the Tribunal, on the side of the claimants four witnesses have examined as P.Ws.1 to 4 and marked sixteen documents as Exs.P.1 to P.16 and one witness was examined as Ex.R.1.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants, directed that after paying the whole compensation amount the appellant/transport corporation is entitled to recover the remaining contribution amount by filing separate proceedings from the owner and insurance company of the Maruti Car. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed.

6.Heard on either side. Perused the material documents available on record.

7.The claimants have filed separate claim petition for the same accident occurred on 08.08.2014. The Transport Corporation has filed this appeal on the ground that eventhough the tribunal held that the driver of the Maruthi car and the insurance company is liable to pay compensation and directed the appellant/Transport corporation to pay entire compensation. The First Information was registered against the driver Maruthi Car. The tribunal in its order, dated 18.07.2018 decided that when the driver of the Maruthi

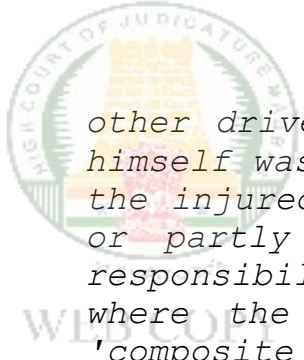


Car came wrongly on the right side and dashed the Transport Corporation bus and also recorded that the First Information Report was registered against the driver of the Maruthi car. But the driver of the Maruthi car died on the spot.

8. Again, it is further stated in paragraph No.18 of the order, the tribunal discussed that the owner and the insurance company of the Maruthi car was not added as a party in the M.C.O.P. Proceedings. Both the vehicles dashed each other.

9. So, on the basis of the Judgment reported in **2008(3) SCC 748 (T.O. Anthony Vs. Karvarnan and Others)**, the tribunal assumed that the extent of negligence of the appellant and the first respondent is 50 : 50 because it was a case of composite negligence. The tribunal, we find, fell into a common error committed by several tribunals, in proceeding on the assumption that composite negligence and contributor negligence are the same. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicle in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

"Composite Negligence" refers to the negligence on the part of two or more person. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the chose of proceedings against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to this contributory negligence. Therefore, when two vehicles are involved in an accident, and one of the drivers claim compensation from the other driver alleging negligence, and the



other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injuries is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error".

10.All these findings shows that the driver of the Maruthi car and the Insurance company are liable for paying compensation. The Tribunal has wrongly fixed the appellant/transport corporation for entire liability to pay compensation. Only 50% liability is to be fixed on the appellant/transport corporation.

11.In M.C.O.P.No.1453 & 1622 of 2016, at the time of accident, the deceased are bachelor. As a bachelor, in personal expenses 50% to be deducted. The tribunal has wrongly deducted 1/3 in personal expenses. So, in personal expenses 50% to be deducted.

12.Finally, all the Civil Miscellaneous Appeals are partly allowed and the liability on the appellant/transport Corporation is fixed on 50%. The appellant/Transport Corporation is directed to pay 50% of the award amount passed by the Tribunal, within a period of six weeks from the date of receipt of copy of the order. After depositing the award amount, all the claimants are permitted to withdraw the same before the tribunal, on filing appropriate application. The appellant/transport corporation is entitled to withdraw the excess amount deposited, if any. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

**Note:**In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

The Motor Accident Claims Tribunal/  
III Additional District Judge,  
Tirunelveli.

Copy to

The Section Officer, V.R.Section(2C)  
Madurai Bench of Madras High Court, Madurai

+5 CC to M/s.P.PRABHAKARAN, Advocate ( SR-38217[F]  
38218,38219,38216,382222 dated 10/12/2021 )

C.M.A.(MD).Nos.320 to 324 of 2019  
10.12.2021

KMK(CO)

KB(17.02.2022) 7P 9C