

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	25.11.2021
DELIVERED ON	15.12.2021

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CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.M.A. (MD) .No.239 of 2018****and****C.M.P. (MD) No.3549 of 2018**

The Branch Manager,
United India Insurance Company Limited,
Branch Office : Subedarpeth,
Main Road, Nelloor,
Andhra Pradesh.

...Appellant/3rd Respondent

Vs.

1.Samuthiravel

2.Selvan Minor Kanagavel

...1st & 2nd Respondents/Petitioners

[The 2nd petitioner represented through
his father and natural guardian of the
1st petitioner]

3.The Managing Director,

Tamil Nadu State Transport Corporation,
Madurai Division No.11 Limited,
Office : No.2, Trivandrum Road,
Vannarpethai, Tirunelveli Town,
Tirunelveli District.

...3rd respondent/1st Respondent

4.Ramakrishna

...4th Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order passed by the learned Motor Accidents Claims Tribunal/Sub Judge, Kovilpatty, in M.C.O.P.No.44 of 2013, dated 13.06.2017 as against the appellant and allow the appeal.

For Appellant :Mr.N.Dilip Kumar

For R-1 & R-2 :Mr.M.Prabhu

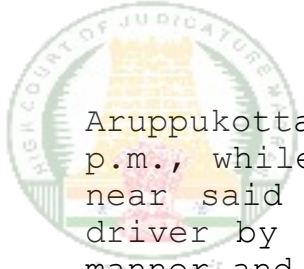
For R-3 :Mr.P.Prabhakaran

For R-4 :No appearance

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the order, dated 13.06.2017 in M.C.O.P.No.44 of 2013, passed by the learned Motor Accidents Claims Tribunal/Sub Judge, Kovilpatty.

2. It is a case of fatal accident. On 09.03.2021 the deceased was travelling as one of the passengers in the 3rd respondent bus bearing Registration No.TN-32-N-1236, coming from Ettayapuram -



Aruppukottai four ways road, from south to north at about 10.45 p.m., while the 1st respondent passenger bus proceeding at the place near said road, in the above said direction the 3rd respondent's driver by changing the route drove the bus in rash and negligent manner and without observing the traffic rules and without following the noticing the infront of the vehicle and dashed against the 4th respondent' vehicle bearing registration No.AP-26X 0157. In the said accident, the deceased and other passengers had sustained severe injury. Due to the severe head injury the deceased died in the Tirunelveli Medical College Hospital, Tirunelveli.

3.The claimants have filed a petition in M.C.O.P.No.44 of 2013 on the file of the learned Motor Accidents Claims Tribunal/Sub Judge, Kovilpatty, seeking compensation.

4.Before the Tribunal, on the side of the claimants two witnesses were examined as P.Ws.1 & 2 and marked six documents as Exs.P.1 to P.6 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 and contributory negligence was fixed. 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.

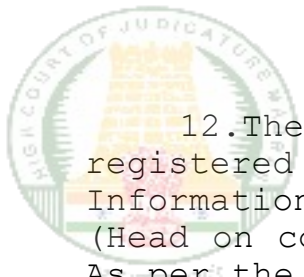
7. The learned counsel appearing for the appellant submitted that the question of fixing contributory negligence upon the driver of our insured vehicle while determining the compensation payable towards the death of an inmate of the bus does not arise. The TNSTC and its driver are alone responsible and liable to pay the compensation.

8.The 1st and 2nd respondents herein/claimants have filed a petition in M.C.O.P.No.44 of 2013 before the learned Motor Accidents Claims Tribunal/Sub Judge, Kovilpatty, for the death of wife of the 1st respondent herein/1st claimant who died in road accident occurred on 09.03.2011 at 10.45 a.m. The deceased travelled in the Government Bus bearing to the 3rd respondent herein.

9.A van has also involved in the alleged accident.

10.The tribunal has awarded a sum of Rs.10,15,000/-found that both the bus and van are liable to pay compensation. Aggrieved by the same, the insurance of the van which is belonged to the 3rd respondent herein filed this appeal.

11.The case of the appellant is that only driver of the bus drove the bus rash and negligent and dashed with the van. So, the appellant is not at all liable to pay compensation.



12.The First Information Report was marked as Ex.P.1 which was registered against the driver of TNSTC. As per the First Information Report, both the van and bus dashed with each other (Head on collision). Admittedly, the bus came from South to North. As per the First Information Report, the driver of the bus drove the vehicle rashly on wrong track dashed the van. The rough sketch was marked as Ex.P.6. The occurrence took place on the right side of center median.

13.When a vehicle coming from south to north, it ought to have come only on the left side of the road. The rough sketch clearly shows that the accident took place only by the rash and negligent driving of the bus driver. The charge sheet has also been filed against the bus driver.

14.The manner of which accident took place clearly proves the negligent of driver of TNSTC Bus. It crossed centre median and dashed the van. Therefore, the alleged accident was occurred only on the part of the TNSTC bus driver.

15.The tribunal has erred in holding the both the vehicles are responsible for the accident. Since head on collision without noticing rough sketch and police inactivating and final report.

16.Finally, this Civil Miscellaneous Appeal is partly allowed by modifying the order, dated 13.06.2017 in M.C.O.P.No.44 of 2013, passed by the learned Motor Accidents Claims Tribunal/Sub Judge, Kovilpatti, regarding the liability of TNSTC Bus driver. The 3rd respondent herein/TNSTC Corporation is liable to pay entire compensation of Rs.10,15,000/-. The 3rd respondent is directed to deposit the entire award of compensation within a period of six weeks from the date of receipt of copy of the order. After depositing the amount, the 1st claimant is permitted to withdraw his share as apportioned by the Tribunal, with accrued interests and costs. The minor's share amount is to be deposited as ordered by the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

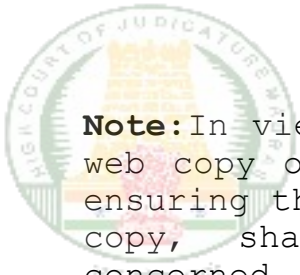
Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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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.

WEB COPY

To

The Motor Accidents Claims Tribunal/
Subordinate Court, Kovilpatti.

COPY TO:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-38780[F] dated 15/12/2021)

+1 CC to M/s.M.PRABU, Advocate (SR-38900[F] dated 15/12/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-39346[F] dated 17/12/2021)

C.M.A. (MD) .No.239 of 2018
15.12.2021

RD(27.12.2021) 4P 7C