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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.Nos.3267 of 2017 & 1335 of 2018
and
C.M.P.Nos.20401 of 2017 & 10735 of 2018

M/s United India Insurance Company Limited,
Pallivasal Street,
Perambalur.

... Appellant in both appeals/2nd Respondent
(in both)

Vs.

1.Balan

2.Shanthi

...1 & 2 Respondents/Petitioners
(in CMA 3267/17)

3.M/s. Social Change and Development,
No.105, A-1, Bye-Pass Road,
Vannarapettai,
Tirunelveli - 627 002.

...3rd Respondents in CMA No.3267 of 2017/1st Respondent

1.Irudaya Adimai

2.Alphonsal

3.Navilraj

4.John Jagan

5.Mary Lincy Mol

...1 to 5 Respondents/Petitioners
in CMA 1335/18

6.M/s. Social Change and Development,
No.105, A-1, Bye-Pass Road,
Vannarapettai,
Tirunelveli - 627 002.

...6th Respondents in CMA No.1335 of 2018/
1st Respondent

COMMON PRAYER: Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act 1988 against the Judgment and
Decree made in MCOP Nos.714 of 2014 and 578 of 2015 dated



05.01.2017, on the file of the Motor Accident Claims Tribunal (Principal District Court) Perambalur.

In CMA No.3267 of 2017;

For Appellant : Mr.M.B.Raghavan
For Respondents: Mr.D.Bhoopal for
Mr.T.Gopinath for R1 and R2
No appearance for R3

In CMA No.1335 of 2018;

For Appellant : Mr.M.B.Raghavan
For Respondents: Mr.D.Bhoopal for
Mr.T.Gopinath for R1 and 2
No appearance for R3to 6

COMMON JUDGMENT

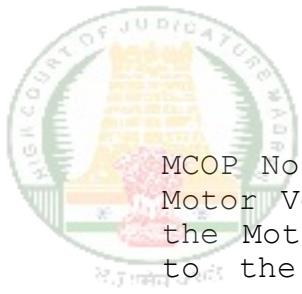
[Common Judgment of the Court was delivered by
K.KALYANASUNDARAM, J.]

These appeals have been preferred challenging the Common Award passed by the Motor Accident Claims Tribunal (Principal District Judge), Perambalur in MCOP Nos.578 of 2015 and 714 of 2014 dated 05.01.2017.

2. A Toyota Innova Car bearing Reg.No.TN-72-AM-6049 belongs to the respondent Educational Institution, by name, M/s.Social Change and Development, Tirunelveli. On 23.11.2013, the car was driven by the deceased Babu John, in which, the deceased Prabhu travelled as occupant. The car met with an accident at 02.10 p.m and both of them died on the spot. It is the case of the claimants that the driver of the bus bearing Reg.No.TN-01-AN-0104 drove it from the opposite direction in a rash and negligent manner and rammed the car.

3. It is not in dispute that both the deceased were working as Chief Administrative Officer and Manager in the respondent Educational Institution. The legal heirs of the deceased sought compensation in the claim petitions. Although they have pleaded in the claim petitions that the accident had happened due to the negligent of the driver of the bus, the owner of the bus was not impleaded as respondent. It is also seen that the claimants did not examine the eyewitness to prove the negligence.

4. MCOP No.714 of 2014 was filed under Sections 165, 166 and 167 of the Motor Vehicles Act and another claim petition in



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MCOP No.578 of 2015 was filed under Sections 165 and 167 of the Motor Vehicles Act. Section 165 deals with the Constitution of the Motor Accident Claims Tribunal and Section 167 gives option to the claimants to choose a Forum where they can claim compensation.

5. The learned counsel appearing for the appellant Mr.M.B.Raghavan placing reliance on the decisions of the Hon'ble Apex Court in the case of Surender Kumar Arora and another vs. Manoj Bisla and others reported in (2012)4 SCC 552, Nishan Singh and others vs. Oriental Insurance Company Limited reported in (2018)6 SCC 765 and Minu B.Mehta and another vs. Balkrishna Ramachandra Nayan and another reported in (1997)2 SCC 441, argued that unless a finding is given on negligence, the owner cannot be mulcted with the liability.

6.This proposition is not disputed by the learned counsel for the claimants. Taking note of the fact that the necessary parties have not been impleaded and no evidence was let in by the claimants to prove the negligence. In order to meet the ends of justice, we hereby set aside the Judgment and Award passed by the Motor Accident Claims Tribunal, (Principal District Court), Perambalur and the matters are remanded to the Tribunal for de-novo trial. The claimants are at liberty to amend the claim petitions, if they are so advised.

7.Considering the fact that these claim petitions arise out of the accident that occurred in the year 2013, we request the Motor Accident Claims Tribunal (Principal District Judge), Perambalur to dispose of the claim petitions within one year from the date of receipt of a copy of the records with this judgment. It is well settled legal position that mere quoting of wrong provision will not dis-entitle the claimants to get the relief.

8. With the above directions, these Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

skn



To

1. The Motor Accident Claims Tribunal,
(Principal District Judge), Perambalur.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras -104.

+1cc to Mr.T.Gopinath, Advocate SR.No.9644

C.M.A.Nos.3267 of 2017 & 1335 of 2018
and
C.M.P.Nos.20401 of 2017 & 10735 of 2018

CA(CO)
GMY(24/05/2022)