

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.09.2022**

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.217 of 2010

and

M.P(MD) No.1 of 2010

National Insurance Co.Ltd.,
Rep. by its Branch Manager,
No.175-A, Great Garden Road,
Tuticorin Town,
Tuticorin District.

... Appellant

vs.

1.The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Rep. by its Managing Director,
Maruthupathi, Managiri Po,
Karaikudi Town,
Sivagangai District.

2.Tmt.Mary Devasundari
Owner of the Bus
Selvam Timber Depot,
No.4/97, Pudukkottai Post,
Tuticorin Town,
Tuticorin District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, to set aside the fair and decreetal order dated

19.12.2007 made in MCOP No.31 of 2006 on the file of Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Sivagangai, and allow this civil miscellaneous appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Petition is filed to set aside the fair and decreetal order dated 19.12.2007 made in MCOP No.31 of 2006 on the file of Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

2. Brief facts of the case is as follows:-

On 15.9.2002, at about 1.25 p.m., a bus belonging to the first respondent/Transport Corporation bearing registration No.TN63-N-0583 was proceeded to Tirunelveli. When the said bus was nearing Union Office, Pudukkottai Bye pass, the second respondent's bus bearing Registration No.TN-69-H-7799 driven by its driver in a rash and

negligent manner, dashed against the first respondent's bus. In the impact, the first respondent/Corporation Bus was damaged. Alleging that the accident had happened due to the rash and negligent driving of the second respondent's driver, the first respondent/Corporation filed a claim petition claiming compensation of Rs.63,054/- for damages.

3.The second respondent, who is owner of the offending bus remained absent before the Tribunal and therefore, he was set *ex-parte*. The appellant/Insurance Company contested the claim petition on all the ground available to them.

4.Before the Tribunal, on the side of the Transport Corporation/claimant, one witness was examined as P.W.1 and four documents were marked as Exs.P1 to P.4. On the side of the appellant/Insurance Company, one witness was examined as R.W.1 and one document was marked as Ex.R1.

5.The Tribunal, on appreciation of evidence adduced by the claimant, found that the driver of the second respondent's bus caused the accident and awarded compensation of Rs.63,054/- with interest at the

rate of 7.5% per annum. Aggrieved over the same, the present appeal has been filed by the appellant/Insurance Company.

6.It is the main contention of the learned counsel for the appellant/Insurance Company that the accident in question took place only on account of the negligence of the driver of the Transport Corporation Bus and the Tribunal ought not to have held the driver of the bus owned by the second respondent is liable for negligence. It is further contented that the Transport Corporation has got its own source, from which, the spare-parts to the repaired vehicle are procured and there is no proof that the estimate has been prepared by the claimant on the basis of the actual damages and to prove the value of the spare-parts purchased, the Mechanic and the Purchase Manager were not examined and P.W.1-Assistant Manager is not the competent person to mark Ex.P.2 and Ex.P3. Hence, the learned counsel prays to set aside the award of the Tribunal.

7.There is no representation on behalf of the respondents either in person or through counsel.

8. A perusal of the records shows that the Tribunal by considering Ex.P.1 First Information Report and Ex.P.4, Accident Report, rightly fixed the negligence upon the driver of the second respondent's bus. Further, it is seen that the Transport Corporation's bus was damaged and they have incurred loss of Rs.63,054/- to the damaged bus. Though the learned counsel appearing for the appellant/Insurance Company contended that the Transport Corporation has not examined the proper witnesses to prove the damage and loss, this Court is of the view that the witness examined by the Transport Corporation, namely, P.W.1 and Ex.P.2-Bills and Ex.P.3-Requisition Slip for purchasing spare-parts, are enough to prove the damages. Hence, the contention of the learned counsel for the appellant/Insurance Company is rejected. Further, on appreciation of evidence and considering the damage caused to the first respondent/Transport Corporation vehicle, the Tribunal has awarded a just and reasonable compensation. Hence, this Court finds no reason to interfere with the conclusion reached by the Tribunal and this appeal is liable to be dismissed.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. The award and decree dated 19.12.2007 made in M.C.O.P.No.31 of 2006 on

the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai, is confirmed. The appellant/Insurance Company and second respondent are directed to pay the compensation of Rs.63,054/- as awarded by the Tribunal jointly or severally together with interest at the rate of 7.5% per annum, less the amount already deposited, if any, from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit is being made, the first respondent/claimant is permitted to withdraw the award amount together with accrued interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2022

Index :Yes/No
Internet :Yes/No
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To

1.The Motor Accidents Claims Tribunal (Chief Judicial Magistrate),
Sivagangai,

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.217 of 2010

A.A.NAKKIRAN,J.

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JUDGMENT MADE IN
C.M.A(MD)No.217 of 2010

14.09.2022