



C.M.A.No.3221 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3221 of 2014

and

M.P.No.1 of 2014

The Managing Director,
Karnataka State Road Transport Corporation Limited,
Chickballapur Division,
Chickballapur, Bangalore

... Appellant

..Vs..

1. Masilamani
2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Salem) Limited, Salem Division,
Ramakrishna Road, Salem – 636 007.
(Second Respondent was impleaded
vide Court Order dated 28.11.2022 made
in CMP No.10021 of 2021)

... Respondents

Prayer:The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 11.10.2013 passed in M.C.O.P.No.815 of 2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Krishnagiri against the appellant.



C.M.A.No.3221 of 2014

For Appellant : Mr. R. Thiyagarajan
For Respondent-1 : No Appearance
For Respondent-2 : Mr.D. Nitin (Standing Counsel)

JUDGMENT

The accident has occurred on 30.10.2010 at 11.30 a.m involving two buses, viz., a Karnataka State Road Transport Corporation bus bearing Registration No. KA 40 F 0136 and a Tamil Nadu State Transport Corporation bus, bearing Registration No. TN-29 N 1726. In the collision, three passengers died. About 36 persons travelling in both the vehicles were injured. Some of the claim petitions were jointly tried, in which, on evaluation of pleadings and evidence, the Claims Tribunal came to the conclusion that the driver of both the vehicles were negligent, in causing the accident. But, in the present case, the Tribunal fixed negligence only against the driver of the Karnataka State Road Transport Corporation bus.

2. Challenging the finding of the negligence fixing on the driver of Karnakata State Road Transport Corporation bus, bearing Registration



C.M.A.No.3221 of 2014

No.KA 40 F 0136 alone, Karnataka State Road Transport Corporation Limited, Bangalore filed this appeal seeking for reversal of the finding fixing negligence only against its driver.

3. The learned counsel appearing for the appellant/ Karnataka State Road Transport Corporation contended that when the de-facto complainant has stated in his complaint Ex.P1 that he heard a huge sound at the time of accident, he has not been examined before the Tribunal. The driver of the 2nd respondent/Tamil Nadu State Transport Corporation who drove the vehicle in a very rash and negligent manner was solely responsible for the negligence and the accident. There was no eye witness to speak about the occurrence nor any report filed by the Investigating Officer to prove the nature and cause of the accident. The Tribunal has failed to see that the photographs filed would prove the intensity of the accident and movement of the vehicles while plying on the road. The Tribunal has failed to note that Exhibit P3 and P4 are stereo typed report of the Motor Vehicle Inspector without proper inspection and contrary to the photographs. The Tamil Nadu State Transport Corporation vehicle crossed the central line after the



C.M.A.No.3221 of 2014

tyre burst and due to which lost its control leading to the accident. There are two vehicles involved in the accident and as such mere registering a first information report against the appellant vehicle alone is not enough to fasten the liability. The Tribunal erred in coming to conclusion that the proposed party is not a necessary party even though a complaint has been registered stating that both vehicles dashed against each other causing injuries to the passengers. The Tribunal has failed to note that the persons who have sustained injury have filed a claim petition seeking compensation and in most of the cases in the claim petitions, the proposed party viz., Tamilnadu State Transport Corporation have been made as a party and as such the proposed party is a necessary party for adjudication. In view of the fact that the TNSSTC vehicle has been involved in the accident, the TNSSTC owner and the insurance company of the TNSSTC vehicle should have been impleaded as a party and the non joinder is fatal to the case of the claimants. When the claimant sustained only simple injury, the compensation awarded by the Tribunal is highly excessive and is liable to be set aside.



C.M.A.No.3221 of 2014

4. The learned counsel appearing for the 2nd respondent/Tamilnadu

State Transport Corporation contended that after considering both the oral and documentary evidence, the Tribunal has rightly fixed the negligence on the part of the driver of the appellant/Transport Corporation and there is no need to interfere with the order passed by the Tribunal. Hence, he prays for dismissal of the appeal.

5. Admittedly, while there were two vehicles involved in the accident, mere registering a first information report against the appellant vehicle alone is not enough to fasten the liability, in the considered view of this Court. It is the main contention of the appellant/Karnataka Transport Corporation that they had filed an application to implead the proposed party namely the TNSCTC and the same was returned and the counsel without representing the same had opted to prefer a revision and by the time, the petitions could be represented, the above O.P was disposed off without giving time to agitate the matter before the Trial Court. From the above submission, it would reveal that the Tribunal had committed error in coming to conclusion that the proposed party is not a necessary party even



C.M.A.No.3221 of 2014

though a complaint has been registered stating that both vehicles dashed against each other causing injuries to the passengers. The learned counsel for the appellant further contended that the persons who have sustained injury have filed a claim petition seeking compensation and in most of the cases in the claim petitions, the proposed party viz., Tamilnadu State Transport Corporation have been made as a party and as such the proposed party is a necessary party for adjudication. In view of the fact that the TNSC vehicle has been involved in the accident, the TNSC/owner and the insurance company of the TNSC vehicle should have been impleaded as a party. The de-facto complainant namely one Venkatachalam who was travelling in the 2nd respondent TNSC bus had lodged a complaint Ex.P1, but he has not been examined. There was also no eye witness to the occurrence to speak about the accident. In such circumstances, without examining the de-facto complainant or any other eye witness, and without impleading the TNSC or the Insurance company the Tribunal has committed error in fixing negligence only against the driver of the appellant/Karnataka State Road Transport Corporation. Moreover, in similar claim petitions, the Claims Tribunal fixed equal negligence on both



C.M.A.No.3221 of 2014

the Transport Corporations. But, in the present case, the Tribunal fixed negligence only against the driver of the Karnataka State Road Transport Corporation bus, which is not correct. Hence, this Court is inclined to fix 50% equal negligence on both the Transport Corporations as per the decision of this Court held in CMA No.3648 to 3651 of 2013 dated 02.07.2014. Therefore, the finding of negligence fixed on the driver of the Karnataka State Road Transport Corporation Limited by the Tribunal is not sustainable in law and the same is hereby set aside. The Managing Director of Karnataka State Road Transport Corporation, Bangalore and the Managing Director of Tamil Nadu State Transport Corporation, Salem, are liable to pay the compensation now determined by this Court in equal proportion, with proportionate interest and costs.

6. Insofar as the total compensation awarded by the Tribunal is concerned, the assessment of the compensation under all the heads by the Tribunal is a just compensation and it does not call for any interference by this Court.



C.M.A.No.3221 of 2014

7. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

Consequently, connected Miscellaneous Petition is closed. No costs.

8. The Transport Corporations are directed to deposit the award amount, in the ratio of negligence, fixed by this Court, with proportionate accrued interest and costs, less the statutory deposit, to the credit of MCOP No.815 of 2013 on the file of the Motor Accidents Claims Tribunal/ Chief Judicial Magistrate, Krishnagiri, within a period of four weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any by the appellant/ Karnataka State Road Transport Corporation Limited. On such deposit, the claimant is permitted to withdraw the award amount, by making necessary application and the payments are to be made through RTGS.

20.04.2023

Index:Yes/No
Speaking/Non-speaking Order
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C.M.A.No.3221 of 2014

WEB COPY

- To
1. The Motor Accident Claims Tribunal (Chief Judicial Magistrate),
Krishnagiri.
 - 2.The Section Officer
V.R.Section, High Court of Madras.



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C.M.A.No.3221 of 2014

A.A.NAKKIRAN, J.
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C.M.A.No.3221 of 2014
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M.P No.1 of 2014

20.04.2023