



C.M.A(MD)Nos.1481 & 1482 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2023

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.1481 & 1482 of 2016

and

C.M.P(MD)Nos.12403 & 12404 of 2016

**C.M.P(MD)No.1481 of 2016:**

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Kumbakonam Division II,  
Periyamilaguparai,  
Trichy District.

... Appellant/1<sup>st</sup> Respondent

Vs.

1.K.Rajeswari (Died)

... Respondent/Petitioner

2.R.Shanmuganathan

3.The Branch Manager,  
National Insurance Co., Ltd.,  
Jerome Building, 1<sup>st</sup> Floor,  
Fort Station Road,  
Trichy-2.

... Respondents/Respondents 2&3

4.Krishnamoorthy

... Proposed respondent

*(R4 is brought on record as legal heir of the  
deceased R1 vide Court order, dated  
17.04.2023 made in C.M.P(MD)No.4795 of  
2023)*

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of  
Motor Vehicles Act, to set aside the judgment and decree passed by the



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Special Sub Court/Motor Accident Claims Tribunal, Tiruchirapalli in  
M.C.O.P.No.1023 of 2014, dated 16.03.2016.

**C.M.P(MD)No.1482 of 2016:**

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Kumbakonam Division II,  
Periyamilaguparai,  
Trichy District.

... Appellant/1<sup>st</sup> Respondent

Vs.

1.Nagarathinam

... Respondent/Petitioner

2.R.Shanmuganathan

3.The Branch Manager,  
National Insurance Co., Ltd.,  
Jerome Building, 1<sup>st</sup> Floor,  
Fort Station Road,  
Trichy-2.

... Respondents/Respondents 2&3

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of  
Motor Vehicles Act, to set aside the judgment and decree passed by the  
Special Sub Court/Motor Accident Claims Tribunal, Tiruchirapalli in  
M.C.O.P.No.4188 of 2013, dated 16.03.2016.

For Appellant : Mr.D.Sivaraman  
(In both cases)

For R1 : Mr.C.Padmaraj  
(In both cases)

For R2 : Mr.P.Chellapandian  
(In both cases)



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For R3

: Mr.J.S.Murali  
(In both cases)

### **JUDGMENT**

Both the appeals have been filed challenging the award of the Motor Accident Claims Tribunal in M.C.O.P.Nos.1023 of 2014 and 4188 of 2013 on the file of the Motor Accident Claims Tribunal, Thiruchirapalli.

2. The claimants in both the claim petitions were passengers in the bus belonging to the transport corporation. While the bus was proceeding from Tiruchirapalli to Madurai from south to north direction, a tractor that was owned by the 2<sup>nd</sup> respondent and insured with the 3<sup>rd</sup> respondent in the claim petition came in the opposite direction. Due to the rash and negligent driving on the part of the driver of the bus, he dashed against the tractor and due to the said impact, both the claimants were thrown out of the bus through windshield in which they have sustained injuries. The claimant in M.C.O.P.No.1023 of 2014 claimed a sum of Rs.15,00,000/- as compensation and the claimant in M.C.O.P.No.4188 of 2013 claimed a sum of Rs.5,00,000/- as compensation.



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3. The transport corporation had filed a counter contending that the bus was driven by the driver on the left side of the road in a cautious manner. However, the tractor that was coming from the opposite direction was driven in a rash and negligent manner. Though the driver of the bus attempted to avoid collision, the 2<sup>nd</sup> respondent driver came in such a manner that it dashed against the bus and caused injuries to the passengers of the bus and caused damages to the 1<sup>st</sup> respondent bus.

4. The tribunal after considering the oral and documentary evidence, arrived at a finding that only the bus was driven in a rash and negligent manner and only due to the same, the accident has happened. However, the tribunal also arrived at a finding that both the driver of the tractor as well as the transport corporation bus were responsible for the said accident. Thereafter, the tribunal proceeded to fix the compensation of Rs.14,80,939/- in M.C.O.P.No.1023 of 2014 and a compensation of Rs.2,06,466/- in M.C.O.P.No.4188 of 2013. These two awards are under challenge in the present appeal by the transport corporation on the ground that when the tribunal has fixed the negligence also on the part of the tractor driver, the transport corporation ought not to have been directed to pay the entire compensation.



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5. According to the learned counsel appearing for the appellant/transport corporation, F.I.R has been registered as against the driver of the tractor and he had pleaded guilty and paid fine. Therefore, it is clear that the negligence was on the part of the tractor driver. He further contended that the driver of the transport corporation bus has been examined as R.W.2, who has categorically deposed that he has driven the vehicle in a cautious manner and only due to the rash and negligent driving on the part of the tractor driver, the accident has happened. He further pointed out that though the owner of the tractor has been impleaded as 2<sup>nd</sup> respondent, he has not chosen to examine the driver of the tractor in order to establish the fact that negligence was on the part of the driver of the transport corporation.

6. The learned counsel appearing for the appellant had further contended that it is the specific case of the claimants that the driver of the bus has driven the vehicle in a rash and negligent manner. However, they have not properly established the said fact by letting in oral and documentary evidence. Hence, he had contended that when the accident has taken place only due to the negligence on the part of the tractor driver, the tribunal ought not to have mulcted the entire liability upon the transport corporation. Hence, he prayed for allowing the appeal and shifting the liability upon the 2<sup>nd</sup> respondent in the claim petition.



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7. Per contra, the learned counsel appearing for the claimants had contended that the claimants have examined themselves as P.W.1 and P.W.2 who have categorically deposed that the accident has happened only due to rash and negligent driving on the part of the driver of the transport corporation. He has further contended that the tractor could be operated only in a speed lesser than the speed of the bus and therefore, the contention of the learned counsel appearing for the appellant that it was driven in a rash and negligent manner cannot be factually correct. Therefore, they prayed for confirming the liability upon the transport corporation and to confirm the quantum of award by the tribunal.

8. I have carefully considered the submissions made on either side and perused the records.

9. The primary contention on the part of the learned counsel appearing for the appellant is that there is a specific finding on the part of the tribunal that the driver of the tractor as well as the driver of the transport corporation are responsible for the accident. However, in the operative portion of the order, the liability to satisfy the award has been mulcted only upon the transport corporation. In paragraph No.17 of the award, the tribunal had specifically found that both the passengers were



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transport corporation has not chosen to mark the MV report of both the vehicles involved in the accident. The corporation has also not chosen to mark the rough sketch that was filed in criminal case. Therefore, this Court is not in a position to accept the contentions of the learned counsel appearing for the appellant to the effect that the entire negligence is only on the part of the driver of the tractor. However, from the contention of both the parties, it could be seen that the driver of both the vehicles have contributed to some extent for the accident. The bus driver seated in a higher position would have a wider vision and therefore, this Court is of the considered opinion that 60% of the liability could be fastened upon the transport corporation and 40% on the 2<sup>nd</sup> respondent in the claim petition, namely the owner of the tractor. Admittedly, the tractor has not been insured.

10. This Court has gone through the quantum of award awarded under various heads and does not find any reason to interfere in the said quantum of award and the same stands confirmed in both the appeals.

11. In view of the judgment of the Hon'ble Supreme Court reported in **2015 (9) SCC 273 (Khenyei Vs. New India Assurance Company Limited & Others)**, the transport corporation as well as the



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recover the compensation amount either from the transport corporation or from the tractor. In case, if the claimants chose to recover the entire award amount from the transport corporation, the appellant corporation is at liberty to recover 40% of the said compensation amount from the owner of the tractor, namely the 2<sup>nd</sup> respondent in both the claim petitions.

12. In view of the above said deliberations, both the Civil Miscellaneous Appeals are allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

**08.06.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

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To

1.The Special Sub Court /  
Motor Accident Claims Tribunal,  
Tiruchirapalli.

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



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Judgment made in  
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