



CMA(MD).Nos.965 of 2018 batch cases

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.04.2023

PRONOUNCED ON : 04 .05.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.965 to 973 of 2018 and
CMA(MD).N0s. 1322 & 1323 of 2016
and CRP(MD).No.2752 of 2018
and
CMP(MD).Nos.11226 & 11227 of 2016
and 12038 of 2018

CMA(MD).No.965 of 2018

The Branch Manager
Tamil Nadu State Transport Corporation
Pillaithanneerpandal
Thirumayam Main Road
Pudukkottai

.....Appellant

Vs.

1.Rani

2.Arivazhagan

...Respondents

PRAYER in CMA(MD).No.965 of 2018:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgement and decree passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Pudukkottai in MCOP.No.118 of 2013 dated 10.02.2015.



CMA(MD).Nos.965 of 2018 batch cases

For Appellant : Mr.D.Sivaraman
For R1 : No appearance
For R2 : Mr.M.Suresh

COMMON JUDGMENT

The Civil Miscellaneous appeals have been filed by the State Transport Corporation challenging the award passed by the Motor Accident Claims Tribunal in 11 claim petitions primarily on the ground of negligence.

2.C.R.P.(MD).No.2752 of 2018 has been filed by the owner of the Tractor challenging the award passed in favour of the Transport Corporation claiming damages for repairing the transport corporation bus due to the accident caused by the tractor owner.

3.The claimants who were the respondents in the appeals have travelled as passengers in the transport corporation bus on 01.03.2013. When the bus was crossing the Indira Nagar and it was near the Ilango Kalyana Mandapam, a tractor-trailer owned by the second respondent carrying haystack was coming in the opposite direction. The driver of the transport corporation bus drove the vehicle in a rash and negligent manner and dashed against the tractor. Due to the said accident, the bus



capsized into a nearby pond and all the passengers got injured. This accident had happened only due to the rash and negligent driving of the driver of the transport corporation. However, due to the pressure of transport corporation, an F.I.R was registered as against the tractor driver in Crime No.163 of 2013. The claimants have claimed various amount towards compensation for the injuries sustained by them in the accident.

4.The tractor owner had filed a counter contenting that the tractor was carrying haystack and it was driven in a moderate speed. Only the transport corporation bus was driven in a rash and negligent manner and it dashed against the front left wheel of the tractor due to which the wheel got detached. As a consequence, the bus driver applied sudden break and the bus got capsized into the pond on the left side. Since the bus had got capsized into the pond, the complaint lodged by the tractor owner was not registered by the police officials. Therefore, the accident had happened only due to the rash and negligent driving on the part of the bus driver.

5.The transport corporation had filed a counter contending that only the tractor was driven in a rash and negligent manner and it dashed against the right side of the bus. Therefore, when the negligence is solely



CMA(MD).Nos.965 of 2018 batch cases

upon the tractor driver, the transport corporation is not liable to pay any compensation to the claimants.

6.The Tribunal after considering the evidence of the driver of the bus who was examined as RW1, the driver of the tractor who was examined as RW2 and an eye witness who was examined as RW3 and based upon Exhibits R1 to R5, arrived at a conclusion that the accident had happened only due to the rash and negligent driving on the part of the transport corporation bus driver.

7.The Tribunal had proceeded to award a sum of Rs.15,000/- to each one of the injured claimants in all the claim petitions. These awards are under challenge in the present appeals,

8.According to the learned counsel for the appellant/transport corporation, the bus was driven in a moderate speed and only the tractor driver had driven the vehicle in a rash and negligent manner and dashed against the front right side of the bus. Due to the impact, the bus had capsized into a pond nearby. The learned counsel for the appellant had relied upon Exhibit R3-rough sketch prepared by the police officials to indicate that the accident has happened only on the left corner of the road and therefore, no presumption can be drawn that the accident has



CMA(MD).Nos.965 of 2018 batch cases

happened due to the rash and negligent driving of the bus driver.

According to him, only the tractor had dashed against the bus making the bus to capsize. In view of the fact that the tractor driver was not having a driving license and the claimants are attempting to fix the responsibility upon the transport corporation bus.

9.The learned counsel for the appellant had further contended that though the driver of the transport corporation was examined as RW1, nothing was extracted from him so as to discredit his evidence. Therefore, he prayed for allowing the appeals and to fix the liability of payment of compensation on the owner of the tractor.

10.Per contra, the learned counsel appearing for the respondents/claimants had contended that Exhibit R3-rough sketch will clearly show that the bus has got capsized into the nearby tank. There is no possibility of a bus capsizing due to the dashing of a slow moving tractor with a trailer having haystack load. He had further contended that the driver of the transport corporation who was examined as RW1 has categorically admitted in his cross examination that only due to his rash and negligent driving that the accident has taken place. Therefore, he prayed for sustaining the award passed by the Tribunal.



CMA(MD).Nos.965 of 2018 batch cases

11.I have considered the submissions made on either side and perused the materials available on record.

12.The appeals have been filed by the Transport Corporation primarily challenging the findings of the Tribunal with regard to negligence. According to the appellant/transport corporation, a tractor coming from the opposite direction was driven in a rash and negligent manner, it dashed against the bus and due to the impact, the bus got capsized and fell into the nearby tank. However, it is contended on the side of the claimants and the tractor owner that the bus had dashed against the front right wheel of the tractor and the said wheel got detached. Only thereafter, the driver attempted to turn left and applied sudden brake which had resulted in capsizing of the bus into the tank. Therefore, the issue that has to be decided is on whose negligence the accident has happened ?

13.The driver of the transport corporation bus has been examined as RW1. In his chief examination, he had contended that on seeing the tractor, being driven in a rash and negligent manner, he had stopped the bus on the left corner of the road. Thereafter, the tractor had dashed against the bus and the bus got capsized. However, during the cross



CMA(MD).Nos.965 of 2018 batch cases

examination, the bus driver has admitted that it is a wide road and two vehicles can move freely in the opposite direction. He had also admitted that at the time of accident, the road was free. He had further admitted that the accident has happened only due to his negligence and carelessness.

14.A perusal of Exhibit R5 which is the motor vehicle report of the tractor would clearly indicate that front right wheel disc was damaged, engine bonnet has been dented, right side rear wheel mudguard has been damaged and right side driver cabin top has also been damaged. A perusal of Exhibit R4 which is a motor vehicle report of the bus would clearly indicate that the front and rear windscreen glass has been broken, right side front bottom body and rear bottom body are dented. A perusal of the Exhibit R3-rough sketch prepared by the police officials would show as if the accident has happened inside the pond.

15.It is an admitted fact that the tractor was moving with a trailer with loaded haystack. The Court could take a judicial notice of the fact that the tractor can move only in a moderate speed especially with a trailer attached which is fully loaded.



16.In the counter filed by the transport corporation, it is only contended that the tractor had dashed against the bus.They have not given any explanation why the bus had got capsized into the left side pond.

17.A combined reading of the evidence of RW1, RW2 tractor driver and the counter of the transport corporation, it is clear that the bus had dashed against the tractor and due to the said impact, the front right wheel of tractor has got detached. Thereafter, the bus driver in order to avoid further accident, had turned to the left and had applied sudden brake which had resulted in capsizing of the bus into the pond. If really the driver of the bus had stopped the vehicle on the left side of the road as contended by him in his chief examination, even if the trailer had dashed against the bus, that would not have resulted in capsizing of the bus. Considering the fact that the bus is a heavier vehicle than the tractor and the tractor was attached with trailer and loaded with haystack, the only conclusion this Court can arrive is that the accident has happened only due to the rash and negligent on the part of the driver of the transport corporation. Therefore, this Court does not find any reason to interfere in the findings of the Tribunal.



CMA(MD).Nos.965 of 2018 batch cases

18.As far as the quantum is concerned, all the claimants have sustained injuries in the said accident and all of them have been awarded a sum of Rs.15,000/-. This Court does not find any reason to interfere in the said quantum of award. Therefore, all the appeals filed by the transport corporation stand dismissed.

C.R.P(MD).No.2752 of 2018 :

19.The transport corporation has filed MCOP.No.175 of 2013 contending that due to the accident, the bus has got damaged and they have spent a sum of Rs.7,837/- for repairing the said bus. For recovering the said expense, MCOP.No.175 of 2013 was filed by the transport corporation. The Tribunal has allowed the said claim petition and directed the tractor owner to pay a sum of Rs.7,837/-. The said award is under challenge in C.R.P.(MD).No.2752 of 2018 by the owner of the tractor.

20.A perusal of the award indicates that the Tribunal had refused to take into consideration the findings arrived by it, in the said MCOP filed by the passengers in the transport corporation. On the other hand, the Tribunal had relied upon the F.I.R lodged by the bus driver as against the tractor driver to arrive at a conclusion that the tractor driver was



CMA(MD).Nos.965 of 2018 batch cases

negligent and he had caused the accident. The Tribunal further found that the tractor driver or the owner have not taken any steps to cancel the F.I.R registered as against them. Apart from that, the tractor was driven by a person who was not holding a driving license and the said vehicle was not insured. Therefore, the Tribunal has fixed the liability upon the tractor owner and passed an award is under challenge.

21.The driver of the tractor who was examined as RW2 in other MCOPs filed by the passengers had categorically pointed out that due to the advise of the officials of the transport corporation, his statement was rejected and an F.I.R was filed as against him. The Tribunal was not right in fixing the liability on the tractor driver just because he has not taken any steps to quash the F.I.R filed against him or he has filed any independent complaint as against the bus driver. The Tribunal has to assess the oral and documentary evidence let in before the said Court. Instead the Tribunal has proceeded to take contrary view from that of the findings rendered in the claim petition filed by the passengers of the transport corporation bus.



CMA(MD).Nos.965 of 2018 batch cases

22.In view of the above said facts, this Court is of the view that when the entire negligence is on the part of the driver of the transport corporation, the Tribunal was not right in allowing MCOP.No.175 of 2013 and fixing the liability upon the driver and owner of the tractor.

23.In view of the above said facts, all the Civil Miscellaneous Appeals stand dismissed and the Civil Revision Petition stands allowed. No costs.Consequently, connected miscellaneous petitions are closed.

04.05.2023

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

1. The Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Pudukkottai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA(MD).Nos.965 of 2018 batch cases

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
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