



C.M.A(MD)No.938 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2024

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.A(MD)No.938 of 2021

and

C.M.P(MD)No.8794 of 2021

The Managing Director
Tamil Nadu State Transport Corporation Limited,
Kumbakonam Division-II,
Periyamelaguparai,
Trichy.

... Appellant/Respondent
No.1

-Vs-

1.Vimala Selin Mary

... Respondent No.1/Claimant

2.SEW Infrastructures Limited,
Rep. By S.Anilkumar,
Nadupatty, Manapparai TK,
Trichy Dt.

*(R2 is dispensed with as R2 was
set ex-parte before the Tribunal
vide order dated 05.04.2024)*

3.Bajaj Allianz General Insurance Company
Tamil Nadu Sarvodaya Sangh Khadi Gramodyg Bhavan
108, 2nd Floor, T.P.K.Road,
Madurai-625 001.

...Respondents 2&3/Respondents2&3



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PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1998, to set aside the impugned award passed in MCOP No.6016 of 2013 dated 24.02.2020 on the file of the MACT (Special District Court), Tiruchirapalli.

For Appellant	: Mr.S.Boominathan
For R1	: No appearance
For R2	: Tapal returned
For R3	: Mr.J.S.Murali

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by Tamil Nadu State Transport Corporation Limited, Kumbakonam Division-II, Periyamelaguparai, Trichy, against the award dated 24.02.2020 passed in MCOP No.6016 of 2013 by the Motor Accident Claims Tribunal/Special District Court, Tiruchirapalli, on the issue of negligence.

2.Despite the receipt of notice, the first respondent neither appeared nor represented through her Counsel.

3.Heard the argument of the learned counsel for the appellant and the learned counsel for the third respondent.



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4.Case as set out in the claim petition is given hereunder:

On 22.01.2012 at about 04.15 p.m., while the claimant in MCOP No.6016 of 2013 was travelling as a passenger in the Government Bus(third respondent) bearing Registration No.TN-45-N-2475 and the bus was proceeding from Manapparai to Dindigul, when the bus was nearing Government Hospital, Vaiyampatty, on Trichy – Dindigul main road, the bus dashed behind back a tipper lorry bearing Registration No.TN-45-AZ-5343, which was parked in the negligent manner on the road without any indicators. Therefore, the claimant and the other passengers of the bus sustained grievous injuries. The accident occurred only due to the rash and negligent act of parking of the first respondent's driver. Therefore, the first and the second respondents, who are the owner and insurer of the tipper lorry are liable to pay compensation to the claimants herein.

5.Per contra, on behalf of the second respondent/Insurance Company it was contended that the accident occurred only due to the rash and negligent driving of the driver of the Government bus bearing Registration No.TN-45-N-2475. Therefore, the third respondent is liable to



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pay compensation to the claimants. The driver of the first respondent tipper lorry (TN-45-AZ-5343) is not responsible for the accident and the second respondent are not liable to pay any compensation.

6.On behalf of the third respondent, it has been averred in the counter that on 22.01.2012 while the driver of the respondent bus bearing Registration No.TN-45-N-2475 was proceeding from Trichy to Dindigul at about 04.15 hours when the bus was nearing Vaiyampatti Government Hospital and while he was slowly driving the bus along National Highways No.45 from east to west, all of a sudden, as the whole place was filled with dusty, the respondent switched off the head lights of the bus and found a tipper lorry parked on the road without any signal or indicators to caution that the lorry was parked there, the respondent's driver swerved the bus to the left side. The right side portion of the bus dashed behind the rear portion of the tipper lorry and the major accident was occurred. Therefore, the driver of the respondent Corporation bus is no way responsible for the accident.



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7.Common evidence was recorded in MCOP Nos.3349, 3350, 3359, 3360, 6015, 6016 and 6021 of 2013 and common order was passed by the Tribunal.

8.At trial, in all the aforesaid MCOPs, 7 witnesses were examined and 51 documents were marked. On the respondent side, legal officer of the Insurance Company was examined as R.W.1 and the driver of the tipper lorry was examined as R.W.2 and six documents were marked.

9.Upon consideration, the Tribunal concluded that because of the rash and negligent driving of the driver of the respondent Corporation bus, the accident occurred and compensation is payable by the third respondent, Tamil Nadu State Transport Corporation Limited. As regards the liability issue, it is sought to be challenged by the Tamil Nadu State Transport Corporation.

10.It has come on record through the evidence of P.W.1 that at about 04.15 p.m., while the bus was proceeding at a high speed and hit on



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the lorry and thereafter, dashed on the Vaiyampatti Government Hospital building. As the bus dashed on the tipper lorry, the tipper lorry capsized. It is her further evidence that even if for laying of road work was going on and the driver of the bus could see the lorry stationed on the left side of the road. P.W.1 would further state that due to the rash and negligent riding of driver of the bus accident occurred.

11.P.W.3 another ocular witness would state that the driver of the bus was riding his vehicle at a high speed from Trichy and the stationed lorry could be seen and had the driver of the bus applied break, he would have averted the accident. P.W.5 and P.W.6 have also spoken.

12.Whereas the driver of the third respondent/appellant Transport Corporation would state that he could not see the stationed lorry towards his left side and 15 metres away from the accident it was dusty and therefore, he slowly proceeded. Having seen the lorry, he stopped his vehicle.



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13.From the testimony of claimant as mentioned supra, it is pellucid that the bus dashed on the rear side of the lorry and thereafter, the bus turned towards left side of the road and hit on the building of the Government Hospital, Vaiyampatti. The accident occurred on the National Highways(NH45), no doubt it is a strait Highways road.

14.From the above said details of the accident, it is deducible that as the road is straight road, the driver of the bus was proceeding at a high speed. The bus having hit on the lorry and the lorry turned topsy turvy and thereafter the bus turned towards left side and hit on the Government Hospital building Vaiyampatti, would go to show that it is because of the rash and negligent driving of the respondent Corporation driver, the accident occurred. As the bus is owned by the third respondent, Tamil Nadu State Transport Corporation Limited, the third respondent is liable to pay compensation to the persons who suffered injuries on account of accident. This Court does not find no good reasons to interfere with the award of the Tribunal.



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15. Hence, this Civil Miscellaneous Appeal is dismissed. The appellant /Transport Corporation herein is directed to deposit the award of the Tribunal (less the amount already deposited if any) with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.6016 of 2013 on the file of the Motor Accidents Claims Tribunal /Special District Judge, Tiruchirappalli, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent/claimant herein is permitted to withdraw the award amount along with interest and costs as apportioned by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is also closed.

03.12.2024

NCC:Yes/No

Index:Yes/No

Internet::Yes/No



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To

1.The Motor Accidents Claims Tribunal /
(Special District Court),
Tiruchirapalli.



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R. KALAIMATHI,J.

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