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C.M.A(MD).Nos.344, 345, 346, 347 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A(MD).Nos.344, 345, 346, 347 of 2022

and

C.M.P(MD)Nos.3163, 3165, 3166, 3167 of 2022

The General Manager,
Tamilnadu Government Transport Corporation,
Periyamilaguparai,
Trichy – 620 001.

... Appellant in all CMAs

Vs.

S.Uma Maheshwari

... Respondent in
C.M.A(MD)No.344 of 2022

Minor.S.Pooja Sri
(Rep. by her mother Uma Maheshwari)

... Respondent in
C.M.A(MD)No.345 of 2022

N.Varalakshmi

... Respondent in
C.M.A(MD)No.346 of 2022

Minor.Mirudhula
(Rep. by her mother Uma Maheshwari)

... Respondent in
C.M.A(MD)No.347 of 2022

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the impugned award dated 06.03.2020 passed in M.C.O.P.Nos.197, 198, 199 and 200 respectively, on the file of the Motor Accidents Claims Tribunal (III Additional Sub Judge), Trichy.



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C.M.A(MD).Nos.344, 345, 346, 347 of 2022

For Appellant
in all CMAs

: Mr.P.M.Vishnuvarthanan

For Respondent
in all CMAs

: Mr.T.A.Ebenezer

COMMON JUDGMENT

These Civil Miscellaneous Appeals are preferred against the Common Award dated 06.03.2020 passed in M.C.O.P.Nos.197, 198, 199 and 200 of 2018 by the Motor Accident Claims Tribunal/III Additional Sub Judge, Trichy.

2. The respondent in M.C.O.P.Nos. 197, 198, 199 and 200 of 2018 is the appellant herein. The petitioners/claimant are the respondents herein.

3. The petitioners/claimant filed the claim petition in M.C.O.P.Nos. 197, 198, 199 and 200/2018 seeking compensation for the injuries sustained by them in a road traffic accident.

4. For the sake of convenience, the parties arrayed in M.C.O.P.Nos. 197, 198, 199 and 200 of 2018 is adopted hereunder.



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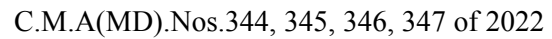


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5. The brief facts of the case:

On 22.09.2018 the claimant Umamaheswari was riding her Honda Activa two wheeler bearing registration No.TN 55 AS 9196 along with her mother Varalakshmi and her children Minor Pooja & Minor.Mirudhula as pillion riders along the Trichy - Madurai road near RSS Company from north to south. Whiles, the respondent's bus bearing registration No.TN 45 N 2390 came from opposite direction which was driven by its driver in a rash and negligent manner and dashed against the two wheeler. Due to impact the aforesaid four persons sustained injuries. So, they filed M.C.O.PNos.197, 198, 199 and 200 of 2018 seeking compensation of Rs.1,00,000/-, Rs.15,00,000/-, Rs.20,00,000/- and Rs.6,00,000/- respectively.

6. The respondent objected the claim petition by contending that the accident was taken place due to rash and negligent riding of the two wheeler, in which four persons travelled, turned 'U' turn without noticing the bus. Two wheeler is only meant for traveling two persons only. Therefore, contributory negligence has to be fixed. Therefore, the petitioners are not entitled any claim from the respondent.



8. Aggrieved by the said award, the appellant/respondent has preferred these Civil Miscellaneous Appeals.

9. Heard both side and perusal the records in these Civil
Miscellaneous Appeals.

10. The learned counsel appearing for the appellant/respondent has mainly argued that the Tribunal awarded compensation mechanically on



a humanitarian ground. The Tribunal failed to take joint negligence as the rider along with three pillion riders were travelling in a two wheeler without following traffic rules and regulations. Towards pain and suffering the Tribunal awarded huge amount without considering the treatment.

11. Per contra, the learned counsel for the respondents/petitioners submitted that the Tribunal has elaborately discussed the matter and considering the decision taken by the Hon'ble Supreme Court and awarded compensation considering the injuries sustained and period of treatment taken by the petitioners. The Tribunal after taken into consideration of the decision of this Court in **Kattabomman Transport Corporation Ltd., /vs/ Vella Duraichi reported in 2004(1) TNMAC 180 DB** held that the respondent could not seek contributory negligence as the accident happened due to rash and negligent driving of the driver of the respondent's bus.

12. On hearing both and on perusal of records, it is clear that in the accident, the appellant/respondent's bus and a two wheeler were involved. It is a general settled principle, when two vehicles involved in accident, the biggest and larger vehicle is to be held responsible than the



smaller one. As per evidence adduced before the Tribunal it is clear that F.I.R. was registered against the driver of the appellant/respondent's bus. No contra material placed by the respondent. The Tribunal has properly appreciated the evidence of P.W.1 and other exhibits and correctly concluded that the accident happened due to the negligence on the part of the driver of the bus.

13. So far as contributory negligence is concerned, the appellant/respondent contended that the rider of the two wheeler along with three pillion riders has ridden the two wheeler. As per decisions in various cases taken by the Hon'ble Supreme Court and by this Court, it is clear that even if a rider involved in the accident has ridden the vehicle along with pillion riders, contributory negligence would not be fixed until it is proved that the accident was taken place due to rash and negligent on the part of the rider. In this case, the respondent has not proved that due to two wheeler rider's negligent riding the accident was taken place and hence, this contention is untenable.

14. The next point argued by the respondents is that for pain and suffering the Tribunal has awarded huge amount. This contention is not acceptable. For pain and suffering for the injuries sustained by the



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injured persons could not be compensated. On perusal of records and order of the Tribunal, it is clear that the respondents sustained various grievous injuries and taken treatment as inpatient more than 7 days. The respondents have produced medical records for their treatment taken from the hospital, the medical records were not objected by the respondents nor the respondent produced any contra materials. There is no serious dispute raised by the respondents against other aspects. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

15. In the result, these Civil Miscellaneous Appeals are dismissed and the common award dated 06.03.2020 passed in M.C.O.P.Nos.197, 198, 199 and 200 of 2018 by the Motor Accident Claims Tribunal/ III Additional Sub Judge, Trichy are confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.02.2024

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

- 1.The Motor Accidents Claims Tribunal
(III Additional Sub Judge),
Trichy.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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and
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