



C.M.A(MD)Nos.30 to 33 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.30 to 33 of 2018

and

C.M.P(MD)Nos.377 to 380 of 2018

C.M.A(MD)No.30 of 2018:

National Insurance Company Limited,
Mettur Road,
Palaniappa Complex,
Erode-638 011.

... Appellant/2nd Respondent

Vs.

1.Jeyalakshmi

... Respondent/Petitioner

2.Vetrivel

... Respondent/1st Respondent

3.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Division,
Kumbakonam.

... Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Court, Kulithalai in M.C.O.P.No. 304 of 2009, dated 28.10.2011.



C.M.A(MD)Nos.30 to 33 of 2018

C.M.A(MD)No.31 of 2018:

National Insurance Company Limited,
Mettur Road,
Palaniappa Complex,
Erode-638 011.

... Appellant/2nd Respondent

Vs.

1.Vijaya

... Respondent/Petitioner

2.Vetrivel

... Respondent/1st Respondent

3.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Division,
Kumbakonam.

... Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Court, Kulithalai in M.C.O.P.No. 306 of 2009, dated 28.10.2011.

C.M.A(MD)No.32 of 2018:

National Insurance Company Limited,
Mettur Road,
Palaniappa Complex,
Erode-638 011.

... Appellant/2nd Respondent

Vs.

1.Saroja

... Respondent/Petitioner

2.Vetrivel

... Respondent/1st Respondent



C.M.A(MD)Nos.30 to 33 of 2018

3.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Division,
Kumbakonam.

... Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Court, Kulithalai in M.C.O.P.No. 307 of 2009, dated 28.10.2011.

C.M.A(MD)No.33 of 2018:

National Insurance Company Limited,
Mettur Road,
Palaniappa Complex,
Erode-638 011.

... Appellant/2nd Respondent

Vs.

1.S.Mahalakshmi

... Respondent/Petitioner

2.Vetrivel

... Respondent/1st Respondent

3.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Division,
Kumbakonam.

... Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Court, Kulithalai in M.C.O.P.No. 308 of 2009, dated 28.10.2011.



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

For R1 & R2 : No Appearance
(In all cases)

For R3 : Mr.Prabhakaran
(In all cases)

COMMON JUDGMENT

All the four appeals have been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal / Sub Court, Kulithalai in M.C.O.P.Nos.304, 306, 307 & 308 of 2009 primarily on the ground of non-consideration of the plea of contributory negligence.

2. All these four claim petitions have been filed by the passengers in a Transport Corporation bus, who had sustained injuries. According to the claim petitioners, when they were passengers in the bus belonging to the Transport Corporation, a van owned by the 1st respondent and insured with the 2nd respondent was driven in a rash and negligent manner and had dashed against the bus and caused the accident. The bus passengers have sustained grievous injuries and they have filed petitions seeking compensation.



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3. The National Insurance Company which is the insurer of the van had filed a counter contending that the accident has taken place only due to the rash and negligent driving on the part of the bus driver and there is no negligence on the part of the driver of the van. The tribunal after considering the oral and documentary evidence, has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the van. The tribunal has proceeded to pass awards in various claim petitions. Challenging these awards, the present appeals have been filed by the insurance company.

4. According to the learned counsel appearing for the insurance company, 25 other claim petitions were filed before Additional District Court / FTC-II, Tiruchirappalli, in which an award was passed on 29.08.2008. As per the said award, 50% of liability was fixed upon the Transport Corporation and another 50% was fixed upon the driver of the van. When this judgment was marked as Exhibit R.1 and cited before the tribunal, the tribunal has refused to take note of the said judgment on the ground that the award of the tribunal is not binding upon it and it proceeded to orders independently, mulcting the entire liability upon the driver of the van.



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5. The learned counsel appearing for the appellant had further contended that 50% liability fixed upon the Transport Corporation was accepted by the Corporation and they have satisfied the award. Hence, he prayed for modification of the award in tune with the other awards passed in the connected claim petitions.

6. Heard the learned counsel on either side and perused the material available on record.

7. A perusal of Exhibit R.1 reveals that it is an order passed by the Additional District Court, Tiruchirappalli in a batch of 25 claim petitions arising out of the same accident filed by the other passengers of the said bus. In Paragraph No.44 of the common award, the learned District Judge has fixed the liability upon the Transport Corporation at 50% and the balance 50% liability was fixed upon the owner of the van. When an award has been passed by one tribunal arising out of the same accident, the said fact should be taken into consideration by the other tribunal while passing an award. In this case, the learned District Court who was acting as the tribunal has passed an order holding that the Transport Corporation is liable to pay 50% of the award amount. It is not



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known how the learned Subordinate Judge has chosen to ignore the said judgment of the learned District Judge and has proceeded to pass award on his own mulcting the entire liability upon the owner of the van. Considering the fact that the award passed under Exhibit R.1 has not been challenged by the transport corporation and they have satisfied the 50% of the award amount, this Court is inclined to allow the appeal to the extent of mulcting 50% of liability with appellant insurance company and the balance 50% shall be mulcted upon the transport corporation.

8. In view of the above said deliberations, the following order is passed:

a) The quantum of award is confirmed.

b) As far as the liability is concerned, it is modified and the liability is fixed upon the appellant Insurance Company at 50% and balance 50% shall be borne by the 3rd respondent in the appeal, namely the State Transport Corporation. If any excess amount has already been deposited by the Insurance Company, the same shall be refunded along with accrued interest and proportionate costs.



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c) The Insurance Company as well as the Transport Corporation shall deposit their respective share of the award amount along with 7.5% interest within a period of twelve (12) weeks from the date of receipt of copy of this order, if not already deposited.

d) On such deposit, the claimants are entitled to withdraw their respective share along with accrued interest.

9. With the said observations, the Civil Miscellaneous Appeals are partly allowed to the extent as stated above. No costs.

22.07.2024

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

- 1.The Motor Accident Claims Tribunal,
Sub Court,
Kulithalai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)Nos.30 to 33 of 2018

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