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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 06.06.2024**

**CORAM**

**THE HON'BLE MR.JUSTICE S.SRIMATHY**

**C.M.A(MD)No.1173 of 2016**

**and**

**C.M.P(MD)No. 10470 of 2016**

The Managing Director,  
Tamil Nadu State Transport Corporation Limited,  
Villupuram.

...Appellant

Vs.

1. Tamil Selvi,
2. Minor.Muniappan
3. Vaiyapuri
4. Minor.Devaraj
5. Ramachandran
6. United India Insurance Company Limited,  
No.139, New No.50, North Usman Road,  
T.Nagar, Chennai-600 017.

... Respondents

*[Minor 2<sup>nd</sup> respondent is represented by his mother and guardian of the 1<sup>st</sup> respondent]*

*[Minor 4<sup>th</sup> respondent is represented by his father and guardian of the 3<sup>rd</sup> respondent]*



**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the Award and Decree made in M.C.O.P.No.337 of 2008 dated 29.01.2016 on the file of the Motor Accident Claims Tribunal/Sub Court, Kulithalai.

For Appellant : M/s.P.Prabhakaran  
R-1 & R-4 : No appearance  
R-5 : Exparte before the Tribunal  
For R-6 : Mr.J.S.Murali

### **JUDGEMENT**

This Appeal is filed by the Transport Corporation to set aside the Award and Decree made in M.C.O.P.No.337 of 2008 dated 29.01.2016 on the file of the Motor Accident Claims Tribunal/Sub Court, Kulithalai.

2. It is a case of fatal. The contention of the Transport Corporation is that the accident occurred during the night hours and the parked Tractor has not indicated through lights that the vehicle was parked. Therefore, negligence ought to be fixed on the Tractor as well. Consequently, the Insurance Company which is shown as 6<sup>th</sup> respondent



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herein is also liable to pay compensation. However, the contention of the Insurance Company is that there is an eye witness who had deposed before the Tribunal that the Transport Corporation bus was driving on a high speed. But this contention was vehemently opposed by the Transport Corporation stating that the said witness is an interesting witness and therefore, it is considered to be as 3<sup>rd</sup> party eye witness.

3. After hearing rival submissions, this Court is of the considered opinion that since the Transport Corporation vehicle was travelling at high speed the Transport Corporation is negligent and liable to pay compensation. Further the Tractor which had parked without indication during the night hours is also negligent, therefore contributory negligence ought to be fixed on the Tractor as well. Therefore, this Court is fixing 30% contributory negligence on the Tractor and 70% on the Transport Corporation.

4. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The Tribunal has granted a sum of Rs.9,00,000/- as compensation. Since the Tractor was insured with the 6<sup>th</sup> respondent /



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Insurance Company, the 6<sup>th</sup> respondent is directed to deposit 30% i.e. Rs. 2,70,000/- and the Transport Corporation is directed to deposit 70% i.e. Rs.6,30,000/-. Both shall deposit along with 7.5% interest with Costs, within a period of 12 weeks from the date of receipt of a copy of the Order, less the amount if already deposited. The other orders passed by the Tribunal is hereby confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

**06.06.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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1. The Motor Accident Claims Tribunal/  
Sub Court, Kulithalai.
2. The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SRIMATHY, J.**

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Order made in  
**C.M.A(MD)No.1173 of 2016**

**06.06.2024**