



C.M.A(MD)No.1234 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1234 of 2017

and

C.M.P(MD)No.12011 of 2017

The Branch Manager,
National Insurance Company Limited,
Ganesh Complex,
No.1754/1756, Manojiappa Street,
South Main Road, Thanjavur.

... Appellant/3rd Respondent

Vs.

1.G.Fathima Beevi

2.M.Gulam Dasthakeer

3.G.Rakpeeth Bashria

4.Minor G.Mohammed Ibrahim

5.Minor G.Shahul Hameed

6.Minor G.Rahamathullah

... Respondents 1 to 6/Petitioners

*(Minors respondents 4 to 6 are
represented through their natural
guardian and mother G.Fathima Beevi /
first respondent)*



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7.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam Region,
Railway Station New Road,
Kumbakonam Taluk,
Thanjavur District.

... 7th Respondent/1st Respondent

8.A.Mohammed Feroskhan

... 8th Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.1173 of 2015, dated 10.12.2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Thanjavur, allow the appeal with costs.

For Appellant : Mr.J.S.Murali

For R-1 to R-6 : Mr.V.Balaji

For R-7 : Mr.A.V.B.Krishnakanth

For R-8 : No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the imposition of 50% of liability upon them in M.C.O.P.No. 1173 of 2015 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Thanjavur.



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2. According to the claimants, the deceased was travelling as a passenger in an auto, which had dashed against the bus belonging to the Transport Corporation. Due to the said impact, the passenger of the auto had passed away and they have claimed a sum of Rs.25,00,000/- as compensation.

3. The Insurance Company has filed a counter contending that, there is no negligence on the part of the auto driver. But the accident has taken place only due to the negligence on the part of the driver of the Transport Corporation. However, the said contention was not accepted by the Tribunal and the Tribunal has proceeded to fix 50% liability upon the driver of the auto and the balance 50% of the liability has been imposed upon the driver of the Transport Corporation. Challenging the same, the present appeal has been filed.

4. According to the learned Counsel appearing for the appellant, four other claim petitions were filed before the same Court in M.C.O.P.Nos.1311, 1312, 1313 and 1314 of 2015. In all those matters, the entire liability was fixed upon the Transport Corporation. Only in this



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claim petition, 50% of the liability has been fixed upon the driver of the auto. According to him, since all the claim petitions arise out of the same accident, a similar view can be taken. He further pointed out that, challenging the fixation of 100% liability, the Transport Corporation have filed C.M.A(MD)Nos.337, 338, 339 and 340 of 2018 before this Court. A perusal of the records of this Court indicate that, the appeals filed by the Transport Corporation have been listed before the Lok Adalath and in all the matters, the Transport Corporation has chosen to admit their 100% liability and got the quantum reduced, by an award, dated 14.09.2019. Therefore, it is clear that the Transport Corporation have admitted 100% liability on their part.

5. In view of the above said facts, this Court is of the considered opinion that, 50% of liability ought not to have been mulcted upon the driver of the auto in one of the M.C.O.Ps, namely, M.C.O.P.No.1173 of 2015, especially when in all other claim petition, 100% liability has been fixed upon the Transport Corporation, which they have admitted in the appeal filed before this Court and got the quantum reduced.



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6. In view of the above said deliberations, the award of the Tribunal fixing 50% of a liability upon the appellant Insurance Company is hereby set aside. The appeal stands allowed to the extent of exonerating the Insurance Company and mulcting 100% liability upon the seventh respondent Transport Corporation.

7. The appeal stands partly allowed to the extent as stated above. The quantum of award in M.C.O.P.No.1173 of 2015 has been put to challenge by the Transport Corporation in C.M.A(MD)No.943 of 2018 and the same has already been partly allowed by this Court. The Tribunal is directed to refund the 50% of the award amount deposited by the Insurance Company along with accrued interest. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

08.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

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- 1.The Motor Accident Claims Tribunal,
Special Sub Court,
Thanjavur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.1234 of 2017

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