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CMA.Nos.566 and 1700 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA Nos.566 and 1700 of 2021 and
CMP No.3528 and 8992 of 2021

IN CMA No.566 of 2021

Tamil Nadu State Transport Corporation Limited,
rep. through the Managing Director,
Villupuram.

... Appellant

VS

1. Suganya
2. Rani
3. Govindaraj
4. G.Arumugam

5. The United India Insurance Company Limited,
Third party claims cell, T.K.M.Complex,
Katpadi Road, Vellore.

... Respondents

In CMA No.1700 of 2021

M/s United India Insurance Co. Ltd.,
third party claims cell, T.K.M Complex,
Katpadi Road, Vellore.

... Appellant

Vs.

1. Suganya
2. Rani



CMA.Nos.566 and 1700 of 2021

3. Govindaraj
4. Tamil Nadu State Transport Corporation Limited,
rep. through the Managing Director,
Villupuram.
5. G.Arumugam

... Respondents

Prayer in both CMAs: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 06.02.2020 made in MCOP No.391 of 2016 on the file of the II Additional District Judge, Motor Accident Claims Tribunal, Ranipet.

In CMA No.566 of 2021

For Appellant : Mr.C.R.Sureshkumar
For respondents : Mr.C.Prabakaran
for Mr.M.Sivakumar, for R1 to R3
Mr.S.Arunkumar for R5.

In CMA No.1700 of 2021

For appellant : Mr.S.Arun Kumar
For Respondents : Mr.M.Sivakumar, for respondents 1 and 3
Mr.C.R.Suresh Kumar for 4th respondent

COMMON JUDGMENT

These two civil miscellaneous appeals are filed against the award passed by the Tribunal in MCOP No.391 of 2016, dated 06.02.2020.



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2. Since both the appeals have arisen out of the same accident, these appeals are taken up for hearing together.

3. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

4. It is the case of the claimants that the husband of the first claimant and son of the claimants 2 and 3 namely Prabakaran died in a road accident that had occurred on 30.03.2016. According to the claimants, the deceased was riding a two wheeler on Walajah - Sholinghur Road in a careful manner and while he was standing behind the lorry, belonging to the second respondent and insured with the third respondent, opposite to the Assistant Primary Education Office, a bus belonging to the first respondent Corporation came in a rash and negligent manner and dashed against the two wheeler. As a result of accident, the said Prabakaran received multiple injuries and died on the way to hospital. Therefore, the claimants preferred a claim petition seeking compensation of Rs.75,00,000/- before the Tribunal.



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5. The first respondent Corporation filed a counter and stated that due to the road maintenance work, a branch of tree was cut off and it fallen in front of the lorry, belonging to the second respondent. Hence, the driver of the lorry applied brake and stopped the vehicle. The deceased, who came in the two wheeler, due to sudden happening in the road, lost his control and hit against the back side of the lorry. On seeing the happenings, the driver of the Corporation bus applied brake and inspite of the same, the bus slightly touched the two wheeler of the deceased and hence the accident had occurred. According to the first respondent, there was no negligence on the part of the driver of the bus.

6. The second respondent, owner of the lorry remained exparte and the claim petition was contested by the insurer of the lorry on the ground that entire negligence was on the part of the driver of the bus, who dashed against the vehicle of the deceased.

7. Before the Tribunal, the first claimant was examined as PW1 and an eye witness to the accident was examined as PW2. On the side of the claimants, 18 documents were marked as Ex.P1 to Ex.P18. An



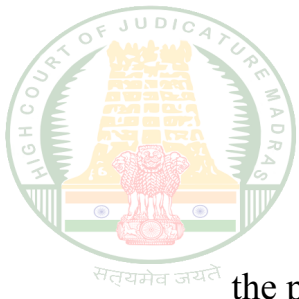
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official of the third respondent/ insurance company was examined as RW1 and the driver of the first respondent Corporation bus was examined as RW2. The charge sheet filed against the driver of the bus was marked as Ex.R1.

8. On appreciation of evidence available on record, the Tribunal came to the conclusion that the driver of the bus and the lorry were liable for the accident and fixed negligence at 50% each. The compensation payable to the claimants was quantified at Rs.30,31,000/- . Aggrieved by the fixation of 50% negligence on the part of the driver of the lorry as well as the bus, the first respondent, owner of the bus and the third respondent, insurer of the lorry have filed these appeals in CMA Nos.566 of 2021 and 1700 of 2021 respectively.

9. The appellant in CMA No.1700 of 2021 would submit that absolutely there was no evidence available on record to suggest that there was negligence on the part of the driver of the lorry and therefore, the Tribunal committed an error in fixing 50% negligence on the part of the driver of the lorry. It is his contention that entire negligence was on



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the part of the driver of the Transport Corporation bus.

10. The learned counsel for the appellant in CMA No.566 of 2021, Transport Corporation would submit that the driver of the lorry applied sudden brake and as a consequence, the two wheeler dashed against the back side of the lorry and on seeing the happenings, the driver of the bus applied brake and inspite of the same, he could not stop the vehicle immediately and the bus dashed against the two wheeler. Therefore, according to him, there was no negligence on the part of the driver of the bus and the entire negligence was on the part of the driver of the lorry, who applied sudden brake.

11. In the counter filed by the first respondent/ Transport corporation, there was no mention about the application of sudden brake by the driver of the lorry. It was pleaded that on seeing the branch of the tree on the road, the driver of the lorry applied brake. Therefore, the submission made by the learned counsel for the appellant/Transport Corporation that the driver of the lorry applied sudden brake is an improvement only to support his case. Even the



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driver of the bus, who was examined as RW2 in his evidence has not stated anything about the application of sudden brake by the driver of the lorry, but he only stated that on seeing the branch of tree on the road, the driver of the lorry applied brake. Hence the submission made by the learned counsel for the first respondent/Transport Corporation that the driver of the lorry applied sudden brake is not acceptable one. Therefore, the reason given by the Tribunal as if there was equal negligence on the part of the driver of the lorry as well as bus is not in accordance with the evidence available on record and hence, the same is liable to be set side.

12. The eye witness to the accident was examined as PW2 on the side of the claimants and in his evidence he had stated that the driver of the lorry proceeding in front of the two wheeler applied brake and halted the vehicle. Therefore, the two wheeler dashed against the back side of the lorry and in the mean time, the Corporation bus, which was driven in a rash and negligent manner dashed against the two wheeler. It is seen from the FIR that a criminal case was registered against both the driver of the lorry as well as the driver of the bus. Taking into



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consideration the contents of the FIR, Ex.P1, evidence of PW2 and evidence of RW2, this court feels that primary negligence for the accident was on the part of the driver of the bus. However, the halting of lorry by its driver triggered the unfortunate chain of events. Therefore, this court feels that it would be appropriate to fix 20% negligence on the part of the driver of the lorry and 80% on the part of the driver of the Corporation bus. Accordingly, the finding of the Tribunal fixing 50% negligence each on the drivers of the lorry as well as bus is set aside.

13. In view of the discussions made earlier, the appeal filed by the Transport corporation in CMA No.566 of 2021 is dismissed and the appeal filed by the insurer of the lorry in CMA No.1700 of 2021 is partly allowed. The contributory negligence fixed on the part of the driver of the lorry is reduced to 20% and the negligence on the part of the driver of the Corporation bus is enhanced to 80%.

14. Accordingly, appellant/ the Transport Corporation is directed



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to pay a sum of Rs.24,24,800/- towards its 80% share of the compensation to the claimants and the appellant/insurer of the lorry is directed to pay a sum of Rs.6,06,200/- towards its 20% share of the compensation to the claimants.

15. It is stated by the learned counsel for the appellant in CMA No.1700 of 2021 that the insurer of the lorry deposited 30% of the award amount.

16. The appellant in CMA No.1700 of 2021/ insurer of the lorry is permitted to withdraw the excess compensation amount deposited, if any, by filing proper application before the Tribunal. However, in case, the deposited amount is less than its share of the compensation amount, it is for the appellant to deposit its share of the compensation amount, within **six weeks** along with interest, from the date of receipt of a copy of this judgment.

17. The appellant in CMA No.566 of 2021, Transport Corporation is directed to deposit its share of the compensation along



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with interest, less the amount if any, already deposited, within a period of six weeks from the date of receipt of copy of this judgment.

18. On such deposit being made, the claimants shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal.

There shall be no order as to costs. Connected miscellaneous petitions are closed.

03.04.2025

Index : Yes/No

Speaking order : Yes/No

Neutral citation : Yes/No

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To

1. The II Additional District Judge,
Motor Accident Claims Tribunal,
Ranipet.

2. The Section Officer,
V.R.Section, Madras High Court.



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S.SOUNTHAR, J.

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