



C.M.A(MD)No.7 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2025

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA**

**C.M.A(MD)No.7 of 2025
and C.M.P(MD)Nos.119 & 5619 of 2025**

The General Manager,
Tamil Nadu State Transport Corporation Limited,
Railway Station New Road, Kumbakonam (Po),
Thanjavur District.

... Appellant/Respondent

Vs.

1.K.Santhi
2.Karthick Raja
3.Ramanathan

... Respondents 1 to 3/
Petitioners 1 to 3

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and Decree of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli made in M.C.O.P.No.445 of 2022, dated 01.12.2023 and allow the appeal with costs.

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For Appellant : Mr.S.Micheal Heldon Kumar

For Respondents : Mr.P.Prabhakaran

JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

This Civil Miscellaneous Appeal has been preferred as against the award passed in M.C.O.P.No.445 of 2022, dated 01.12.2023 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

2.The respondents are the claimants and the appellant is the sole respondent in the claim petition.

3.On 08.01.2022 at about 07.30 a.m., the deceased was travelling as a pillion rider in a Motorcycle bearing Registration No.TN-81-X-2822, which was driven by one Nandhakumar and proceeding from east to west at Thanjavur – Trichy Highway Road near Ariyamangalam SIT Polytechnic, Trichy. At the time, a private



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passenger bus bearing Registration No.TN-68-0928 was driven by its driver in a rash and negligent manner in the same direction ie., east to west and dashed against the rear side of the two wheeler. Therefore, the rider of the motorcycle-Nanthakumar and pillion rider-Kumar sustained grievous injuries. The deceased Kumar was taken to the Government Hospital, Trichy and admitted as an inpatient from 08.01.2022 to 16.01.2022 and later succumbed to the injuries sustained in the accident. The post-mortem report also confirmed that his death was due to the injuries sustained during the accident. On the complaint, F.I.R was registered in Crime No.9 of 2022 for the offences under Sections 279, 337 IPC @ 304 of IPC on the file of the Trichy Traffic South Investigation Wing Police, Trichy. The respondents, being the legal heirs of the deceased, filed the claim petition.

4.In support of the claim petition, PW1 and PW2 were examined and Exs.P1 to P3 were marked. On the side of the



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respondents, RW1 and RW2 were examined and Exs.X1 and X4 were marked.

5.On perusal of the oral and documentary evidence, the Tribunal concluded that the accident occurred due to the composite negligence of both the drivers of the vehicles and awarded compensation. Since the claimants failed to implead the insurer of the two wheeler and the rider of the two wheeler, the Tribunal directed the appellant to pay the entire compensation and permitted to recover the entire compensation by way of filing a suit as against the owner and the insurer of the two wheeler. Aggrieved by the same, the present Appeal has been filed.

6.The learned counsel appearing for the appellant submitted that when the Tribunal concluded that the accident itself occurred due to the composite negligence of both the drivers ie., two wheeler as well as bus, the Tribunal ought not to have directed the



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appellant to pay the entire compensation. The respondents failed to array the insurer of two wheeler and the rider of the motorcycle as respondents in the claim petition. Therefore, the claim petition itself is liable to be dismissed for the sole ground of non-joinder of necessary parties.

7.In fact, the F.I.R has been registered as against the rider of the motorcycle and also charge-sheeted. Therefore, the entire liability ought to have been fastened on the rider of the motorcycle. When the Tribunal concluded that the accident occurred due to composite negligence on the part of both the drivers, it ought not to have ordered pay and recovery, especially when the rider of the motorcycle was charged for the offences under Sections 279, 337 I.P.C @ 304 of I.P.C. Even assuming that 50% of the negligence is attributable to the appellant's vehicle, the appellant is liable to pay only 50% of the compensation and the claimants ought to have made a claim as against the rider or the insurer of the motorcycle.



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8.Per contra, the learned counsel appearing for the claimants submitted that though the rider of the motorcycle was charged for the offences under Sections 279, 337 I.P.C @ 304 of I.P.C, the Tribunal rightly concluded that both vehicles were jointly responsible for the accident and fixed composite negligence on the drivers of both the vehicles. In cases of composite negligence, apportionment of compensation between joint tort-feasors for the purpose of making payment is not permissible. Since the liability of joint tort-feasors is joint and severable, the claimants are entitled to recover the entire compensation from the solvent joint tort-feasor. Therefore, the Tribunal rightly directed the appellant to deposit the entire compensation amount with liberty to recover the same from the rider of the motorcycle/insurer of the motorcycle by way of filing a suit.



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9.In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Khenyei Vs. New India Assurance Company Limited and others [2015 (1) TN MAC 801 (SC)]***.

10.Heard the learned counsel appearing on either side and perused the materials available on record.

11.The only point that arises for consideration in this appeal is whether the appellant is liable to pay the entire compensation when the Tribunal has concluded composite negligence on the part of both the drivers. The appellant's bus was driven behind the two wheeler in which the deceased was travelling as a pillion rider. While being so, the bus hit the motorcycle from the rear side. Therefore, the rider and the pillion rider of the two wheeler fell down and sustained injuries and the pillion rider of the two wheeler later died due to the injuries sustained. As per the rough

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sketch marked as Ex.X2, the accident occurred in the middle of the road. Though the rider of the motorcycle was charged for the offences under Sections 279, 337 I.P.C @ 304 of I.P.C, had both drivers drove their respective vehicles in a cautious manner, the accident would not have occurred. Therefore, the Tribunal rightly concluded that the accident occurred due to the composite negligence of both drivers.

12.Insofar as pay and recovery are concerned, admittedly, the claimants failed to implead the rider of the motorcycle and its insurer as respondents in the claim petition. In fact, though joint tort-feasor are liable to pay compensation to the claimants, the Tribunal directed the appellant to pay the entire compensation with liberty to recover the same from the rider or insurer of the motorcycle by filing a civil suit. It cannot be countenanced for the simple reason that though the rider and the insurer of the motorcycle were very much available, the claimants did not array them as parties



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in the claim petition and they were not heard before the Tribunal.

Therefore, by applying legal maxim audi alteram Partem, (no party can do condemned unheard), the rider of the motorcycle or the insurer of the said motorcycle cannot be fastened with any liability without being heard. When the Tribunal concluded that the accident was happened due to composite negligence on the part of both the drivers of the vehicles, each tort-feasor is liable to pay 50% of the compensation. There is sufficient and cogent evidence on record to fix their liability as 50% each to compensate the claimants. Therefore, the contention of the claimants that the appellant has an option to recover compensation amount from other tort-feasor cannot be countenanced in view of the settled principle of law that no party can be condemned unheard.

13.In view of the above, the direction of the Tribunal permitting the appellant to recover the entire compensation from the rider of the motorcycle/insurer cannot be sustained and is liable to be



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set aside. The appellant is entitled to a refund of 50% of the award amount deposited to the credit of M.C.O.P.No.445 of 2022 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli. The claimants are permitted to withdraw 50% of the compensation amount as apportioned by the Tribunal. The appellant/Transport Corporation is entitled to a refund of the amount deposited, if any, upon filing an appropriate application before the Tribunal. The claim petition is remanded back to the Tribunal for fresh trial after impleading the rider of the motorcycle and the insurer of the motorcycle bearing Registration No.TN-81-X-2822 as respondents. The rider and insurer of the motorcycle are permitted to cross-examine the witnesses of the claimants and they are permitted to let in evidence, if any. The claimants are not permitted to let in any new evidence. The trial Court is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order.



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14. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

**[G.K.I.J.] & [N.M.J.,]
11.12.2025**

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

1. The Motor Accident Claims Tribunal,
Special District Court, Tiruchirappalli.

2. The Record Keeper (Vernacular Records),
Madurai Bench of Madras High Court,
Madurai.

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AND
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