

(1983) 03 MAD CK 0039

In the Madras High Court

Case No : A.A.O. No's. 106 and 258 of 1979 and App. No's. 77 and 98 of 1980

Andhra Marine Exports (P) Ltd. and Another

APPELLANT

Vs

P. Radhakrishnan and Others

RESPONDENT

Date of Decision : 08-03-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1984) ACJ 355 : AIR 1984 Mad 358

Hon'ble Judges : Nainar Sundaram, J;Gokulakrishnan, J

Bench : Division Bench

Advocate : P. Ananthakrishnan and K. Shanmuga Nair, for the Appellant; K. Swarnidurai King and Partridge and K.S. Narasimhan, for the Respondent

Judgement

Nainar Sundaram, J.—The proceedings which have come up to this Court arise out of an accident. which took place on 6-5-1978 at about 11:20 a.m. or 11:40 a.m. and which involved

the bus belonging to the Kattabomman Transport Corporation Ltd. hereinafter referred to as the Transport Corporation, and the van belonging to Andhra Marine Exports Private Ltd., hereinafter

referred to as the Van owners. The van was insured with the United India Fire and General Insurance Co., hereinafter referred to as the Insurance Company. One A Pathrose was the driver of

the van. One Natarajan was the driver of the bus. P. Radhakrishnan was a passenger in the bus. We will presently come to the questions to the nature of and the manner in which the accident

took place and as to who is to be held culpable for the accident. In the accident, Natarajan, the driver of the bus, and another passenger in the bus died at the spot. P. Radhakrishnan sustained

injuries, the details of which we will have occasion to refer to in the course of this

judgment. P. Radhakrishnan laid M. A. C. P. No. 14 of 197 before the Subordinate Judge, Nagarkoel, claiming,

compensation of Rs. 15000 for the injuries sustained by him, and under other heads. In that petition, the Transport Corporation was the first respondent the Van operator, the second respondent

the driver of the van, the third respondent and the Insurance Company the fourth respondent. The Transport Corporation laid O. S. 90 of 1977 on the file of the Subordinate Judge,

Padmanabhapuram, claimed, a sum Of Rs. 31,439-18, for damages sustained by the bus in the accident. In that suit, the driver of the van was the first defendant; the Van owners, the second

defendant and the Insurance Company, the third defendant. The Subordinate Judge, Nagarkoel, considered the claim for compensation by P. Radhakrishnan in M. A. C. P. 14 of 1977 and

awarded a total compensation of Rs. 10,250, against the van owners, the driver of the van and the Insurance Company and the Transport Corporation was exonerated from the claim, C. M. A.

106 of 1979 has been preferred by the Van owners and the driver Of the van, and the respondents therein are P. Radhakrishnan and the Insurance Company. C. M. A. 25(S of 1979 has been

preferred by the Van owners along with the Insurance Company and the respondents therein are P. Radhakrishnan and the Transport Corporation. O. S. 90 of 1977, after trial by the

Subordinate Judge, Padmanabhapuram, culminated in its decree in favour of the "Transport Corporation as prayed for with costs. As against the judgment and decree in O. S. 90 of 1977, A.S. 77

of 1980 has been preferred by the driver of the van and the van owners, and the respondents therein are the Transport Corporation and the Insurance Company; and A. S. 98 of 1980 has been

preferred by the Van Owners and the Insurance Company and the respondents therein are the Transport Corporation and the driver of the van.

2. The parties being same and the issues in question involved being common to all the parties, submissions were made- by the respective counsel in common and we are obliged to deal with the

matter by a common judgement. Both in M. A. C. P. No.14 of 1977 and in O. S. 90 of 1977, the courts below have held that the accident occurred on account of the rash and negligent

driving of the van.

3. The primary question that comes up for consideration before us is as to who was responsible for the accident. Mr. T. S. Rangarajan, and Mr. P. Ananthakrishnan Nair, learned counsel

appearing for the appellants did make an attempt to dislodge the findings rendered by the Courts below on this question. But, we must point out that these attempts proved a futile process. In M.

A. C. P. 14 of 1977 alone we find that a contention seemed to have been raised that it could be a case of contributory negligence. The contention regarding contributory negligence is an obvious

misconception. The claimant, the injured P. Radhakrishnan was a passenger in the bus belonging to the Transport Corporation. When a person is injured without any negligence on his part, but as

a result of negligence on the part of the other person or as a result of the combined negligence of two other persons, it is not a case of contributory negligence. The term contributory negligence

squarely and solely applies to the conduct of the claimant alone. If the claimant is built of an act or omission, which has materially contributed to the accident and the resultant injury and damages,

the matter comes within the concept of contributory negligence and courts are enjoined to apportion the loss between the parties as the facts and circumstances may justify. In the instant case, by

no stretch of imagination, it is possible to state that P. Radhakrishnan, a passenger simpliciter in the bus, was guilty of any act or omission which materially contributed to the accident and the

resultant injury and damages. We also do not find any plea of contributory negligence, specifically put forth by the defendants in O. S. 90 of 1977. The defendants in the suit have chosen to put

forth the blame solely and wholly on the driver of the bus. We find that this principle of contributory negligence hits to be totally eschewed with regard to M. A. C. P. 1-4 of 1977. Now we have

to find out as to on account of whose rashness and negligence, the accident occurred. Here, learned Counsel for the appellants advanced arguments that the driver of the bus was rash and

negligent either to say that the accident occurred on account of the rash and negligent driving by the driver of the bus or at least the accident must have Occurred due to the composite negligence

of both the drivers, When the accident occurs and the resultant injuries and damages flow without any negligence on the part of the claimant but as a result of the negligence on the part of two or

more persons, it is a case normally styled in legal parlance as composite negligence and in the language of Pollock (Torts 15th Edition)

Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analysis to find out whom he can sue. He is

entitled of course, within the limits set out by the general rules as to remoteness of damage to sue all or any one of the negligent persons. It is no concern of his whether there is any duty of

contribution or indemnity as between these persons though in any case he cannot recover in the whole more than his whole damage.

This theory of "composite negligence" could not be availed of at all by the appellants in the civil miscellaneous appeals it) exonerate themselves from the claim in M. A. C. P. 14 of 1977, because

the choice is that of the claimant to proceed against one or both of the negligent persons, assuming that both were negligent. The principles of composite negligence are, where more than one

person are responsible in the commission of the wrong- that the person wronged has a choice of proceeding against all or anyone or more than one of the wrong doers. Every wrong doer is liable

for the whole damage if it is otherwise made out and it does not lie in the mouth of one wrong doer to say "Though I am also responsible, yet, the other man was also equally responsible for the

wrong and on this basis he cannot avoid the liability to the person wronged. But, on an analysis of the materials placed in the case, we are firm in our opinion that the accident occurred solely due

to the rash and negligent driving of the van by its driver and there is no question of composite negligence at all.

4. The bus belonging to the Transport Corporation was proceeding from east to west in Nagarcoil - Trivandrum road and the bus reached the place two furlongs east of Villukuri bridge at about

11.40 a.m. The van was coming in the opposite direction from west to east and the collision between the bus and the van took place. In the accident, two persons, namely, the driver of the, all

and a passenger in the bus, died on the spot and thirty nine passengers, including P. Radhakrishnan, sustained injuries. III M. A. C. P. 14 of 1977, on the question of the manner and the cause of

the accident, the evidence placed has been properly analysed by the court below. Ex. A. 19 is the certified copy of the first information report in the criminal case

and here, at tire earliest point of

time A. Pathrose, the driver of the van, had been attributed with rash and negligent driving. Of course, the informant was Sundaramony, the conductor of the bus. But, if in fact, the driver of the

bus was rash and negligent. definitely. A. Pathrose, the driver of the van, would have hastened to launch the complaint. This aspect cannot at all be omitted to be taken note of in the happening of

the events. Ex. A. 20 is the certified copy of the observation mahazar and Ex. A. 21 is the rough sketch prepared by the investigating officer. The following details emerge from these documents.

The width of the tar road was 20 ft. The width of the mud road on the north was 5-3/4 ft. and on the south -5-1/2 ft. The total width of the road at the place of the accident was 31-1/4 ft. The

road at the place of the accident was straight. The position of the vehicles after the accident clearly establishes that the van had come on the wrong side of the road at a great speed and dashed

against the bus causing extensive damages to the bus and the impact dragged the bus to a slanting position. The left front wheel of the bus was found to be on the mud portion of the road and all

the three other wheels of the bus were found on the tar portion of the road. In contrast, the four wheels of the van were on the tar portion of the road and the van had come to the wrong side of

the road. A. Pathrose, the driver of the van, admitted in his evidence in M. A. C. P. 14 of 1977 that he did see the bus coming on the opposite direction even at a distance of one furlong.

Obviously, the driver of the van did not care to reduce the speed even on seeing the bus coming in the opposite direction. The position of the bus after the accident, to a very great extent,

establishes that the bus must have reduced its speed and was proceeding on the left extreme side of the road. The driver of the van chose to put forth a plea that a bullock cart was proceeding in

front of the bus. But, as rightly pointed out by the Court below, in M. A. C. P. 14 of 1977, this theory was not projected in the counter statement of either the van owners or the driver of the van

and does not merit any consideration, The van owners did not care to send a reply to the notice issued on behalf of Radhakrishnan. If in fact the accident occurred due to the rash and negligent

driving of the bus belonging to the Transport Corporation the van owners would

have hastened to put forth a claim for damages. They potentially remained silent and, on the other hand, the

Transport Corporation laid the suit O. S. 90 of 1977, as stated above.

5. The court below in M. A. C. P. 14 of 1977 has referred to the criminal case against the driver of the van. We do not feel obliged to advert to this aspect at all because, a scrutiny of the other

factual materials placed in the case amply makes out that it was the driver of the van who was responsible for the accident. The facts and circumstances do indicate that it was a case of want of

reasonable care and diligence on the part of the driver of the van and the circumstances are eloquent testimony per se of negligence on the part of the driver of the van and there is a justification

for applying the principle *res ipsa loquitur* to the case on hand. In the said circumstances, the court below, in M. A. C. P. 14 of 1977, rightly held that the accident occurred on account of the rash

and negligent driving of the van by its driver. Mr. P. Ananthakrishna Nair, learned counsel for the appellants in C. M. A. 106 of 1979, drew our attention to the evidence of P. Radhakrishnan who

was examined as P. W. I in M. A. C. P. 14 of 1977. It is true, in some places he has stated that the bus was also coming at a great speed. But, we must remember that he was only a passenger in

the bus and stray lines in his evidence cannot be magnified to come to a conclusion that the bus was also driven at a high speed and the driver of the bus was responsible for the accident. In O. S.

90 of 1977, the same conclusion has been reached by the Court below on an analysis of the evidence placed in the suit. Apart from the documentary evidence in the suit, there was the oral

evidence of one Vaithialingam, a passenger in the bus, examined as P. W. 2, and Sundaramony, the conductor of the bus, examined as P. W. 5. As against this, two persons, Asokan and Porman

Nadar were examined on behalf of the defendant in the suit and these two persons were stated to have travelled in the bus. Their evidence is not at all convincing, and, as pointed out by the Court

below, there is considerable doubt as to whether they were actually passengers in the bus, because their names do not find a place in the list of persons injured, found in Ex. A. 5, and they have

also not been examined by the Police in the course of investigation. In our view, the analysis of the materials placed in both the cases in the shape of evidence,

oral and documentary, does

establish beyond doubt that the accident occurred on account of the rash and negligent driving of the van by its driver, A. Pathrose.

6. The next question that comes up for consideration is as to whether the award of compensation of Rs. 10250 in M. A. C. P. 14 of 1977 is in order. P. Radhakrishnan, the injured, examined as

P. W. 1, was on the relevant date working as a clerk-cum -cashier in Union Bank of India, Nagarcoil branch. At the time of the accident, he was getting a pay of Rs. 542, per month, as could be

seen from Ex. A. 8, the pay certificate. After the accident, he fell unconscious and he was first treated at the Government Headquarters Hospital at Nagarcoil. Ex. A. 22 is the certified copy of the

wound certificate and this discloses the following external injuries :-

1. An abrasion about 1 1/2" X 1" over the right shoulder ;
2. A diffused swelling on the right middle of the thigh fracture forearm.
3. Lacerated wound on the left forehead 1 1/2" F F X 1/2" 1" F X 1/4"

For want of adequate medical facilities and to secure better treatment, P. W. 1 was admitted as an inpatient in a private nursing home. Dr. Mathaias Hospital at Nagarcoil, and he remained an

inpatient during the period from 6-5-1975 to 10-9-1975. Ex. A. 10 to A-18 are the ski grams disclosing the fractures sustained by P. W. 1, P. W. 2, the Chief Medical Officer attached to the said

hospital, has given Ex. A. 1 to A. 3 certificates. P. W. I have sustained a fracture of the right thighbone and fracture of the right collarbone. He also sustained a lacerated injury on the forehead. It

is the evidence of P. W. 2, that P. W. I cannot walk for a long distance as he was doing previously and he should be getting pain during the winter season and the strength of the right leg would

not be as it was before and as age advances, P. W. 1 would be getting more pain during winter season. P. W. 1's right leg was bandaged and was suspended for about two weeks and actually,

the plaster was removed after the lapse of four months. These factors do make out the agony, physical and mental suffered by P.W. 1. P. W. I is stated to be aged 25 years and in all probability

the normal power and use of his right leg have been deprived to him. We do not find anything wrong in the award of compensation under the following heads :

Medicines purchased besides medicines supplied in the hospital Rs. 900/

Extra nourishment Rs. 1,000/

Medical charges paid Rs. 2,350/-

Permanent disability caused to his right leg Rs. 6,000/-

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Total Rs. 10,250/-

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Hence, we have to uphold the award passed in M. A. C. P. 14 of 1977 and the two appeals directed against the said award viz. C. M. A. 106 and 258 of 1979 will stand dismissed. There will

be no order as to costs.

7. Coming to the damages awarded in O. S. 90 of 1977, we find that we have to countenance the submission made by the learned counsel for the appellants that the court below has practically

dealt with the question in a most summary manner and without proper evidence to support the claim put forth by the Transport Corporation in the suit. The Transport Corporation, the plaintiff in

the suit, placed reliance on Ex. A. 1 which bears the nomenclature "material cards". It is true, the total amount shown in this document is Rs. 31,439-18. The only witness examined by the

Transport Corporation to prove the case of damages sustained by the bus is P. W. 1, who is the Assistant Manager of the Transport Corporation at Nagarcoil. In the course of his evidence he

has referred to Ex. A. 1. He makes a general statement that Ex. A. I contain the details of materials cost, spare parts and labour charges. But, a perusal of Ex. A. 1 does not bring conviction to

our mind about the actual incurring of the materials cost, purchase of spare parts and payment of labour charges. P. W. I admit that the materials were taken from the Transport Corporation's

stores and there is a main register in the stores to evidence the same. P. W. I frankly admitted that he has no personal knowledge about the preparation of Ex. A. I and he was not present at the

time of its preparation. He has further admitted that the registers corresponding to Ex. A. 1 have not been filed. In this state of unsatisfactory evidence, we are unable to comprehend as to how the

court below placed reliance only on Ex. A. I to uphold the claim for damages put

forth by the Transport Corporation in the suit. The details disclosed in Ex. A. I cannot by themselves be taken as

conclusive with reference to the actual incurring of the expenses towards materials cost, spare parts and labour charges. Realising this lacuna in the evidence, Mr. K. Raghunathan, learned counsel

appearing for the Transport Corporation, frankly concedes that this question requires a fresh adjudication after affording an opportunity to the Transport Corporation, the plaintiff in the suit, to

place further adequate evidence. We think that this request is reasonable and in the interest of justice, we consider it necessary that the matter should go back only for the purpose of considering

the question of proof and quantum of the damages claimed in the suit. This obliges us to interfere in the appeals and we accordingly allow the appeals, A. S. 77 and 98 of 1980, to this limited

extent namely while confirming the finding of the court below that the accident occurred due to the rash and negligent driving of the van belonging to the van owners, we remit the suit back to the

file of the court below with a direction to re-admit the suit under its original number and proceed to determine the question of proof and "quantum of damages, permitting the parties to place

further adequate materials as they may consider it necessary. We direct the parties to appear before the court below on 30-7-1983 for the purpose of receiving its directions as to the further

proceedings in the suit. The appellants are entitled to refund of the court fee paid on the memorandum of grounds of appeals. The cost in the lis will abide the result in the suit on a fresh disposal by

the court below.

8. Appeals partly allowed.