

(1987) 09 MAD CK 0040
In the Madras High Court

Anna Transport Corporation Ltd.

APPELLANT

Vs

Mani and Others

RESPONDENT

Date of Decision : 01-09-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173

Citation : (1988) 2 ACC 8 : (1989) ACJ 325

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Judgement

Swamikkannu, J.—This appeal coming on for hearing on Thursday the 27th day of August 1987 and on this day upon perusing the petition of appeal, the order of the Lower Court, and the material papers in the case, and upon hearing the argument of Mr. R. Balasubramaniam, Advocate for the Appellant, and of Mr. S.K. Ramamurthy, Advocate for the Respondents, the Court made the following order:

2. The first respondent Anna Transport Corporation Limited, Salem, by its Managing Director, is the appellant herein. The second respondent Subramant, has not been impleaded in the appeal. The petitioners 1 to 3 are the respondents herein. The appeal has been preferred by the owner of the vehicle in question, who was found to be liable, on the ground that the driver of the appellant had been responsible for driving the vehicle in question in a rash and negligent manner and was also directed to pay the compensation of Rs. 30,000/- apportioning the said compensation, namely Rs. 20,000/- to the first petitioner/first respondent and Rs. 5,000/- to the petitioners 2 and 3 each who are respondents 2 and 3 herein with interest at 6% per annum from the date of the award till the date of deposit with costs.

3. The main point that is raised on behalf of the appellant by Mr. R. Balasubramaniam, learned Counsel is that the deceased was sitting in the motor cycle as a pillion rider and the rider of the motor cycle had emerged out of the Salem Namakkal Road without stopping it and observing the rules of the road as provided under the 10th schedule of the Motor Vehicles Act and according to.

traffic regulation, 7 which reads as follows:

The driver of a motor vehicle shall, on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.

Since the motor cycle in which the deceased had been travelling as a pillion rider, did not observe the rules contained in the 10th schedule of the Motor Vehicles Act, it must be held that the driver of the motor cycle has also contributed to the negligence. In other words, it is submitted that there had been contributory negligence on the part of the driver of the Motor cycle also and the percentage of that aspect has also to be determined by this Court on the basis of the evidence available on record.

4. The second point that is raised on behalf" of the appellant is that Rs. 15,000/- that had been awarded towards loss of consortium is excessive.

5. The case of the petitioners/respondents 1 to 3 is that on the fateful day while the deceased was proceeding on a motor cycle from Trichengode side towards Rasipuram and crossed Salem Namakkal Road, the bus T.M.N. 6294 belonging to the 1st respondent/appellant herein was driven by the 2nd respondent, who is not a party to this appeal, in a rash and negligent manner and that the said vehicle dashed against the motor cycle and caused the injuries on the deceased to which he succumbed later in the hospital and that in the said circumstances, the petitioners respondents are entitled to compensation which is estimated at Rs. 65,000/-.

6. The second respondent was given up before the Tribunal.

7. In the counter filed on behalf of the 1st respondent/appellant herein, it is contended that the accident was not due to the rash or negligent driving of the bus in question, that the deceased alone drove the motor cycle without observing the rules of the road at an uncontrollable speed and met with his death and that in the said circumstances, the petitioners/respondents herein are not entitled to compensation and that in any event, the quantum claimed is excessive.

8. On the above pleadings, the following two questions were framed by the Tribunal for determination.

(1) Whether the accident was due to the rash or negligent driving of the vehicle in question.

(2) Whether the petitioners are entitled to compensation and if so what is the quantum and from whom?

9. On behalf of the respondents herein, PW 1, Mani and PW 2 Marimuthu, were examined. Ex. A. 1, dated 7-6-1979, form of transfer certificate issued by the Principal, Thiruvalluvar Government Arts College, Rasipuram to Ramasamy; Ex. A. 2 dated 28-3-1979 certificate for lower grade typewriting examination in

English issued by the Director of Technical Education and Chairman, Board of Education, Tamil Nadu to Ramasamy; Ex. A. 3 dated 30-8-1979, certificate for lower grade typewriting examination in Tamil; Ex. A. 4 dated 24-6-1979, certificate issued by the Surgeon Examiner, St. John Ambulance Association, Pondicherry to Ramasamy; Ex. A. 5 dated 26-11-1979, conductor's certificate issued to P. Ramasamy ; Ex. A. 6 dated 18-4-1981 copy of notice issued by the petitioners' counsel to the respondents; Ex. A. 7 dated 21-4-1981, postal acknowledgment served by the 1st respondent/appellant herein were marked on behalf of the petitioners/respondents herein. Subramani was examined as RW 1 on behalf of the respondents/appellants herein. Ex. B. 1 dated 20-10-1980, certified copy of the first information report in R.C.S. 529 of 1980 on the file of Sub Divisional Judicial Magistrate, Sankari and Ex. B. 2 dated 18-10-1980, certified copy of the first report u/s 173 of the Criminal Procedure Code in R.C.S. No. 529 of 1980 on the file of the Sub Divisional Judicial Magistrate, Sankari were marked on behalf of the respondents appellants herein. On the consideration of the above evidence both oral and documentary, available on record, under point No. 1, the Tribunal held that the accident was due to rash and negligent driving of the bus in question, and under point No. 2, the Tribunal held that the petitioners/respondents herein are entitled to compensation of Rs. 30,000/- and it was also directed that the first respondent/appellant herein had to pay the first petitioner/first respondent herein a sum of Rs. 20,000/- and the petitioners 2 and 3, who are respondents 2 and 3 are entitled to Rs. 5,000/- each with interest at 6% per annum from the date of award till date of payment.

10. Aggrieved by the above decision of the Tribunal, the first respondent has come forward with this appeal. As already noted, the contention of the appellants with respect to the liability for the occurrence is that there were three persons travelling in the motor cycle in question and the deceased was a pillion rider during that time. Though in the pleadings it looks as though the deceased himself was driving the motor cycle, yet the evidence of PW 2 discloses that he was a pillion rider. The entire case rests on the evidence of PW 2, so far as the question of negligence is concerned. On a close scrutiny of the evidence of PW 2, I find that the deceased died as a result of the injuries sustained by him in a motor accident and that the cause for the accident is the rash and negligent driving of the bus in question. The appellants would deny the same. There is the evidence of PW 2, Marimuthu, who would claim to have witnessed the said accident. He has stated that the deceased, who was coming on a motor cycle by sitting on the pillion and after the motor cycle crossed 3/4th of the Salem Namakkal Road, the bus in question came from Salem at a high speed without the sound of the horn and hit against the motor cyclist and the deceased sustained injuries and he died later in the hospital. He has denied the suggestion that the motor cyclist came at a high speed without the sound of the horn and hit against the bus.

11. It is now contended by Mr. R. Balasubramaniam learned Counsel for the appellant that there was no proper observance of the rules of the road in that it

can be held safely on the basis of the evidence of PW 2 himself that the motor cycle was emerging out of the said road to the main road without stopping as well as without observing the rules of the road. I am unable to uphold this contention because nothing tangible has been brought out in the evidence of PW 2 so as to uphold this contention. The presumption is always in favour of the person, who is driving the vehicle. The argument now advanced that there had been no stopping of the motor cycle while coming out of a road cannot be accepted because when PW 2 was in the box, nothing has been elicited in the cross-examination on this aspect. Thus there is absolutely nothing in evidence to show that the motor cycle had not been stopped, when it had emerged into the main road where the occurrence took place. On the other hand, it is clear from the evidence of R W 1 that the motor cyclist alone was at fault and he was driving the vehicle in a cautious manner. Further it is relevant to note that the police did not charge the driver of the bus for the offence of rash and negligent driving. On the other hand, the police had referred the case.

12. It is seen from Ex. P. 1 that it was one Ramaswamy, who had laid the first information report. If really the bus was driven in a cautious manner and as stated by RW 1 his vision was shut out by reason of certain other bus standing at the junction point and the motor cyclist alone contributed for the accident, one would normally expect the 2nd respondent to go to the police and lay a report about the occurrence. Even though RW 1, would assert in his evidence that he gave the report to the police, factually it is not so and therefore the Tribunal is correct in not having given credence to his version. The fact that the police did not take any further action and referred the matter will be of no avail in these proceedings because the Tribunal has to independently found out as to whether the driver of the bus was at fault or not. Therefore relying upon the evidence of PW 2, I find that the accident was only due to rash and negligent driving of the bus in question.

13. So far as the quantum is concerned, it is very much stressed on behalf of the appellant that Rs. 15,000/- granted towards the head "consortium" is far more excessive. I am unable to uphold this contention as well.

14. "Consortium" is the right of one spouse to the company, assistance, affection and fellowship of the other. An action for damages lies for loss of consortium caused by any wrongful act such as enticement of one spouse from the other *Place v. Searde* 1932 2 KB 497. The principle of enticement actions has no application where there has been no conscious or wilful invasion of the spouse's right, and it appears that the only loss which the law will recognise is loss of service, *servitium* *Best v. Samuel Fox and Co.* 1952 A.C. 716.

15. "Consortium" is the right of each spouse to the companionship, affection and assistance of the other. To a limited extent the law recognized interference with or impairment of consortium by a third party, as by injuring one spouse, as wrong actionable by the other spouse. (Vide the Oxford Companion to Law-David M. Walker).

16. Loss of consortium with reference to a motor accident is not a temporary loss but a permanent one. It is for this reason that the law recognises award of compensation for this loss, in terms of money. No amount of compensation can relieve this loss sustained by one of the spouse. It is a divine relationship that makes this legal tie which is also a moral and religious tie so far as Hindus are concerned. Marriage is a sacrament so far as Hindu Law is concerned. It is not a contract as it is looked into by other religions. It is a relationship that comes into existence even prior to the relationship of human beings in this janma, but it continues from the prior one and will certainly continue also to the other janma to which a spouse on the surface of the earth enters his or her service is complete on the surface of the earth.

17. The principle of consortium is not based on sex. According to Manu Smriti, Hindu marriage is a sacrament. This holy union of the husband and wife comes into existence not on the earth for the first time, but it is only a continuation of union from the "Poorva Janmas" and this will be in existence not in this Janma but also in the other Janmas to come, if at all they are destined to get rebirth.

18. The great Valmiki, on seeing one of the couple of Krouncha birds during the time of their union and when an archer killed one of them with his arrow emanating from his bow said (Matter omitted as in vernacular) and expressed his angry mood on the cruel act of the archer. So the consortium afforded by the male bird to the female bird when the male bird was killed by the archer, the epic Ramayana was began to be written and the first slogan itself coming out of sorrow and suffering. This shows that even with respect to the birds, the consortium or the existence of comradeship should never be disrupted and intercepted by force, much less violence. There are several kinds of sogam-suffering in the relationship of human being "puthra sogam"--"loss of son", "the sorrow or suffering of the wife" on the death of her husband and give versaare all instances of facts of loss of consortium.

19. The relationship of divine "Andril" made and female birds is explained as one which is delicate such that if one bird either female or male dies, the other bird will die at once. The pangs of separation due to cruel acts of death made Shajahan to think about his wife throughout his life and that made him to build Taj Mahal, one of the seven wonders of the world, on the memory of his wife Mumtaz.

20. The consortium is the concept of means between two souls, which are immortal, and the tie of marriage, according to Hindus, as already mentioned, is a sacramental tie. Loss of consortium is one that has to be taken into consideration deeply by the Courts as one which is a vital loss for one of the spouse, when the other spouse has been hit or killed due to the injuries sustained in a motor vehicle accident. The company of one of the spouse to the other is not the one based on age. A divine enjoyment gets itself disrupted due to the accident by a motor vehicle. It is needless to say that the other spouse living who has lost the company of the other is entitled to a reasonable and

adequate amount of compensation for loss of consortium.

21. "Consort":--The idea implicit in "consorting" suggests a more or less close personal relationship at least some degree of familiarity or intimacy with persons, or attraction from or an enjoyment of some feature in common, that results in a tendency towards companionship *Dias v. O' Sullivan* 1949 A.E.R. 586.

22. Under the circumstances, for the award of Rs. 15,000/- towards loss of consortium to the first petitioner/first respondent herein is concerned, this Court gives it full consent and confirm the said compensation as a just compensation under the said head. So far as the other heads under which compensation has been given by the Tribunal is, concerned, this Court is in full agreement with the reasons given by the Tribunal and confirm the items of compensation. Learned Counsel for the appellant argues that when once a sum of Rs. 15,000/- had been granted by the Tribunal towards consortium, the grant of another sum of Rs. 15,000/- under the head "loss to the estate" is not correct, and that the Tribunal erred in doing so. I am unable to uphold this contention as well. Consortium is different from the loss to the estate and when a sum of Rs. 15,000/- had been granted towards the said head, this Court finds that the Tribunal has done the right thing. It is seen from the evidence that the respondents 1 to 3 have claimed a sum of Rs. 65,000/- comprising of Rs. 25,000/- for pain and suffering ; Rs. 40,000/- for loss of earnings.

23. It is in evidence that the deceased at the time of the accident was working in a powerloom factory getting Rs. 200/- per month. It is submitted by the learned Counsel for the appellant that no record has been produced to substantiate the same. But it is seen from the materials on record that the deceased had appeared for P.U.C. examination and was qualified in Typewriting and that he has also taken the conductor's certificate. Therefore it is evident that he would become a prospective earning member and in that view, it is evident that there is loss to the estate. Having regard to the age of the deceased at the time of the accident, which is stated to be 22 years, I am perfectly of the view that the Tribunal is correct in having granted Rs. 13,000/- as loss to the estate which also includes in the instant case, the compensation towards pain and suffering because it is in evidence that the deceased died in the hospital after having bit by the bus in question. Under the circumstances, he would have certainly experienced lot of pain for which compensation can also be given separately. But in the instant case, since the Tribunal had awarded a sum of Rs. 15,000/- as a loss to the estate, this Court is of the opinion that that aspect had also been taken into consideration namely pain and suffering and the said sum had been arrived at. Therefore the compensation of Rs. 30,000/- awarded to the petitioners/respondents 1 to 3 herein is hereby confirmed as a just compensation. The apportionment as directed by the Tribunal has to be made. There is no merit in the appeal. Hence the appeal is dismissed, but under the circumstances, there is no order as to costs.