
(1987) 09 MAD CK 0037
In the Madras High Court

C. Shanmugam and Others		APPELLANT
	Vs	
Pallavan Transport Corporation		RESPONDENT

Date of Decision : 07-09-1987

Acts Referred:

Citation : (1988) 1 ACC 199 : (1988) ACJ 536

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Judgement

Swamikkannu, J.—The petitioners have preferred this appeal against the award dated 24th day of October, 1980 in O.P. No. 450 of 1979 which was disposed of by the Tribunal along with O.P. No. 449 of 1979. Here we are concerned only with the award relating to O.P. No. 450 of 1979.

2. The deceased Anjalai was a Fish Vendor, aged 45 On 29-7-1979 at 8 a.m. she was travelling in the rickshaw driven by deceased Singaram and the P.T.C. Express Bus knocked down the rickshaw driver as well as the occupants of the rickshaw resulting in the death of Anjalai. The first petitioner/first appellant is her husband and the petitioners/appellants 2 to 4 are the children of the deceased. They claim Rs. 50,000/- as compensation.

3. The respondent, namely the Pallavan Transport Corporation, filed a counter denying rashness or negligence on the part of the bus driver. It is stated in the counter that the driver was slowly proceeding on the road and at that time, the left front tyre suddenly burst on account of which the driver lost control of the steering wheel and resulted in the accident. The rickshaw driver was on the middle of the road and suddenly turned to his right and therefore, he is also guilty of contributory negligence. The amounts claimed are, in any event excessive.

4. The following points were framed by the Tribunal for consideration:

(1) Whether the P.T.C. express bus was driven rashly and negligently resulting in the occurrence;

(2) To what amounts, if any, are the petitioners entitled ?

5. P.W. 1, Dr. Sulochana, P.W. 2 Narayanaswami, P.W. 3 Shanmugham, and P.W. 4 K. Padmanabhan were examined on behalf of the appellants herein. Ex. P-1, post mortem certificate, Ex. P-2- do, Ex. P-3 Plan and Ex. P-4 first information report, were marked on behalf of the appellants.

On behalf of R.W. 1, Kumar was examined. No document was filed on behalf of the respondent.

6. On the consideration of the above evidence available on record both oral and documentary, the Tribunal came to the conclusion that the express bus driver was responsible for the occurrence by his own negligence and rashness and that the petitioners/appellants herein are entitled to a sum of Rs 8,000/- with proportionate costs and interest at 9% per annum from the date of decree.

7. Aggrieved by the above decision of the Tribunal the petitioners have come forward with this appeal as stated earlier. It is contended by Mr. N. Arumugam, learned Counsel for the appellants that the Tribunal had not properly assessed the compensation that is to be adequately paid with respect to several head and as such only Rs. 8,000/- had been granted when the petitioners/appellants have claimed Rs. 50,000/- for the death of Anjalai.

8. Mr. R.S. Jeevarathinam, learned Counsel for the respondent submits that the compensation arrived at by the Tribunal is on the sound principles of law and as such there is absolutely no ground for enhancement of the amount of compensation awarded by the Tribunal to the appellants herein.

9. The points that arise for consideration in this appeal are:

(1) Whether there has been any contributory negligence on the part of the cycle rickshaw driver as alleged in the counter filed by the respondent herein before the Tribunal.

(2) If it is found that the occurrence was entirely due to the rashness and negligence on the part of the driver of the bus belonging to the respondent, what is the proper and just quantum of compensation that is to be awarded to the appellants for the death of Anjalai who was eking her livelihood and supporting the appellants by her earnings as a Fish Vendor ?

10. A perusal of the evidence of R.W. 1 and P.W. 2 clearly shows that there had been no contributory negligence on the part of the driver of the cycle rickshaw in which the deceased had been travelling. The direct evidence for the occurrence is furnished by P.W. 2, who is a street vendor in that area. He has stated that the cycle rickshaw going ahead with some passengers and that the P.T.C. Bus came from behind and knocked it down. He says that he saw the occurrence from a distance of 20 feet. It was elicited that this witness was not examined by the police, nor did he give any statement to them. It was also pointed out that he is a relation and an interested witness. But his evidence is in conformity with the

First Information Report Ex. P-4 and plan Ex. P-3 and the evidence of the Doctor and the Investigating officer. The evidence on the side of the respondent is furnished by the Bus Conductor as R.W. 1. No reason has been offered by the respondent as to why the driver had not been examined. From the evidence of R.W. 1, it is seen that he was issuing tickets inside the bus and he heard a noise as if a tyre had burst. It is relevant to note to the extent to which this witness R.W. 1 can go even while giving evidence in the box. Careless and most irresponsible way of deposing in a Court or before a Tribunal can be seen from the perusal of the deposition of R.W. 1. In his Chief Examination R.W. 1 states thus :

(Matter omitted in vernacular)

A careful reading of the evidence of R.W. 1 shows that he has got absolutely no regard for Court nor has got any regard for truth. However much one may be engaged in issuing the ticket, the bursting of the tyre can never escape one's hearing. A conductor who alleges that the tyre of the bus had burst, says in a very mischievous way that he heard the sound as if a tyre had burst. This shows that he had no regard for court nor had he any idea that he was deposing on oath. He would say that as if he had got down to check up as to where from the sound had emanated. While doing so, the people on the street came to beat him and the driver and therefore he and the driver ran away from that place. If really there had been any bursting of the tyre, certainly that would have been brought to the notice of the authorities concerned, though not at that particular hour but yet atleast subsequently. It is also to be noted that in the counter filed by the respondent before the Tribunal, it is contended in paragraph 2 that the tyres and tubes were brand new and the bus was maintained properly by trained mechanic.

11. The Inspector of Police, P.W. 4 has clearly stated that the plea of bursting of the tyre is false. When he had been to the place of the occurrence, he saw two dead-bodies and when he examined the tyres, they were all intact with full air. P.W. 4 had denied the suggestion of tyre bursting. Hence it is clear that there is nothing to show that there had been tyre bursting. Therefore the evidence of R.W. 1 should be viewed seriously and he should be taken to task with respect to this. This Court does not want to give a finding that R.W. 1 did perjury ,but directs that the papers of this case will be entrusted to the persons concerned for proceeding with prosecution. There are evidence to show that R.W. 1, the Conductor had committed the offence of perjury .A report of the launching of the prosecution as directed by this Court has to be submitted by the concerned authority periodically till the trial of that case is over regarding that aspect as against R.W. 1, the Conductor.

12. Thus on a careful and anxious scrutiny of the entire evidence available on record, both oral and documentary, this Court finds that there has been hundred per cent negligence and rashness on the part of the driver of the bus which resulted in the death of the deceased Anjalai. The postmortem certificate, Ex. P-2 in this case clearly shows the speed with which the vehicle ought to have

been driven so as to impart so much of serious injuries on the body of the deceased Anjalai. As a matter of fact the Tribunal which had the benefit of seeing R.W. 1 in the box has stated in paragraph 9 of its judgment, that the evidence of R.W. 1 "was most half-hearted and in any event it does not help the respondent's plea." In the cross-examination, he conceded that he does not know how the occurrence took place or how the bus came into contact with the cycle rickshaw. He ought to have stated this even in his examination in chief. The very fact that he was indulging in giving some imaginary versions, clearly shows that he has got no regard for Court and that he was deposing in a careless way. Further no official of the P.T.C. had been examined with respect to the versions of the respondent in his counter regarding the tyre bursting. Therefore from the above discussion it is clear that the story of tyre bursting is an invented one by the Conductor who examined himself as R.W. 1 in this case. On this basis I hold that the employee of the respondent alone is responsible for the accident.

13. Let us now discuss the second point, namely the adequacy or otherwise of the compensation given by the Tribunal. Rs. 8,000/- has been awarded in all. The Tribunal had relied on the evidence of P.W. 3, Shanmugham, who is none other than the husband of the deceased. According to P.W. 3, the deceased was aged about 45 years. She was earning Rs. 20/- daily by fish vending. It was the deceased who was maintaining the family (in vernacular). In his cross-examination, P.W. 3 would state that he belongs to fishermen community. (In vernacular) that his profession is "catching fish" The second petitioner is aged 25. He is also engaged in catching fish. The second petitioner was married. He was maintaining his family. The third petitioner, who is the daughter of P.W. 3, was also married and she was living with her husband in his house. The 4th petitioner/4th appellant herein is aged 12. He is along with P.W. 3 has further stated in his cross-examination that when he goes for work, he would get about Rs. 10/- to Rs. 15/-, since he is aged 55 years, he was unable to get any income. He does not possess any licence for vending fish. He had denied the suggestion that the deceased who is the wife, was not earning.

14. It admits of no doubt that the deceased Anjalai was eking her livelihood by vending fish. Merely because she was aged 45 her income cannot be said to be less than Rs. 10/- per day. Though it has been claimed by P.W. 3 her husband that she was earning Rs. 20/- a day, it will not be out of proportion if this Court holds that the deceased Anjalai was earning Rs. 10/- per day by vending fish. There is no holiday for vending fish. All the days one has got the advantage of vending fish in the fish market. So it cannot be doubted when her husband deposes that he is a fisherman by caste and that since he was 55 years old, he could not further earn by physically exerting himself to go to see and catch fish and vend fish and as such, the deceased alone was maintaining the family. It is also in evidence that his daughter got married and the second petitioner is also aged now to earn because he was 22 at the time when P.W. 3 deposed before the Tribunal. So the deceased was earning Rs. 300/- month. The husband and the child namely the 4th petitioner herein claimed a sum of Rs. 50,000/-. So far as

the second petitioner/second appellant herein, who was aged 22 at the time of the occurrence, cannot be said to be a dependent or a legal representative so far as the provisions of this enactment are concerned. Similarly third petitioner/third appellant is concerned, she had got married and so far as the question of protection of that petitioner is concerned, it is her husband not the mother. When once marriage had taken place, it is for the husband to protect the wife and not for the mother to protect the daughter, even after the daughter getting married. There, is nothing in evidence to show that either the 22 years old second petitioner or the married daughter, third petitioner are dependents of the deceased. But P.W. 3 has deposed that he has become old and his minor son, the 4th petitioner herein were depending on the income of the deceased. So if at all any compensation is to be awarded it has to be apportioned only between these two petitioners/appellants, namely the first petitioner/first appellant and the 4th petitioner/4th appellant and not the second and third petitioners/second and third appellants.

15. The deceased was aged 50 years. This Court is of the opinion that since the deceased was a woman, engaged in a very difficult profession of vending fish, it would be in the interest of justice if her life span is fixed as sixty years. Taking 15 as the multiplier, the total sum under this head comes to Rs. 54,000/- i.e., Rs. 3600 x 15. Deducting 45% from it on the