
(2007) 04 MAD CK 0258

In the Madras High Court

Case No : C.M.A. (MD) No's. 749 to 751 of 2000

Durai Raj and Others

APPELLANT

Vs

Tamil Nadu State Trans. Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 23-04-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 166
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2009) ACJ 700

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : V.K. Vijaya Raghavan, for the Appellant; M. Krishnamoorthy and K. Bhaskaran, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—This judgment shall govern all the three civil miscellaneous appeals, viz., C.M.A. Nos. 749, 750 and 751 of 2000. The injured/claimants, who had preferred M.C.O.P. Nos. 18, 17 and 20 of 1998 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Kumbakonam, have preferred these civil miscellaneous appeals respectively, challenging the common judgment and decrees passed in the said M.C.O.Ps. dismissing the claim of each one of the claimants.

2. The facts leading to the filing of these appeals can briefly be stated thus:

Pursuant to a vehicular accident that took place on 30.7.1993 at about 3.30 p.m. involving the motor cycle belonging to respondent No. 2 bearing registration No. TN 49-Z 1269 and the bus belonging to transport Corporation, respondent No. 1, bearing registration No. TN 49-N 0155, the injured persons, viz., Durai Raj, Ilangoan and Napoleon filed separate claim petitions on the file of the Motor Accidents Claims Tribunal (Sub-Court), Kumbakonam, which were numbered respectively as M.C.O.P. Nos. 18, 17 and 20 of 1998. Ilangoan, the claimant in M.C.O.P. No. 17 of 1998 and Napoleon, the claimant in M.C.O.P. No. 20 of 1998

had claimed a sum of Rs. 3,00,000 each as compensation for the injuries allegedly sustained by them, whereas Durai Raj, the claimant in M.C.O.P. No. 18 of 1998 had made a claim of Rs. 4,00,000 as compensation. According to the claimants in all the three petitions, all of them were proceeding from Kumbakonam to Natchiar Kovil in the above said motor cycle belonging to respondent No. 2 which stood insured with respondent No. 3. Ilangovan, the claimant in M.C.O.P. No. 17 of 1998 was the rider and the other two claimants in M.C.O.P. Nos. 18 and 20 of 1998 were the pillion riders. While they were thus proceeding near Azhakhaputhur, Ilangovan, the rider of the motor cycle wanted to overtake the above said bus belonging to respondent No. 1 which was proceeding in the very same direction and hence sounded the horn. Upon hearing the horn sound of the motor cycle, the driver of the bus, at the first instance, gave way for the motor cycle to overtake the bus. But after the bus was overtaken by the motor cycle, the driver of the bus suddenly took over speed, drove it in a rash and negligent manner and dashed against the above said motor cycle in which all the three claimants were travelling. As a result of the said impact, the claimants, three in number, fell down and sustained multiple injuries. Pursuant to the above said accident, a case was registered on the file of Natchiar Kovil Police Station against the driver of the bus for alleged offences punishable under Sections 279 and 337, Indian Penal Code in Crime No. 380 of 1993. After investigation, the bus driver was charge-sheeted. Contending that the accident was the result of rash and negligent driving of the bus belonging to the transport Corporation, respondent No. 1, by its driver and the accident could have been avoided had the driver of the bus taken a little bit care and that the respondent No. 1 being the owner of the offending vehicle (bus) and employer of its driver, was liable to compensate the claimants for the injuries caused to each one of them, they filed the above said M.C.O.Ps. claiming compensation as indicated above. The owner and insurer of the motor cycle in which the claimants were travelling at the time of accident were also added as party respondents, namely, the respondent Nos. 2 and 3 in all M.C.O.Ps. In support of their claim, the claimants examined four witnesses and relied on 13 documents marked as Exhs. A1 to A13.

3. The respondent No. 2, owner of the motor cycle in which the claimants were proceeding at the time of accident did not file any counter-statement and remained ex parte before the Tribunal. The respondent Nos. 1 and 3, viz., the transport Corporation (owner of the bus) and the insurer of the motor cycle filed separate counter-statements and resisted the claim made by each one of the claimants.

4. Transport Corporation, respondent No. 1, resisted the claim made by claimants by filing separate counter-statements in all the three M.C.O.Ps. denying the petition averments regarding the question of negligence, entitlement of the claimants to claim compensation from the respondent No. 1 and the reasonableness of the amount claimed by each one of the claimants as compensation. It was the further contention raised by the respondent No. 1 in its

counter-statement that the allegation made in the petitions by the claimants, as if they were proceeding in the same direction in which the bus was proceeding and overtook the bus was not true; that while the bus was proceeding from Kumbakonam to Thiruvavur at a normal speed, the claimants came in a motor cycle in the opposite direction; that when the bus was proceeding near Natchiar Kovil, a lorry also come in the opposite direction; that the claimants who were travelling in the motor cycle attempted to overtake the said lorry without proper signal and violating the rules of road; that on seeing the same, the driver of the bus moved the same to the extreme left; that in spite of the same, the rider of the motor cycle in his attempt to overtake the lorry, lost his control and dashed the motor cycle against the right side front part of the bus and fell down; that thus the accident was nothing but the result of the rash and negligent driving of the motor cycle; that there was no negligence or want of care on the part of the driver of the bus and that hence the claimants were not entitled to make a claim for compensation based on the theory of fault. With the said pleading, transport Corporation, respondent No. 1 had prayed for the dismissal of all the three claim petitions with costs.

5. The respondent No. 3 the alleged insurer of the motor cycle involved in the accident, contested the claim denying the insurance coverage. It was the further contention of the respondent No. 3 that there was violation of traffic rules on the part of the claimants, as three persons travelled in the motor cycle as against the permitted capacity of two; that the said motor cycle was driven by a person not holding a valid driving licence and that hence even assuming that the motor cycle had been insured with the respondent No. 3 at the relevant point of time, it would be absolved of its liability to pay compensation on behalf of the insured. It was also the contention of the respondent No. 3 that even as per the petition averments, the driver of the bus belonging to the respondent No. 1 was at fault and hence the respondent No. 3, arrayed only as a pro forma party, was not liable to pay any compensation and that in any event, the amount claimed by each one of the claimants was highly excessive and exorbitant. One witness, the driver of the bus was examined as RW 1 and no document was marked on behalf of the respondents.

6. After recording evidence, Tribunal heard the arguments advanced on both the sides, framed necessary points for determination, scrutinised materials on record and held that the claimants had not proved any rashness or negligence on the part of the driver of the bus belonging to the respondent No. 1 and that Ilangoan, the claimant in M.C.O.P. No. 17 of 1998 who was riding the motor cycle alone was at fault. The Tribunal also held that the motor cycle bearing registration No. TN 49-Z 1269 belonging to the respondent No. 2 was not proved to be insured with the respondent No. 3 and hence the respondent No. 3 was not liable to pay any compensation to anyone of the claimants. Recording a further finding that while the negligence on the part of Ilangoan, PW 1, the claimant in M.C.O.P. No. 17 of 1998 was the cause of the accident, the claimants in the other claim petitions were also guilty of contributory negligence and hence became

joint tortfeasors, the Tribunal dismissed all the three M.C.O.Ps. without costs.

7. The legality and correctness of the common judgment and decrees passed in all the three M.C.O.Ps. are being challenged in these appeals preferred by the claimants.

8. This Court heard the arguments advanced on either side and paid its anxious considerations to the same.

9. The learned Counsel for the appellants would contend that the Tribunal has committed an error in disbelieving the case of the claimants regarding the manner in which the accident took place and believing the story propounded by the transport Corporation, respondent No. 1, that the finding of the Tribunal holding Ilangovan, PW 1, the claimant in M.C.O.P. No. 17 of 1998 to be at fault is also erroneous; that the Tribunal did not appreciate the evidence and hence came to a wrong conclusion that the accident was the result of the negligence on the part of the rider of the motor cycle to which the other claimants also contributed and that the said finding of the Claims Tribunal should be set aside and reversed with the result that the transport Corporation, respondent No. 1, as the owner of the bus involved in the accident, should be held liable to pay compensation as claimed by the appellants-claimants. Contending further that even assuming that the contention of the respondent No. 1 that the accident occurred as a result of the rashness and negligence on the part of the rider of the motor cycle could be accepted, the Tribunal ought to have held the transport Corporation, respondent No. 1, liable to pay compensation at least to the extent of the no fault liability as provided u/s 140 of the Motor Vehicles Act and that the dismissal of M.C.O.Ps. in their entirety could not be sustained in law. It is also the contention raised by the learned Counsel for the appellants that the finding of the Tribunal to the effect that the claimants had not proved the insurance coverage regarding the motor cycle and the order of the Tribunal absolving the respondent Nos. 2 and 3 of their liability to pay compensation altogether was erroneous and the same has got to be disturbed.

10. The claimants, who are the appellants before this Court, had made the claim before the Tribunal against the respondents for compensation based on their specific plea that the driver of the bus belonging to the respondent No. 1 was at fault and that the rashness and negligence on his part was the cause for the accident. According to the claimants, both the vehicles, namely, the respondent No. 1's bus and the motor cycle were going in the very same direction and after the motor cycle had completed overtaking of the bus, the driver of the bus increased its acceleration and hit the motor cycle in which the claimants were proceeding. The further allegation of the claimants in their claim petitions is that firstly the motor cycle overtook the bus and went to the extreme left side of the road and then only the bus in an attempt to overtake the motor cycle hit the persons travelling in the motor cycle on their right legs. By such an averment, the claimants had meant that the left side front portion of the bus came into contact with the motor cycle and the claimants. Even though all the three

claimants were examined before the Tribunal as PWs 1 to 3, except Ilangovan, PW 1 (claimant in M.C.O.P. No. 17 of 1998), others have not stated anything in their evidence regarding the manner in which the accident took place. Therefore, the evidence of PWs 2 and 3 in this regard is not helpful to the claimants to prove their case that the accident was the result of negligence on the part of the driver of the bus. The only ocular testimony available in support of the claimants in this case is that of PW 1. The other corroborating piece of evidence to the above said testimony of PW 1 is the certified copy of the final report (the charge-sheet) filed by the police in the criminal case registered in respect of the accident in question. The same is Exh. A7. The mere fact that the police have charge-sheeted the driver of a vehicle in a given case will not amount to the proof that he was guilty of negligence in driving the vehicle. In this case, a clear contradiction is found between the evidence of PW 1 and the contents of Exh. A7.

11. According to the case of the claimants, after they had overtaken the bus and went to the left side of the road, the bus picked up speed and in an attempt to overtake the motor cycle on its right side, hit the right legs of the claimants who were travelling in the motor cycle. If that be so, definitely the left side of the front bumper and not the right side of the front bumper of the bus should have come into contact with the legs of the claimants. On the other hand, the accusation found in the charge-sheet has been coined as if the motor cycle came into contact on the right side body of the bus. If it is so, the left legs of the claimants and not their right legs should have come into contact with the body of the bus. Likewise, had the collision occurred while the motor cycle was in the process of overtaking the bus, the front portion of the motor cycle would not have hit the body of the bus. On the other hand, it is obvious from certified copy of the report of Motor Vehicles Inspector, Exh. A2, all the damage caused to motor cycle was found on its front part. In fact, the earliest document that came into existence in this case is the first information report, the certified copy of which has been marked as Exh. A1. RW 1, who was the driver of the bus involved in the accident, gave the complaint to the police based on which, the above said criminal case in Crime No. 380 of 1993 was registered against the persons who travelled on the motor cycle for offences punishable under Sections 279 and 337, Indian Penal Code. In the said complaint, RW 1 had clearly stated that while the bus was proceeding from Kumbakonam to Thiruvavur, the claimants were coming on the motor cycle in the opposite direction and that the rider of the motor cycle in an attempt to overtake a lorry that was proceeding in front of the motor cycle without noticing the bus coming in the opposite direction, hit the right side body of the bus, fell down with the motor cycle and sustained injuries. Based on the said complaint, the criminal case was registered against the claimants without mentioning their names. Somehow or other, the police officer who investigated the case happened to submit a final report finding fault with the driver of the bus, RW 1. The police officer who investigated the case might have chosen to file a charge-sheet against the driver of the bus, RW 1, in spite of the clear averments made in the complaint statement alleging negligence on the part of

the rider of the motor cycle. RW 1 has categorically stated that the criminal case instituted against him based on the above said charge-sheet ended in acquittal. The said part of the testimony of RW 1 stands uncontroverted. In fact, not even a suggestion denying said fact deposed by RW 1 was put to him.

12. Scrutinising the entire evidence, both oral and documentary, adduced before it, the Tribunal has rightly rejected the evidence of PW 1 and held that there was no negligence or want of care on the part of the driver of the bus, RW 1, that while the bus was proceeding from Kumbakonam to Thiruvavur, the motor cycle should have proceeded not in the very same direction, but in the opposite direction towards Kumbakonam; that it was the driver of the motor cycle, PW 1, who attempted to overtake a lorry going in front of it without noticing the bus coming from the opposite direction and in such an attempt hit the right side body of the bus and that thus the accident took place due to negligence on the part of PW 1. The above said finding of the Tribunal is not infirm. There is no reason whatsoever, either to interfere or dislodge the said finding of the Tribunal. On the other hand, the same is well founded and deserves to be confirmed. Based on the above said finding that there was no fault on the part of the driver of the bus belonging to the respondent No. 1 and that it was due to rash and negligent driving of the motor cycle by PW 1, the accident took place, the Tribunal has rightly held the claimants not entitled to claim compensation from the transport Corporation, respondent No. 1, based on the theory of fault.

13. In such an event, the question as to whether the claimants have made out a case for claiming compensation against the other respondents, namely, respondent Nos. 2 and 3, as the owner and insurer of the motor cycle in which the claimants were proceeding should be considered. The Tribunal seems to have rejected the claim of all the three claimants as against the respondent Nos. 2 and 3 for the simple reason that they had not proved the insurance coverage of the motor cycle. It is true that the documents produced on the side of the claimants do not contain anything to show that the motor cycle was insured with the respondent No. 3 at the relevant point of time. Necessary particulars like number and date of policy, the period for which the policy was issued, which are minimum requirements to shift the burden on the insurance company, were not furnished in the claim petitions. Nor was there any evidence adduced on the side of the claimants giving such details. On the other hand, PW 1 in his evidence had pleaded ignorance as to the name of the insurance company with which the motor cycle stood insured and thereby indirectly admitted that respondent No. 3 was not the insurer of the motor cycle on the relevant date. Certified copy of the report of the Motor Vehicles Inspector, Exh. A2, also does not contain any particulars regarding the insurance policy and the relevant column has been left blank. Taking into consideration all these aspects, the Tribunal has rightly come to the conclusion that the motor cycle involved in the accident was not proved to be insured with the respondent No. 3 on the relevant date and hence the respondent No. 3 was not liable to pay any kind of compensation to anyone of the claimants.

14. At the same time, the further finding of the Tribunal that the owner of the motor cycle, namely, the respondent No. 2 was also not liable to pay any compensation to anyone of the claimants, simply because the motor cycle was not insured seems to be erroneous. The Tribunal has chosen to adopt the reverse procedure of first fixing the liability on the insurer and then on the insured, owner of the vehicle. The same is improper and erroneous. Unless and until the liability is first fixed on the insured, owner of the vehicle, the insurer whose liability is statutory by virtue of the contract of insurance cannot be asked to shoulder the liability of the insured and discharge the same. In the instant case, though Claims Tribunal has rightly found that the motor cycle was not proved to be insured with the respondent No. 3 on the relevant date, it has committed an error in coming to the conclusion that the owner of the motor cycle would not be liable for the said reason alone. Therefore, the said finding of the Tribunal regarding the liability of the respondent No. 2 deserves interference by this Court.

15. PW 1, the claimant in M.C.O.P. No. 17 of 1998 was the rider of the motor cycle. It was his negligence which led to the accident in which all the claimants including PW 1 sustained injuries. Therefore, PW 1 the claimant in M.C.O.P. No. 17 of 1998 cannot claim compensation from the respondent No. 2 also on the basis of the theory of fault. If such a claim of PW 1 is allowed, it will amount to permitting a person to claim compensation from the other for his own fault. The same is not permissible in law. PW 1 has admitted in unambiguous terms that he did not possess any valid driving licence to ride the motor cycle. The other claimants also with the knowledge of the said fact had chosen to travel on the said motor cycle and that too without the knowledge of the respondent No. 2. In addition to the fact that the motor cycle was driven by a person not holding a valid driving licence, the claimants, three in number, had chosen to travel on the single motor cycle as against the permitted capacity of two. All these factors, put together, will justify the observation made by the Claims Tribunal that the other two claimants, viz., PW 2 and PW 3 (claimants in M.C.O.P. Nos. 20 and 18 of 1998 respectively) had also contributed to the cause of accident. Therefore, they should also be non-suited for making a claim for compensation against the respondent No. 2 on the basis of theory of fault.

16. On the other hand, they shall not be precluded from claiming and getting compensation under the no fault liability clause found in Section 140 or 163-A of the Motor Vehicles Act. Since the accident took place prior to the introduction of Section 163-A by Act 54 of 1994, the claimants are not entitled to make any claim for compensation u/s 163-A of the Act. In fact, when a claim is made u/s 166 of the Act in which case Section 140 of the Act is applicable, no claim could be made u/s 163-A of the Act. The claimants themselves have chosen to make the claim under Sections 140 and 166 of the Act. The very same observation is applicable to the other claimants, PWs 2 and 3, also. Therefore, it shall be just and proper in the circumstances of the case to hold that the claimants are entitled to claim compensation on the principle of no fault liability u/s 140 of the Act alone, provided they are proved to have sustained permanent disability.

Since two vehicles have involved in the above said accident, the no fault liability payable u/s 140 of the Act should be cast jointly and severally on the owners of both the vehicles. Therefore, the respondent No. 1 being the owner of the bus and the respondent No. 2 being the owner of the motor cycle are jointly and severally liable to pay compensation to the claimants to the extent of liability found in Section 140 of the Act. There is the evidence of the Medical Officer, PW 4, who examined the claimants and issued the disability certificates, Exhs. A8, A10 and A12. X-rays taken for assessing disability are Exhs. A9, A11 and A13 series. He has certified permanent disability at 75 per cent, 35 per cent and 30 per cent respectively. As there is no contra evidence, the said evidence of the Medical Officer should be accepted and thus there would not be any impediment in holding that all the three claimants sustained permanent disability. The accident took place prior to the amendment introduced by the Amendment Act 54 of 1994. As per Section 140, as it stood before amendment, only a sum of Rs. 12,000 is payable under the no fault liability clause in case of permanent disability.

17. Therefore, this Court hereby comes to the conclusion that each one of the claimants shall be entitled to get a sum of Rs. 12,000 alone as compensation from the respondent Nos. 1 and 2 and that the respondent Nos. 1 and 2 are jointly and severally liable to pay the above said amount with a reasonable interest from the date of claim till realization. Considering the facts and circumstances of the case, this Court is of the view that awarding an interest at the rate of 9 per cent per annum shall be reasonable. The claimants shall also be entitled to get proportionate cost in both the courts from the respondent Nos. 1 and 2.

18. In the result:

(i) All the three civil miscellaneous appeals, as against the respondent Nos. 1 and 2 alone, namely, C.M.A. Nos. 749 to 751 of 2000 are partly allowed and the respondent Nos. 1 and 2 are held jointly and severally liable to pay a sum of Rs. 12,000 to each one of the appellants-claimants in all the three appeals, together with an interest at the rate of 9 per cent per annum from the date of claim till realization and proportionate costs in both the courts.

(ii) So far as the respondent No. 3 is concerned, all the three appeals shall stand dismissed without costs.