

(1999) 11 MAD CK 0037
In the Madras High Court
Case No : C.M.A. No. 233 of 1997

G. Bhuvaneswari and 3 others	Vs	APPELLANT
M. Sornakumar and 2 others		RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 2(34)

Citation : (2000) 2 ACC 231 : (2000) ACJ 1343 : (2000) 1 CTC 145 : (2000) 1 MLJ 280

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : Mr. A.P. Kasthurirangan for Mr. M.K. Srinivasan, for the Appellant; Mr. V. Mohan Choudry and Mr. M.S. Krishnan, for the Respondent

Judgement

A. Subbulakshmy, J.—Claimants are the wife, children and mother of the deceased Janakiraman, who died as a result of the accident that

occurred on 24.6.1994 at about 22.05 hours while he was proceeding in his moped from the West to East towards loading section in his factory.

At that time the tempo bearing Registration No.TDD 8706 came from North to South inside the factory driven by its driver, the third respondent,

in a rash and negligent manner and dashed against the moped which the deceased Janakiraman was driving, The said Janakiraman was thrown off

from his vehicle and he sustained injuries and inspite of intensive treatment in the hospital, he died.

2. The tribunal found that the accident had happened due to the negligent driving of the tempo driver, the third respondent. The tribunal had further

found that the place where the accident occurred is a private place and the second respondent Insurance Company is not liable as per provisions

of section 147 of the Motor Vehicles Act, 1988 and he has directed respondents 1 and 3 to pay the compensation amount.

3. Aggrieved by the order passed by the tribunal, the claimants have preferred this appeal,

4. The learned counsel for the appellants/ claimants submitted that even if the accident had happened if in the private place, the place is accessible

to the members of the public and is available for their use, enjoyment and avocation, it is a public place and not a private place as the other people

have got right of entry. He places reliance on the decision of the Full Bench of this Court in the case of United India Insurance Co. Ltd. v. Parvathi

Devi & others, 1999 T.N.L.J. 144 wherein this Court has held that public place includes places where public have an access whether free or

controlled in any manner.

5. Section 2(24) of the Act defines "Public Place" as a road, street, way or other places whether a thoroughfare or not, to which the public have a

right of access and includes any stand at which passengers are picked up or set down by a stage carriage. In the above decision a full Bench of this

Court has held that the definition of public place is very wide. A perusal of the same reveals that of the public at large has a right to access though

that right is regulated or restricted as the definition under the Act uses the expression "right of access" what, is significant is that under the present

definition even a place the right to use of which is restricted is a public place.

6. In the instant case, the accident had happened in the factory premises. The place is accessible to the members of the public and available for the

use of public, who have dealings ... Following the decision of the Full Bench of this Court, we are of the view that the place where the occurrence

had happened is a public place and the second respondent Insurance Company is liable to pay the compensation as per the provisions of the Act.

7. The deceased was working as Junior Assistant in M/s T.V.S. Suzuki Limited and he was drawing a salary of Rs.4,270 per month. His salary

certificate Ex.A.1 is also produced. It is seen from Ex.A.1 that the deceased Janakiraman was drawing a monthly salary of Rs.3,033.20 at the time

of his death. Ex. A.3 shows that he was also drawing bonus of Rs.1,599,36 and ex gratia payment of Rs.2,509.74 i.e., totally Rs.4,084.10. He

was also drawing Rs.213.57 as attendance incentive. The tribunal has found that

the monthly payment is made on the basis of regularity of the attendance and, therefore, it is a contingency payment which may vary and taking that into account, it has fixed the attendance incentive at Rs.125 per mensem. It is also evident from Ex.A1 that late Janakiraman was getting plant performance incentive of Rs.2,760 per annum and educational allowance of Rs.2,300 per annum and apart from his pay and attendance incentives, late Janakiraman was paid Rs.934.10 towards bonus and other incentives and allowances and dividing this by 12 the other payment works out to Rs.761.17 per mensem, the tribunal has arrived at the total income of late Janakiraman per mensem Rs. 3,033.20 + 125+761.17 = Rs.3,919.37 and rounded to Rs 3,920 and accordingly, arrived at Rs.3,920 and after deducting his personal expenses, the dependency per month was arrived at Rs.2,520. The deceased was 37 years old at the time of accident. The tribunal has adopted 16 as multiplier and has arrived at the total income at Rs.2,520 x 12 x 16 = Rs.4,93,840. The amount of compensation arrived at by the tribunal is perfectly justified. The tribunal has also awarded interest at 12% from the date of the petition on this award till the date of realisation. The interest awarded is also justified. So the compensation amount arrived at by the tribunal does not warrant any interference of this Court.

8. In the result, the Civil Miscellaneous appeal is allowed holding the second respondent is also liable for payment of compensation to the claimants. With regard to the apportionment of the compensation amount among the claimants and for deposit of the minor's amount in the Nationalised Bank, we are not interfering with the order passed by the tribunal. Consequently, Civil Miscellaneous Petition No.2519 of 1997 is closed.