
(1981) 02 MAD CK 0047
In the Madras High Court
Case No : A.A.O. No. 279 of 1978

General Travels, Bangalore and Others	APPELLANT
Vs	
Chandrakala Shetty and Others	RESPONDENT

Date of Decision : 16-02-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110

Citation : (1982) ACJ 597 : AIR 1982 Mad 62 : (1981) ILR (Mad) 399

Hon'ble Judges : Sengottuvelan, J;Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.

iThe above appeal has been filed by respondents 1 to 5 in M. A. C. T. O. P. No. 79 of 1914, on the file of the Motor Accidents Claims Tribunal, North Arcot at Vellore. On 9-5-1974 at about 2:50 p.m. the bus MDL 1591 belonging to the 7th respondent and hired by respondent-1 carrying tourists from Bangalore to Madras met with an accident at a place near Marappattu between Vaniambadi and Ambur road, in the course of which the bus went off the road and after going to a distance of 200 yards, hit a tree and thereafter a wall of a house. As a result of the said accident, one Sadashiva Shetty sustained multiple injuries on the head and died in the hospital the same day. On the ground that the accident was entirely due to the rash and negligent driving of the bus by the driver the widow and the children of, the deceased Sadashiva Shetty filed a petition claiming compensation of Rs. three lakhs.

2. The said claim was opposed. The first respondent in the said claim petition is a firm by name "General Travels" carrying on business at Bangalore as a travel agency. Respondents 2 to 6 there in are the partners of the first respondent firm. The seventh respondent is the owner of the bus, the eighth respondent is the driver of the bus and the ninth respondent is the Insurance Company with which the bus had been insured. Except respondents 2 to 5 and 9, the other respondents remained ex parte. Respondents 2 to 5 though filed a counter, did

not take part at the enquiry and their counsel reported "no instructions". In their counter statement they had stated that the bus was driven very carefully and cautiously and when it was negotiating a turn, the axle got broken and the vehicle went out of control and as such the accident should be taken to have been an inevitable one in the circumstances. They also contended that the compensation claimed was excessive. The ninth respondent filed a counter affidavit adopting the counter filed by respondents 2 to 5 and adding that in any event the insurers liability has to be limited to Rs. 5000/- for the death of a passenger as per the terms of the policy and as per Sec. 95(2)(b) of the Motor Vehicles Act. Having regard to these pleadings, the Tribunal set down the following two questions for consideration:-

1. Whether the 8th respondent drove the bus with rashness and negligence and was responsible for the accident; and

2. Whether the petitioners were entitled to claim compensation and if-so, from which of the respondents.

3. After analysing the evidence adduced by the claimants and the Insurance Company, which alone took part at the enquiry the tribunal held that the rashness and negligence on the part of the driver of the bus has been duly established and that the accident having been caused by such rashness and negligence on the part of the driver of the bus, the liability to pay compensation has arisen. Dealing with the quantum of compensation, the tribunal held that having regard to the fact that the deceased was employed, as an Assistant Director of Agriculture in the Karnataka State Government, and he was 48 years of age at the time of his death, the compensation payable under the head of the loss of pecuniary benefit will be Rs. 1,44,000. In that view, the tribunal straightway passed an award as against all the respondents for the said sum of Rs. 1,44,000 however limiting the liability of the Insurance company to the sum of Rs. 5000/- and making the other respondents liable to pay the balance of Rs. 1,39,000 jointly and severally. Aggrieved by the award of the tribunal, so far as it is against them, the respondents 1 to 5 alone have filed this appeal.

4. According to the appellants no award can be passed as against them under Sec. 110-B of the Motor Vehicles Act, as they cannot come under the category of either the owner, driver or the insurer, against whom alone an award could be passed by the Claims Tribunal as per the said provisions. The learned counsel has referred to the following averments made by the claimants in their claim petition-

"Petitioners submit that the deceased Y. S. Shetty was travelling, in the bus MDL 1591 belonging to respondents 1 to 7. No. 1 is the General Travels Co. Nos. 2 to 6 is the partner of the said company. The 7th respondent is the owner of the vehicle. The 7th respondent has entrusted the bus to Nos. 1 to 6, and therefore respondents 1 to 7 are liable." According to the learned counsel for the appellants, the above averment clearly contains an admission that the vehicle was owned by the 7th respondent though it has been taken by respondents 1 to

5 for hire for carrying tourists and that in view of the said averment, respondents 1 to 6 cannot be taken to be the owners of the vehicle. This contention of the learned counsel based the question of lack of jurisdiction of the tribunal to pass an award, as against appellants who are respondents 1 to 5, has to be considered in the light of the statutory provisions. S. 110 of the Motor Vehicles Act enables the State Govt. to constitute Motor Accidents Claims Tribunal for different areas. Sec.110-A of the said Act provides for the manner, mode and the time of filing a claim application for compensation before the tribunal. Though S. 110-A is silent as against whom the claim for compensation has to be made, Sec. 110-B however indicates as to the persons against whom the Claims Tribunal could pass an award. In this "connection it may be necessary to set down the said S. 110-B of the Motor Vehicles Act :-

"On receipt or an application for compensation made under S. 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be."

A close reading of the above section indicates that the Claims Tribunal may, after determining the amount of compensation which appears to it to be just, specify the person or persons to whom the compensation shall be paid and that in making the award it shall also specify the amount which will be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. Thus, it is clear that the Claims Tribunal can pass an award either against the insurer, owner or driver of the vehicle or against all or any of them. The said section does not confer on the Claims Tribunal a power to make an award against persons other than the insurer, owner or driver of the vehicle involved in the accident. This will establish that the Claims Tribunal cannot be considered to be a Civil Court, determining the rights and liabilities of the parties under the common law. Once it has been conceded by the claimants in their claim petition that the seventh respondent is the owner of the vehicle and respondents 1 to 6 have been entrusted with the vehicle, such entrustment even if it is established, cannot make them the legal owners of the vehicle. Even in case of entrustment of the vehicle by the 7th respondent in favour of respondents 1 to 6, legal possession even during the period of entrustment is with the seventh respondent. In this connection it is useful to refer to the definition of "owner" in S. 2(19). "Owner" has been defined as follows:-

"Owner means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement."

5. As per, this definition, any person who is in legal possession of a motor vehicle or the registered owner of a vehicle or a person who is in possession of the vehicle under hire purchase agreement, is stated to be the "owner" of the vehicle. Even if respondents 1 to 6 have been entrusted with the possession of the vehicle temporarily for a specific purpose, they cannot be said to be the owners of the vehicle; for, ownership is different from mere custody. Normally "ownership", consists of bundle of rights, one of which is custody or possession of the vehicle. Merely because respondents 1 to 6 have been entrusted with the custody of the vehicle by the 7th respondent for certain duration, they cannot be said to possess the entire bundle of rights which would make them the owner of the vehicle. In this view of the matter, we cannot say that respondents 1 to 6 were the owners of the vehicle at the time the accident took place.

6. The learned counsel for the respondents contends that even if an award could not be passed under the Motor Vehicles Act, as against respondents 1 to 6, because they were not the owners of the vehicle at the relevant time, they may be vicariously liable under the general law of torts for the, accident caused by the rash and negligent driving of the bus by the driver, for, the driver of the bus was functioning under the control and supervision of respondents 1 to 6 at the relevant time. Reference also has been made to the observations of Lord Tucker in the *Trust Co. Ltd. v. H. I. De Silva* 1956 1 W. L. R.376, and the decision in *Rickets v. Rhos Tilling Ltd.* 1915 1 K B 644. However, it is unnecessary for us to go into the question as to whether respondents 1 to 6 as persons who had temporary custody and possession of the vehicle were vicariously liable for the tort committed by the driver or under the general law of torts for, we are in this appeal, concerned only with the liability arising under the Motor Vehicles Act. If the tribunal had no jurisdiction to pass an award as against respondents 1 to 6 under S. 110-B of the Motor, Vehicles Act then the award passed in. this case as against them has to be, set aside, whatever be their liability under the General law of torts. Therefore, with out going into the question as to whether respondents 1 to 6 are vicariously liable under the general law for the tort committed by the driver of the bus, we set aside the award of the Tribunal in this case so far as it is against the appellants.

7. The learned counsel for the respondents contends that it is not open to the appellants who did not admittedly

take part in the proceedings before the lower Court to question the award by the tribunal by raising new contentions before this Court. It is true, that the first appellant was ex parte and appellants 2 to 5 though appeared at the initial stage and filed counter, subsequently did not take part in the proceedings before the tribunal. But the mere fact that the decision was ultimately rendered ex parte, so far as the appellants are concerned, does not deprive them of the right to question the award before the appellate Court on legal grounds. It is true that if the legal points which have been raised before this Court had been raised before the tribunal, the tribunal would have had occasion to consider these points and

give a decision thereon. The fact that the tribunal had no occasion to consider the legal question does not mean that this court cannot entertain a legal objection raised by the appellants, which does not involve the investigation of any fresh facts. We, therefore, entertain the legal objection put forward by the appellants, notwithstanding the fact that they had not raised the said objections before the tribunal.

8. In the result, the appeal is allowed to the extent indicated above. There will be no order as to costs. It is, however, made clear that the disallowance of the claim petition as against the appellants in these proceedings will not prejudice the rights of the respondents to proceed against the appellants in a civil court on the basis of their common law liability.

9. Appeal allowed.