

(1979) 07 MAD CK 0064
In the Madras High Court
Case No : A.A.O. 242 of 1977

Govindammal

APPELLANT

Vs

Pallavan Transport Corporation

RESPONDENT

Date of Decision : 27-07-1979

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : AIR 1980 Mad 245 : (1980) 93 LW 45

Hon'ble Judges : Venugopal, J

Bench : Single Bench

Advocate : K.N. Balasubramaniam and T. Danyakumar, for the Appellant; R. Balasubramanian, for the Respondent

Judgement

1. One Natarajan, a mechanic, earning Rs. 350 in an automobile workshop at Thiruvottur, died as a result of an accident that occurred on 2-2-1971, at about 2 p.m. on Thiruvottur High Road when a bus belonging to the respondent knocked him down causing fatal injuries. His parents filed an application u/s 110-A of the Motor Vehicles Act, claiming compensation of Rs. 15,000, for the death of their son. It was contended for the respondent that the right front tyre suddenly burst and in spite of the best efforts of the driver, the bus went out of control and the accident was not due to rash and negligent driving on the part of the driver. The trial court held that the bus was running properly till 2 p.m. on the date of accident and the driver of the bus could not have foreseen the bursting of the tyre which alone rendered the vehicle uncontrollable and that there was no culpable rashness or negligence on the part of the driver and there is no liability for payment of compensation. Aggrieved against this order of the trial court, the petitioner has filed this appeal before this court.

2. It is contended for the appellant that it is the rash and negligent user of the vehicle that is made actionable u/s 110-A of the Motor Vehicles Act and inasmuch as the respondent has failed to maintain the bus in a roadworthy condition and has also not established that the bursting of the tyre of the bus was due to latent

defect which could, not have been discovered by use of reasonable care, the respondent is liable to pay compensation to the appellant. In support of this contention the learned counsel for the appellant relied on two decisions of the Supreme Court reported in *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, and *State of Haryana Vs. Smt. Darshana Devi and Others*, . The learned counsel for the respondent contended that the accident was due to unforeseen causes over which the driver had no control and that there is liability to pay compensation to the appellant.

3. In *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, the Supreme Court has pointed out that in order to succeed on a plea that the accident was due to a mechanical defect in the vehicle, the owner must show that the defect was latent and not discoverable by use of reasonable care and the vehicle was kept in a roadworthy condition and the defect occurred in spite of reasonable care and caution taken by the owner. From the decision of the Supreme Court cited above it is clear that. The burden of proving that the accident was due to any mechanical or other defect in the vehicle was on the owners and it is their duty to show that they have taken all reasonable care and despite such care, the defect remained hidden. The respondent is a public sector undertaking, a transport corporation plying buses in the city of Madras, As it is a public utility service run for the convenience of the public, it is the paramount duty and obligation of the respondent to maintain buses in a roadworthy condition by proper maintenance and upkeep and devising periodical checks and counter checks by its supervisory staff to ensure its roadworthiness and safety, If the accident had occurred in spite of these precautionary measures and the bursting of the tyres was on account of a latent defect which could not have been discovered by reasonable care and diligence, only then no liability can be fastened on the respondent.

In the, instant, case, there is no evidence to show that the bursting of the tyre was on account of latent defect and could not be discovered by use of reasonable care and diligence. There is also no evidence to show that the bus was kept in a roadworthy condition, and the bursting of the tyre occurred in spite of reasonable care and caution taken by the respondent. There is no evidence to show that the driver of the bus had taken care to see that the tyres were in a good running condition. The driver had not stepped into the witness box to explain how the tyre bursting occurred and that it was on account of the latent defect in the tyres. The Supreme Court in the case of *State of Haryana Vs. Smt. Darshana Devi and Others*, held -

"It is a notorious fact that our highways are graveyards on a tragic scale, what with narrow, neglected roads, reckless, unchecked drivers, heavy vehicular traffic and State Transport buses often inflicting the maximum casualties. Now that insurance against third party risks is compulsory and motor insurance is nationalised and transport itself is largely by State undertakings, the principle of no fault liability and on the spot settlement of claims should become national

policy."

The Supreme Court has gone to the extent of observing that-

"The time is ripe for the court to examine whether no fault liability is not implicit in the Motor Vehicles Act itself and for Parliament to make law in this behalf to remove all doubt".

Such being the trend of judicial thinking in this country, I have no hesitation in coming to the conclusion that the respondent is liable for payment of compensation. With regard to the quantum of compensation, the lower court has fixed the sum at Rs, 7,000/- and it appears to be quite fair and reasonable.

4. In the result, the appeal is allowed No costs.

5. Appeal allowed.