

(1987) 08 MAD CK 0056
In the Madras High Court

K. Andavar and Another

APPELLANT

Vs

Pandiyan Roadways Corporation Ltd.

RESPONDENT

Date of Decision : 17-08-1987

Acts Referred:

Citation : (1988) 1 ACC 148

Hon'ble Judges : S. Swamikkannu, J

Bench : Single Bench

Judgement

S. Swamikkannu, J.—The appellants are the parents of the deceased who had died at the very spot of the accident. It is vehemently contended on behalf of the petitioners/appellants by Mr. R. Balasubramanian, learned Counsel that the Tribunal had not taken into consideration the various aspects that are exhibited in the evidence let in, but had given a compensation which is not quite adequate namely Rs. 15,400/-. According to the learned Counsel for the appellants, the ratio decidendi in the various decisions of this Court had not been followed by the Tribunal for arriving at the compensation.

2. Mr. P. Pandi, learned Counsel for the respondent Pandiyan Roadways Corporation Limited, Madurai submits that the Tribunal has taken into consideration all the aspects including the fact that had been elicited in the cross-examination of PW 1 that the family owns 18 acres of dry land and the yearly income after deducting all the expenditure is Rs. 200/- It is also pointed out by Mr. Pandian that the appellants have not taken care to elicit from the relevant witness that the deceased was a brilliant student. In this regard Mr. R. Balasubramanian, counsel for the appellants would point out that for the age of the deceased, namely 15 years, he was reading in 10th Std. and that this itself would show that the student had been reading with all his ability and was passing every class without detention.

3. The point for consideration in this appeal is whether the quantum of compensation awarded by the Tribunal is adequate and reasonable.

4. On the question whether the accident resulted in the death of Vivekanandan was due to rash and negligent driving of the Pandian Roadways Corporation bus by its driver, the Tribunal came to the conclusion that there is no contributory negligence on the part of the deceased Vivekanandan and as such as rash and negligent driving of the driver of the Pandian Transport Corporation Town bus was responsible for the accident. When we scrutinise the evidence of PW 1, the father of the deceased, the first petitioner/first appellant herein as well as that of the eye witness to the occurrence PW 3 Mohan, who was going along with the deceased Vivekanandan at time of the accident we find that their evidence is cogent, convincing and trustworthy so as to hold that the vehicle in question was driven in a rash and negligent manner.

5. Both PW 3 as well as the deceased had been to Pudupatti on 13-11-79 for Mariamman Festival and were returning to Surulipatti at about 8 a.m. on 14-11-79 in their respective cycles in Cumbum main road towards south. The evidence of PW 2 would go to show that near KSR Thottam in the place of occurrence, he was going in front of the deceased Vivekanandan in his cycle at a distance of about 10ft. to 15ft. Vivekanandan was coming behind PW 2 in his cycle on the left side of the road in the mud portion. Then the PRC Town bus came from south towards north at a high speed. Immediately PW 2 got down and when he saw the PRC Town bus hit the deceased Vivekanandan and he was thrown off. After hitting Vivekanandan the PRC bus proceeded for a distance of about 100ft. and stopped. The first information report regarding the accident and given by PW 3 to the police as could be seen from Ex. P. 7, which is the certified copy of the first information report. Ex. P. 7, discloses that the accident took place in the manner spoken to by PW 2 and PW 3. Ex. P. 4 is the certified copy of the charge sheet in the Criminal Case against the driver of the PRC bus which goes to show that PW 3 is cited as the prosecution witness in that case, PW 3 accompanying the deceased at the time of the accident in his cycle is also stated by the respondent in the statement of objections. The respondent before the Tribunal had examined the driver of the Town bus which was involved in the accident as RW 1. It is the evidence of RW 1 that he was proceeding in his Town bus near KSR Thottam at a moderate speed of about 25 to 30 kilometers. Then from the opposite direction two boys were coming separately in two cycle and they were overtaking one another in a playful manner. Then the deceased Vivekanandan came in a careless manner, lost his balance and dashed against the PRC bus on its right side. As against the evidence of RW 1, we have got the evidence of PW 3. PW 3 is a young boy, who studying along with Vivekanandan in the school. There is nothing to disbelieve the evidence of PW 3 regarding the accident. One Ramu Gounder is examined as PW 4. According to him, he was a passenger in the PRC bus at the time of the accident and would state that the bus was driven by the driver in a rash and negligent manner and dashed against the deceased, Vivekanandan. It is not for a witness to say whether the bus was driven in a rash and negligent manner, but he can say that the bus was driven in a high speed. Regarding the element of rash and negligent manner it is for the

Court to consider on the evidence available on record, this aspect and come to a definite conclusion. In this view, we find that the Tribunal is correct when it held that only due to rash and negligent driving of the vehicle in question that the accident had occurred.

6. Now coming to the point which is very vehemently argued on behalf of the claimant, namely the quantum of compensation, it is relevant to note that the deceased was studying in the 10th standard at the time of the accident. He was aged 15 years. For that age of 15 years, certainly the 10th standard is one should normally study. This itself shows clearly that the deceased is a regular student studying in a school getting his promotion without detention in a class.

7. Learned Counsel for the appellants that the evidence does not disclose that much income was derived from the lands owned by the family and as such the father and mother are not justified in asking for more and the Tribunal itself had given adequate and sufficient compensation after taking into consideration all these aspects.

8. This Court is of the view that the fact that the boy was studying in the 10th standard at that particular point of time, namely at the age of 15, has not been taken note of by the Tribunal with proper perspective. The parents of the deceased, as disclosed by the evidence, were engaged in cultivation. That does not mean that a family engaged in cultivation cannot have a son who may prove himself a genius in a particular subject or mode of life. We see in many cases, students who are dull and not intelligent in primary classes, become suddenly brilliant and pass the Government or University examinations with flying colours. It is also possible to be vice versa. Therefore this test, though not a sure test as to the future of a student or to ascertain the future of a student, yet the said test alone is available for the Court and as such viewed from that angle, this Court is of the opinion that the compensation awarded on the basis of this aspect is not adequate and requires enhancement. Ex. P. 1 is the certified copy of the postmortem. Ex. P. 6 is the certificate issued by the Headmaster, Government High School, Surulipatti and the said Headmaster has been examined as P.W. 2. From Ex. P. 6, it is seen that the date of birth of the deceased Vivekanandan is 7-6-1965 and on the date of his accident, he was aged 15 years. It is also established from Ex. P. 6 that the deceased Vivekanandan was a student in 10th standard in Suruli Government High School at the time of his death. The Tribunal has observed that there are no records to show that he was a brilliant student. A student's brilliancy cannot be measured by the marks he obtains. The deceased Vivekanandan may have exhibited his brilliance if he is alive. The fact that he has been promoted from one class to another itself shows that he was a regular student. This factor ought to have been taken into consideration for coming to the conclusion that the deceased was a regular student. In this view, I find that the evidence is sufficient to hold that the deceased was a student with regular habits of studying. Further there is nothing to show that he was detained in any class. If he had been allowed to study, he would have completed the school final

and thereafter he would have got himself admitted either in any professional colleges or Art Colleges to have a bright future. Unfortunately he died in a road accident.

9. Coming to the "pain and suffering", P.W. 1 would depose that they have sustained great mental shock and agony on the death of their son. But it is the pain and suffering of the deceased that has to be taken into consideration when the compensation is awarded, under that head. The head "pain and suffering" available in the form contemplated is only with reference to the "pain and suffering" of the deceased. In the instant case, we find that the deceased died at the spot instantaneously. The question, remains of-course to be considered is whether there would have been atleast some amount of pain and suffering before the life actually become extinct. Postmortem certificate clearly shows that the deceased would not have had any experience of pain and suffering because the injuries are so extensive and serious. So I find that no amount can be given under that head by way of compensation. Admittedly the claimants own about 18 acres of land The deceased is the eldest son of the claimants. Therefore they should have counted much on the bright future of the deceased Vivekanandan, but who died at premature age of 15 years due to the fateful accident. This Court had gone through the ratio decidendi of the following decisions:

Maharashtra State Road Transport Corpn. Vs. Shobhana Hemchand Sheth and Others, cited by the learned Counsel for the appellants. This Court had also once again taken note of the decision in 1986 ACJ 989 which was also referred to by Mr. Pandi, learned Counsel for the Pandian Roadways Corporation. After applying the principle laid down in all these decisions, this Court is of the view that under the head "loss of pecuniary benefit and advantages" the compensation awarded by the Tribunal has necessarily to be enhanced. By what amount is the question.

10. The claimants have claimed a sum of Rs. 50,000/- towards loss of pecuniary benefits. The deceased was 15 years at the time of his death. He was studying in 10th standard The Tribunal had only given a sum of Rs. 12,000/-. But this Court is of the view that this sum of Rs. 12,000/- should be enhanced to Rs. 20,000/- and is hereby enhanced to Rs. 20,000/-.

11. The claimants had been awarded a sum of Rs. 2,500/- towards mental agony, pain and suffering by the Tribunal. This portion of the award has to be deleted as one which does not arise.

12. A sum of Rs. 20,000/- towards loss of pecuniary benefits and advantages; a sum of Rs. 750/- for his funeral expenses; a sum of Rs. 50/- for damage to the clothing and a sum of Rs. 100/- towards damages to the cycle, totalling in all a sum of Rs. 20,900/- is awarded as compensation in this appeal, i.e. a sum of Rs. 5,500/- is awarded over and above the compensation of Rs. 15,400/- awarded by the Tribunal.

13. In the result, the appeal is allowed to the extent indicated above. Under the circumstances there is no order as to costs. The claimants are entitled to claim

interest at 6% per annum on this amount.