
(1996) 08 MAD CK 0068
In the Madras High Court

Kalyani and Another

APPELLANT

Vs

The District Collector and Another

RESPONDENT

Date of Decision : 28-08-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 92A

Citation : (1996) 2 MLJ 592

Hon'ble Judges : Govardhan, J

Bench : Division Bench

Judgement

Govardhan, J.—This appeal is against the order passed by the Motor Accidents Claims Tribunal, Pudukkottai in M.A.C.O.P. No. 72 of 1983.

2. The petitioners in their petition contend as follows: The petitioners are the parents of the deceased Manickam. On 28.9.1982 at about 5.45 P.M., at Sathiyamurthy Road, when the deceased was rolling tyre, the Fire Service van belonging to the second respondent and the trailer attached to it, was driven in a rash and negligent manner and hit at Manickam and ran over him. Deceased Manickam died on the spot. He was deaf and dumb by birth. He was aged 25 years. He was earning at the rate of Rs. 20 per day by rolling the tyres at the rate of Rs. 2 per tyre. He used to get not less than Rs. 500 per month. The petitioners are put to irrecoverable loss and hardship and they make a claim of Rs. 50,000.

3. The second respondent filed a counter stating as follows: The allegation that the accident was due to the rash and negligent driving of the Fire Service Van is not correct. It was proceeding to put out a fire reported in a School in Pallahupatti. It was making noise by ringing the bell and sounding horn. The deceased Manickam hit at the rear side of the van. The van was immediately stopped. But, he died. The deceased got himself involved in the vehicle and the petitioners' claim for compensation is very high.

4. The first respondent adopted the counter of the second respondent.

5. The Motor Accidents Claims Tribunal, held an enquiry and awarded a compensation of Rs. 15,000 under "No fault liability" and aggrieved over the same, the claimants-petitioners have come forward with this appeal.

6. The unsuccessful petitioners before the Motor Accidents Claims Tribunal are the appellants herein. The petitioners have filed the M.C.O.P. contending that their son Manickam who was a deaf and dumb person was hit by the Fire Service Van bearing registration No. T.M.C. 1138 with trailer which came from behind him and ran over him crushing him to death instantaneously. The Tribunal has held that the evidence of P.W.2 who was an eye witness, cannot be believed since he could not narrate the manner in which the accident had taken place and since he has not given a complaint to the police, and since he has stated that he had not mentioned about the accident to others. It is needless for me to state that witnesses are to be examined in a motor accidents case within a reasonable time. The examination of P.W.2 one and half years after the accident and the admission of P.W.2 that he did not inform the others about the accident and he did not give a complaint to the police cannot be the reasons for disbelieving the evidence of P.W.2. But, at the same time, we cannot ignore the fact that any Fire Service Van would be rushing to the place where fire had occurred by ringing the bell and raising sufficient noise so that people in the highway or road could move to the side of the road to enable the van to proceed fastly due to the exigency. It is to be noted that two Fire Service Vans went one behind the other. The deceased was crushed to death by the trailer attached to the second Van. Even assuming that he did not hear the ringing sound of the bell, it cannot be stated that he did not see the Fire Engine which was proceeding first. The conduct of any normal human being would be to get to the side of the road when such vehicles pass at a high speed due to the contingency. The possibility of the deceased seeing the first Fire Service Van, followed by the second one cannot be ruled out. Therefore, the conclusion arrived at by the Motor Accidents Claims Tribunal that the accident was not due to the rash and negligent driving of the Van in question can be accepted.

7. The non-production of the sketch of the scene of occurrence drawn either by the Motor Vehicles Inspector or by the Police Department are not very material since it is not in dispute that in the road, the accident had taken place when the deceased was rolling the tyre and the vehicle involved in the accident is the Fire Service Van.

8. The Tribunal has recommended payment of Rs. 15,000 on gratis considering the financial status of the petitioners, even though it has held that the petitioners are not entitled to any compensation under the principle of "No fault liability". But, I am of opinion that this is liable to be set aside. It may be that the accident had taken place on 28.9.1982 a few days prior to the coming into force of the amended Section 92-A of the Motor Vehicles Act. Though Section 92 is not given retrospective effect, being a beneficial legislation, it should be given retrospective effect as per the decision reported in New India Assurance

Company Ltd. v. Ramesh Kalita 1989 A.C.J. 607. A Division Bench of the Madhya Pradesh High Court, in the decision reported in Indramal Mukhriya Vs. G.M., Madhya Pradesh State Road Trans. Corpn. and Others, , has held that when the accident took place on 3.1.1977 and the claim application was dismissed before Section 92-A was brought on the statute book and the appeal was pending against the dismissal of the petition when Section 92-A was incorporated, Section 92-A is applicable since the appeal is continuation of the suit and the beneficial provision has to be extended not only in a pending case, but also in a pending appeal. In the present case, the application filed by the petitioners was pending and orders have been passed in the claim petition only on 9th March, 1984, by which time, Section 92-A had come into force. Therefore, the finding of the Motor Accidents Claims Tribunal that the petitioners are not entitled for any compensation under "No fault liability" but it is a case, in which the Government should take pity on the petitioners and pay a sum of Rs. 15,000 as compensation is liable to be set aside and the petitioners are entitled to a sum of Rs. 15,000 under "No fault liability" as of right conferred on them u/s 92-A of the Motor Vehicles Act. In that view, I hold that the appeal has to be ordered.

9. In the result, appeal is, allowed. The appellants are awarded a sum of Rs. 15,000 by way of compensation under "No fault liability" with interest at 12% from date of suit. No costs.