

(1987) 10 MAD CK 0020
In the Madras High Court
Case No : A.A.O. No. 326 of 1981

Kannammal

APPELLANT

Vs

A.S. Kasim and Others

RESPONDENT

Date of Decision : 23-10-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110A, 110F, 2(24), 95(1)
Penal Code, 1860 (IPC) — Section 304A

Citation : (1987) 10 MAD CK 0020

Hon'ble Judges : S. Swamikkannu, J

Bench : Single Bench

Advocate : S. Jagadeesan, for the Appellant; T. Somasundaram and A. Devanathan, for the Respondent

Final Decision : Dismissed

Judgement

S. Swamikkannu, J.—This is an appeal preferred by Kannammal Petitioner/claimant against the order of dismissal of her claim petition

MACA No. 170 of 1979 on 8.8.1980 by the Motor Accidents Claims Tribunal (Additional District Judge), Salem. The Appellant filed claim

application claiming a compensation of Rs. 15,000/- towards loss of earnings, mental agony, distress etc., for the death of her son, Ravi who was

aged about 12 at the time of his death.

2. The allegations in the claim application filed by the Appellant herein before the Tribunal are as follows:

On 25.2.1979 at about 12.30 p.m., the deceased Ravi, who was aged about 12, was killed in Venkateswara Super Service Station,

Kitchipalayam. A.S. Kasim, the first Respondent herein, drove the lorry belonging to one Hakeem at the service station, rashly and negligently and

crushed the boy to death. The deceased was the only earning member in the family. But for the accident, he would have lived upto 70 years. The

original prosecution against the driver of the vehicle was pending before the Judicial First Class Magistrate, Salem, at the time of the application

before the Tribunal. Due to the careless driving of the lorry in the service station, the boy was killed.

3. United India Insurance Company Ltd., second Respondent herein in its counter before the Tribunal contended that the allegations in the claim

application are not true and they should be proved. It is further contended that it should be proved that the deceased was the son of the claimant

and aged about 12 and was on a pay of Rs. 25/- . The accident was not due to negligent driving of the lorry. The boy ran across suddenly and in

spite of best effort, he got hit. The boy was aged only about 9 years. Criminal case was pending against the driver at the time of the application

before the Tribunal. The claim of Rs. 15,000/- is very heavy and if at all only a sum of Rs. 3,000/- could be awarded.

4. On the above pleadings, the Tribunal framed the following point for consideration:

Whether the Petitioner is entitled to compensation and if so, how much?

5. On the side of the claimant/Appellant herein PW1, Kannammal and PW2, Mohan, were examined before the Tribunal and Exh. A-1 certified

copy of judgment dated 15.11.1979 in C.C. No. 951 of 1979 on the file of the learned Judicial First Class Magistrate No. 1, Salem and Exh. A-2

certified copy of postmortem certificate filed in C.C. No. 951 of 1979 on the file of Judicial 1st Class Magistrate, No. 1, Salem, were filed on the

side of the claimant. No witness was examined and no document was filed on behalf of the Respondents herein before the Tribunal. On the

consideration of the above evidence, both oral and documentary, the Tribunal came to the conclusion that the accident did not happen in a public

place when it happened within the precincts of a petrol bunker and that since the accident did not occur in a public place, the petition has to fail

and accordingly, the Tribunal dismissed the claim application filed by the Appellant herein. Aggrieved against the order of dismissal of her

application by the Tribunal the Appellant herein has come forward with this appeal.

6. Mr. S. Jagadeesan, Learned Counsel for the Appellant, contended that the place of occurrence, viz., petrol bunker is not a private place since

public owning motor vehicles are allowed to take vehicles inside the petrol bunker for filling the tank of the vehicle by purchasing fuel for their

vehicle. There is no prohibition for any vehicle owner for purchasing fuel from the premises and as such, it is a public place. On the other hand, Mr.

A. Devanathan, Learned Counsel for the second Respondent, insurance company, inter alia, contended that the place of occurrence in the instant

case before us, is a private place and as such the Tribunal is correct in having held that the accident took place as alleged by PW 2 and that the

accident did not occur in a public place and therefore, the petition has to fail and was dismissed. As already pointed out, the contention raised on

behalf of the Appellant herein by her Learned Counsel is that the Tribunal has erred in rejecting the evidence of PW 2 who was also working in the

same service station when the accident took place and that the Tribunal also failed to consider that the accident took place due to rash and

negligent driving of the driver. It is also contended on behalf of the Appellant by the Learned Counsel that the Tribunal failed to consider that the

lorry of the first Respondent entered into the petrol bunker as of right to transact business, viz., to fill up diesel and for service and as such,

assuming for the sake of argument, the petrol bunker is not a public place, still the insurance company is liable as the petrol bunker is deemed to be

a public place. It is further contended by the Learned Counsel for the Appellant that the Tribunal failed to consider that the deceased was

employed in the petrol bunker and due to rash and negligent act of the driver who took the vehicle in reverse without taking proper care hit the

deceased. According to the Learned Counsel for the Appellant, the Tribunal has disregarded the fact that the victim who was in the actual service

in the station was killed while servicing the vehicle.

7. The points that arise for determination in this appeal are:

(1) Whether there was rash and negligent driving of the vehicle by the driver of the first Respondent herein; and

(2) If so, what is the compensation that can be awarded?

Point Nos. 1 and 2:

8. Even at the outset the incidental and ancillary point that requires deep

consideration in the instant case before us is whether the place of occurrence is a "private place" or a "public place". Mr. T. Somasundaram, Learned Counsel for the first Respondent herein, has contended that the owner of the lorry has insured the vehicle with the second Respondent herein and as such it is the second Respondent insurance company which has to pay compensation if it is held that the owner of the vehicle is liable to pay compensation arrived at and awarded by the Tribunal. On the other hand, the Learned Counsel for the second Respondent insurance company has contended that the petrol bunker is a "private place" and as such the insurance company is not liable.

9. The deceased Ravi was the son of Kannammal, Appellant herein, who gave evidence as PW 1 before the Tribunal. She was not an eye-witness to the accident. PW 1 has stated that her son was aged about 12 years at the time of the accident. She added that her son was healthy and he would live longer to serve the family and confer economic benefit. She has further stated that he was learning work as a mechanic and he was working for two years and was almost gaining experience. PW 2 Mohan who is working in Venkateswara Super Service Station has also stated that the deceased Ravi was working as well as learning and was earning Rs. 30/- per month as an apprentice. He has further added that he himself and the deceased took a diesel tank to the service station and at that time a lorry, which was nearby, was pushed in the reverse for the purpose of starting, in the course of which the boy was crushed to death. The evidence of PW 2 shows that the driver was actually at the wheel while the lorry could not be started and for the purpose of getting it started, it was pushed from the ramp and it was then that the deceased boy got entangled.

10. It is common ground that the occurrence took place inside the premises of the service station and not in a public highway. So, it is contended by Mr. A. Devanathan, Learned Counsel for the second Respondent insurance company, that the accident did not take place in a public highway and therefore compensation cannot be claimed by preferring an action under the provisions of the Motor Vehicles Act, 1939 and for that purpose, he relied on the decision in K. Somasundaram and Bros. v. Vijayam Minor by Guardian 1978 TNLJ 56 , wherein it has been held that a petrol bunker is not a public place and therefore the insurance company is not liable to

pay compensation. The accident in the decision cited happened in the precincts of a petrol bunker and it is contended that it is not a public place as per the definition given in Section 2 Sub-section 24 of the Motor Vehicles Act. "Public place" means a road, street, way or other place, whether a thoroughfare or not to which the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage carriage. By examining the facts of the instant case before us, one has to come to a conclusion that the accident did not take place on a road, street, way or other place where the public have a right of access. Some persons who pay for the service charges have a right of access to a service station or a petrol bunker. But this is not the test for asserting that the said service station or petrol bunker is a public place. It is only a private premises and therefore, if any accident takes place within the precincts of a petrol bunker, it may not attract the provisions of Section 2(24) of the Motor Vehicles Act and a claim for compensation cannot be made under the provisions of the said Act by setting in motion the law by filing a petition u/s 110-A of the Motor Vehicles Act.

11. It was observed in the decision in *K. Somasundaram and Bros. v. Vijayam, Minor* by Guardian 1978 TNLJ 56 , as follows:

It might be a matter of common knowledge that the pedestrians who have no need for petrol or oil, often take short cuts through the precincts of petrol bunker. But these factual considerations or tendencies will not render a petrol bunker a public place within the meaning of the statutory definition.

The question whether the "public" meaning thereby all members of the public without exception, could have a right of free access to the place. The owner of a petrol bunker and anyone acting for him has every right to prevent any individual or any section of the people, who have no business to transact with him from entering the premises. When this test was applied in the said decision cited, it was held that the accident did not happen in a public place when it happened within the precincts of the petrol bunker and therefore, the insurance company was not liable to pay compensation to the injured person.

12. In the decision in *Life Insurance Corporation of India v. Karthyani* 1975 ACJ 226 (Orissa), it was held that when the accident took place

within the premises of Hindustan Steel Factory, the insurance company is not liable, since the accident was not in a public place or in a place where

the public have any right of access. The accident occurred in a private place and therefore, an action will not lie.

13. Mr. S. Jagadeesan, Learned Counsel for the Appellant herein, would vehemently submit that the place of occurrence in question is a public

place. In support of his contention, he refers to the decision in Lanka Sarmma Vs. Rajendra Singh and Others, , for the following proposition:

Where the coolies were hired for loading and unloading stones to be delivered at dam site and accident occurred near the dam site, the place of

accident would have to be considered as one falling within the definition of "public place" though it belonged to the Public Works Department as

the workmen constituted public and as such, the place was a "public place".

The words "other place which is not a thoroughfare" cannot be interpreted according to ejusdem generis rule, because they are negative in nature.

A place over which a vehicle can pass and which is yet not a thoroughfare can only refer to a private place made fit for plying of the motor vehicle.

14. The Learned Counsel for the Appellant has also referred to the decision in Sri Venkataramana Devaru and Others Vs. The State of Mysore

and Others, , wherein it was observed as follows:

... Where in a suit under Madras Act 13 of 1949, the Plaintiffs had throughout maintained that the temple was not a public temple but belonged

only to a certain community and not that it was a private temple and it was admitted that the temple came within the purview of the Act as

amended, but it was contended that as the temple was a denominational one, the Plaintiffs were entitled to the protection of Article 26(b) they

cannot raise a new point for the first time in appeal before the Supreme Court that the temple was a private one and not within the purview of the

Act.

15. Mr. A. Devanathan, Learned Counsel for the second Respondent insurance company, referred to the decision in Bimla Devi Jalan v. Raja

Ram Shaw 1978 ACJ 143 (Calcutta), for the following proposition:

In case of accidents causing death or bodily injury the liability might arise under the law of Torts or under the provisions of the Fatal Accidents Act.

How that liability has to be adjudicated in respect of accident arising out of the

use of the motor vehicle has been provided by Section 110. Section 110 does not limit that jurisdiction only to accidents occurring in public places. The jurisdiction of the Claims Tribunals is for the purpose of adjudicating upon claims for compensation in respect of accidents (not limited to particular places) involving the death of, or bodily injury to, persons arising out of use of motor vehicles. The scope of this section has to be understood in conjunction with Section 110-F of the Act.

Therefore, from the fact that the liabilities of insurer are limited to accidents occurring in public places, it cannot be inferred that the jurisdiction of the Claims Tribunals is also restricted to accidents taking place in public places.

16. The decision in *K. Hanumantha Rao v. National Aeronautical Laboratory* 1973 ACJ 78 (Mysore), is relied on by the Learned Counsel for the second Respondent insurance company for the proposition that the Tribunal has jurisdiction in regard to claims arising out of accidents occurring not only in public places but also in private places.

17. The Learned Counsel for the second Respondent has also relied on the decision in *Oriental Fire and General Insurance Co. Ltd. Vs. Rabari*

Gandu Punja, wherein it was held that with respect to third party risk regarding the accident inside the compound of a factory, the insurance company is not liable because the accident took place in a private place.

18. The decision in *Mangalam v. Express Newspapers Ltd.* 1982 ACJ 203 (Madras), is relied on by the Learned Counsel for the second Respondent for the following proposition:

Under Section 95(1)(b) of the Motor Vehicles Act, the insurer's liability will arise only if the accident had occurred in a public place. "Public

place" is defined in Section 2(24) of the Act as a road, street, way or other place, whether a thoroughfare or not, to which the public have a right

of access and includes any place or stand at which passengers are picked up or set down by a stage carriage. The question is whether the accident

in the instant case occurred in a private place or in a public place. If the accident had occurred in a private place it is common ground that the

insurer is not liable.

The entire Express Estate premises cannot be construed to be a public place merely because a newspaper is printed and published from that place.

Merely because a newspaper is a public media the place where the newspaper is printed and published cannot be taken to be a public place. If

that were to be so, every place where books are printed and published will become a public place. The test for finding out whether a place is

public or private is to see whether any member of the public would have access as of right to that place. In this case the evidence is clear that the

Indian Express Estate is surrounded by a compound and there is a gate, through which the entry is regulated by permission.

19. The Learned Counsel for the second Respondent insurance company relied on the decision in *Rajammal v. Associated Transport Company*

1970 ACJ 44 (Madras), for the proposition that the criteria is whether the public have a right of access to that place and not merely that the public

have access and it was held therein that on the evidence, it is clear that the public have no right as such to enter the premises and hence the

insurance company is not liable.

20. It is relevant in this connection to note that in the instant case before us, no eyewitness was examined. In fact, PW 2 was examined for the

purpose of establishing that he saw as to how the accident took place and how the boy was crushed to death. Exh. A-1 is the certified copy of the

judgment on the file of the learned Additional First Class Magistrate No. 1, Salem, before whom the driver was charged for an offence u/s 304-A,

Indian Penal Code. PW 2 who claimed to be an eye-witness before the Tribunal was a witness in that case. It is found in that judgment that after

learning about the accident in which the boy was killed, Mohan who is PW2 in the instant case before us and who gave evidence as PW 1 in the

criminal court, went to the spot and saw the dead body. He did not say in that case that he saw the accident. He merely preferred a complaint to

the police after visiting the scene of accident. Now, Mohan has assumed the role of an eyewitness which cannot be true. Therefore, on the

evidence and also on the question of law, we find that it is difficult to come to a conclusion that the accident actually took place as alleged by PW

2. At any rate, it has not been proved that the accident occurred in a public place. Therefore, the Tribunal is correct in having held that the petition

has to fail and in dismissing the claim petition.

21. There is no merit in the appeal. Hence the appeal is dismissed. Under the

circumstances of the case, there is no order as to costs.