

(1987) 10 MAD CK 0001

In the Madras High Court

Case No : Appeal against O. No. 326 of 1931

Kannammal

APPELLANT

Vs

A.S. Kasim and others

RESPONDENT

Date of Decision : 23-10-1987

Acts Referred:

Constitution of India, 1950 — Article 26(b)
Penal Code, 1860 (IPC) — Section 304A

Citation : (1987) 10 MAD CK 0001

Hon'ble Judges : Swaraikkannu, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

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

M.A.C.A. 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. 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 live 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.

2. United India Insurance Company 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.

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

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

4. On the side of the claimant appellant herein P.W. 1, Kannammal and P.W.2 Mohan were examined before the Tribunal and Ex.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 Ex.A-2

certified copy of post mortem certificate filed in C.C. No. 951 of 1979 on the file of Judicial First Class Magistrate, No. 1, Salem, were tiled 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 bunk, 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.

5. Mr. S. Jagadeesan, learned counsel for the appellant contended that the place of occurrence viz.. petrol bunk is not a private place since public

owning motor vehicles are allowed to take vehicles inside the petrol bunk 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 P.W. 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 P.W. 2 who is 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 bunk 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 bunk is not a public place, still the Insurance Company is liable as the petrol bunk 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 bunk, 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.

6. 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?

7. Points Nos. 1 and 2: 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 bunk is a

"private place" and as such the insurance company is not liable.

8. The deceased Ravi was the son of Kannammal, appellant herein, who gave evidence as P.W. 1 before the Tribunal. She was not an eye-

witness to the accident. P.W. 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. P.W. 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

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 a course of which, the boy was crushed to death. The evidence of P.W. 2 shows that the driver was actually on 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 the deceased boy got

entangled.

9. 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 Ms. K. Somasundaram and Bros. v. Vijayam Minor by Guardian and another 1978 T.N.L.J. 56, wherein it has been

held that a petrol bunk is not a public place and therefore the Insurance Company is not liable to pay compensation. The accident in the decision

cited case happened in the precincts of a petrol bunk and it is contended that it is not a public place as per the definition given in S. 2 Sub-S. 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 bunk. But this is not the test for asserting that the said Service Station or petrol bunk is a public place. It is only a private premises, and therefore, if any accident takes place within the precincts of a petrol bunk, it may not attract the provisions of S. 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 under S. 110-A of the Motor Vehicles Act.

10. It was observed in the decision in *M/s. K. Somasundaram and Bros. v. Vijayam, Minor by Guardian and another*, 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 bunks. But these factual considerations or tendencies will not render a petrol bunk 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 bunk 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 case, it was held that the accident did not happen in a public place when it happened within the precincts of the petrol bunk, and therefore, the Insurance Company was not liable to pay compensation to the injured person,

11. In the decision in *Life Insurance Corporation of India Vs. Karthyani and Others*, ., 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.

12. 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 she, 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".

13. 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 Art. 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.

14. Mr. A. Devanathan, learned counsel for the second respondent-Insurance Company, referred to the decision in *Smt. Bimla Debi Jalan and*

Another Vs. Raja Ram Shaw and Others, 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 S. 110. S.

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 S. 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.

15. The decision in K.H. Rao v. N.A. Laboratory AIR 1974 Mys 16., 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.

16. 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.

17. The decision in Mangalamma and Others Vs. Express Newspapers Ltd. and Another, is relied on by the learned counsel for the second

respondent for the following proposition:

Under S. 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 S. 2(24) of the Act as a road, street, way or other place, whether a thoroughfare or not, to within 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 medium 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.

18. The learned counsel for the second respondent-Insurance Company relied on the decision in *Rajammal Vs. Associated Transport Company*

and *Another*, 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.

19. It is relevant in this connection to note that in the instant case before us, no eye-witness was examined. In fact, P.W. 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. Ex.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 under S.

304-A I.P.C., P.W. 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 P.W.2 in the instant case before us and who gave evidence as P.W.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 P.W.

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. 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.