

(1987) 08 MAD CK 0009
In the Madras High Court

Lakshmi Ammal and Others

APPELLANT

Vs

Pallavan Transport Corporation Ltd.

RESPONDENT

Date of Decision : 19-08-1987

Acts Referred:

Citation : (1988) 1 ACC 545

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Judgement

Swamikkannu, J.—The appellants herein submit that the finding given by the Tribunal that there had been no evidence worth-mentioning let

in so as to uphold the claim that there had been rash and negligent driving of the P.T.C. bus in question by its driver during the time of the

occurrence is contrary to the evidence available on record, both oral and documentary let in by the appellants herein. It is further submitted on

behalf of the appellants by their counsel that PW 3 Krishnamurthi, a witness claimed to be an eye witness for the occurrence by the appellants

herein specifically stated that he heard" thud" sound of the vehicle in question dashing against an object and also immediately seeing the dead body

of the deceased underneath the bus in question. In other words, the evidence of PW 3 is that apart from hearing the sound of the collision, he had

also seen the body of the deceased being extricated from underneath the bus which was lying in between the pair of front wheels and rear wheels

of the bus in question. It is relevant in this connection to note that none had been examined on behalf of the respondent herein nor any document

filed as an exhibit so as to explain as to how the dead body came underneath the moving bus. There is absolutely nothing in the counter filed on

behalf of the respondent to show the cause of the coming into existence of the dead body underneath the vehicle. The averments in the counter of

the respondent are to the following effect

The deceased was under the influence of alcohol and sustained injuries due to some other reason and the driving of the bus was not responsible for

the injuries. On wrong information the bus has been implicated. The bus TMN 2030 was not involved in any accident on that date. There were

some eye-witnesses who have given statements that the deceased was not involved in the accident and was lying in the road only due to

intoxicating condition. The claim is excessive.

Apart from filing the counter, nothing else had been done on behalf of the respondent, The appellants have examined PW 1 Inspector of Police,

PW 2 son of the deceased and PW 3 an eye-witness for the occurrence, and Ex. PI to Ex. P 6-series were also marked on the side of the

appellants herein before the Tribunal. The Tribunal came to the conclusion that the appellants have miserably failed to prove that the accident was

caused due to rash and negligent driving of the bus. Under point No. 2, the Tribunal also found that the total compensation payable by the

respondent, if it is found that the driver of the vehicle drove the same rashly and negligently, was calculated at Rs. 34,420/- and a direction was

also given to the effect that the appellants would share the amount equally.

2. It is vehemently contended that none of the appellants has gone into the witness-box. It is relevant in this connection to note that PW 3 has been

examined. Apart from PW 3 who is claimed to be the eye-witness for the occurrence, the investigating officer viz., Inspector of Police has been

examined as PW 1 The evidence of PW 3 is rejected by the Tribunal on the ground that his evidence does not show that he had witnessed the

occurrence. I am unable to uphold this finding of the Tribunal. He has specifically stated that he did bear the sound of the impact and also the

subsequent lying of the deceased underneath the vehicle in question. This is sufficient to prove that the vehicle in question viz , bus TMN 2030

while proceeding opposite to Youth Hostel in Indira Nagar, knocked down the deceased on 26-101-977 while he was returning to his house in his

cycle in the opposite direction on Indira Nagar Road. It is the specific case of the appellants that due to rash and negligent act of the driver of the

bus the deceased was knocked down by the bus who was riding the cycle. The deceased was taken to the Hospital and died after a month in the General Hospital. We are not concerned whether the deceased was under the influence of alcohol and was in an intoxicated state. The fact remains that the bus did hit the deceased and the injuries found in the post mortem certificate were sustained by him. The respondent has not taken care to examine either the driver or the conductor of the bus so as to at least give a prima facie finding that this bus was not involved in the accident in question. On the other hand, we find the specific evidence of PW 3 pointing at the bus which resulted in the death of the deceased, and the injuries sustained by the deceased were clearly borne out by the contents of Ex. P. 5 PW 1 has investigated about the occurrence and the documents Ex P. 1 to Ex. P. 4 have been proved through him. As such the contents of the same can be safely relied on as evidence. It is observed by the Tribunal that from Ex. P. 1 nothing can be made out. Ex. P. 1 is a true copy of the rough sketch. It is rather strange that the Tribunal has observed that nothing can be made out from Ex. P. 1 when it is the rough sketch prepared by PW 1 which discloses the juxtaposition of the bus as well as the victim at the time of the occurrence, and when once PW 1 has proved the contents of Ex. P. 1 the contents of the same can, be safely relied upon together with the evidence disclosed by PW 3. An eye-witness need not actually see the hitting of the vehicle with the victim. Merely on the ground that the deceased died due to the injuries sustained about a month subsequent to the accident does not reduce down or cool down the rigor of the accident in the instant case so as to view the same in the light of the case put forward by the appellants and the case put forward by the other side through its counter. As already stated, the counter contents at the pleading itself and it does not proceed further. Under the circumstances, the case put forward by the appellants through their witnesses as well as contents of the records clearly establish beyond all reasonable doubt that it was the bus belonging to the respondent herein which had hit the deceased as a result of which the deceased died Under the circumstances, this Court holds that the appellants have established their case that it was the bus belonging to the respondent that hit the deceased since the driver of the same drove it in a rash and negligent manner at the time of the occurrence. Under the circumstances, the finding of

the Tribunal that the appellants have miserably failed to prove that the accident was caused due to rash and negligent driving of the bus is hereby set aside.

3. So far as the quantum of compensation arrived at by the Tribunal is concerned, this Court finds that the Tribunal has given cogent and convincing reasons for arriving at the quantum of compensation under various heads in proper perspective and in the light of the evidence that had been adduced by the appellants. Under the circumstances, the quantum of compensation viz., Rs. 34,420/- arrived at by the Tribunal is hereby confirmed. The direction given by the Tribunal that the appellants shall share the said amount equally is also hereby confirmed. It is needless to say that the said amount of compensation has to be necessarily paid by respondent herein.

4. In the result, therefore, the award of the Tribunal is set aside, the appeal is allowed with costs and an award for Rs. 34,420/- together with interest at 6% per annum from the date of the claim petition is passed in favour of the appellants herein. The appellants are directed to share the award amount in equal proportion. The respondent herein is directed to deposit the amount within two months from today.