
(1973) 08 MAD CK 0013
In the Madras High Court
Case No : A.A.O. No. 227 of 1971

Lakshmiammal and Others	Vs	APPELLANT
State of Tamil Nadu		RESPONDENT

Date of Decision : 20-08-1973

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : AIR 1975 Mad 157 : (1978) 87 LW 249 : (1974) 87 LW 249

Hon'ble Judges : N.S. Ramaswami, J; Kailasam, J

Bench : Division Bench

Advocate : A.V. Raghavan, for the Appellant; Addl. Govt. Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

N.S. Ramaswami, J.—The claimants in O. P. 601 of 1969, on the file of the Motor Accidents Claims Tribunal, Madras, are the appellants

before us. One Kapali Nattar was injured in a motor accident that occurred on 22-7-1969 in Triplicane High Road, as a result of which he died

within a few hours thereafter. The motor vehicle involved in the accident is the State Transport Bus bearing registration No. MSV 266. The three

claimants are respectively the widow, the minor son and the mother of Kapali Nattar, the deceased. They claimed a total compensation of Rs.

75,000 payable to them in respect of the death of Kapali Nattar. According to them, the motor accident which resulted in the death of Kapali

Nattar was due to rash and negligent driving of the abovesaid motor vehicle. The respondent to the claim petition is the State of Tamil Nadu,

represented by the Director of Tamil Nadu State Transport Department as the owner of the vehicle.

2. The tribunal below determined the total compensation payable to the claimants as Rs. 53,295, but dismissed the petition accepting the plea of

the respondent that the accident was an inevitable one and that there was neither rashness nor negligence bringing about the accident.

3. The admitted facts are these : The deceased (Kapali Nattar) was proceeding on a cycle from north towards south on the extreme east of

Triplicane High Road. The bus (MSV 266) admittedly driven by an employee of the respondent was also proceeding in the same direction in the

said road. Due to sudden failure of brake, the bus went out of control, ran over the pavement on the eastern side of the road, hit against one

Balakrishnan (who has given evidence as P.W. 5), then hit the cycle which the deceased was riding on its rear, as a result of which the deceased

was thrown down and the bus ran over him. The bus travelled further to a distance of 390 feet after which it was brought to a stop by persons on

the road throwing stone boulders and other obstacles in front of the vehicle. The deceased had sustained extensive fractures of bones in the pelvic

region due to the bus actually running over him, apart from severe injuries to the head. The man died in the hospital within 3 hours of the accident.

4. The case of the respondent which has been accepted by the Tribunal below is that as the accident was a result of sudden failure of brake, it was

an inevitable one and not due to any rashness or negligence on the part of the driver of the vehicle.

5. The question for consideration is whether the above finding of the Tribunal below is correct.

6. In a case of claim for damages on the ground that the respondent, either directly or vicariously, is guilty of a tortious act, the burden of proof that

the respondent or his servant committed the tort is upon the claimant. In the case of a motor accident it has to be shown by the claimant that the

accident was due to either rashness or negligence. Such rashness or negligence need not necessarily be by the person who actually drives the

vehicle at the time of the accident. In cases of alleged negligence, if the doctrine of *res ipsa loquitur* applies, there would be a presumption of

negligence which presumption has to be rebutted by the respondent.

7. In the present case, undoubtedly the maxim *res ipsa loquitur* applies. It is the admitted case that the bus hit against the cycle on its rear when the

deceased was riding it on the extreme eastern side of the road. The cyclist was going on his proper side as he was using the road close to the eastern pedestrian pavement. He was keeping to his extreme left. The bus ran off its track, jumped over the pedestrian pavement and after hitting a person who was standing on the pedestrian pavement hit the cycle from behind. These facts prima facie indicate that the accident was due to negligence. It is not disputed that under the circumstances of the present case the maxim *res ipsa loquitur* applies. The controversy is as to whether the respondent has discharged his burden in showing that the accident was not due to negligence. The driver of the bus has not been examined as a witness and the explanation is that after the accident he left the services of the respondent and his whereabouts are not known. R. W. 1, the only witness examined by the respondent, is the Motor Vehicles Inspector who inspected the vehicle after the accident. His evidence is that the foot brake of the vehicle had failed due to oil leakage at the front left wheel cylinder. He added that the driver of the vehicle could not have anticipated the sudden failure of the brake. Is this evidence sufficient to negative the presumption arising under the abovesaid doctrine? We are clearly of the view that it is not sufficient and that the respondent has not discharged his burden of showing that the accident was not due to negligence. It is no doubt true that there was a sudden failure of foot brake due to oil leakage of the front left wheel cylinder, but this fact namely the sudden failure of the brake by itself is not sufficient to hold that the accident was not due to negligence. The fact that the driver of the bus could not have anticipated such failure of the brake also does not alter the position. All that has been established in this case is that there had been a latent defect which the driver of the bus could not know and the accident was as a result of such latent defect resulting in the failure of the brake. But in all cases of such latent defects, the respondent can get over liability only if it is further shown that latent defect was not discoverable in spite of reasonable care.

8, In Bingham's Motor Claims Cases -- 6th Edn. at page 183, it is pointed out that there would be no negligence if the accident is due to latent defect which is not discoverable by reasonable care. In Halsbury's Laws of England, Hailsham 2nd Edn., Vol. 23, at pages 671 and 672, the position relating to the maxim *res ipsa loquitur* is summed up thus:--

An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff, occurs wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendant's negligence, or whether the event charged as negligence "tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim *res ipsa loquitur* applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which, if he is to succeed in his defence must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part. Where, therefore, there is a duty on the defendant to exercise care, and circumstances in which the injury complained of happened are such that with the exercise of the requisite care, no risk would in the ordinary course of events ensue, the burden is, in the first instance, on the defendant to disprove his liability. In such a case, if the injurious agency itself and the surrounding circumstances are all entirely within the defendant's control, the inference is that the defendant is liable and this inference is strengthened if the injurious agency is inanimate.

9. In the present case, there is absolutely no evidence as to whether, the respondent took any care, much less, reasonable care, to avoid the failure of the brake, and in spite of such care, the failure happened. As already noted, apart from the evidence of the Motor Vehicles Inspector, no other evidence was let in by the respondent. There is not even evidence that periodical checking of the brake system had been done in order to see whether the brake was in proper condition.

10. *R v. Spurge*, 1961 2 All ELR 688, is a case of motor accident due to defective brake. The accident occurred due to mechanical defect in the brake. In a criminal prosecution against the person who drove the car at the time of the accident it was held by the House of Lords that the fact that the brake of the car was defective is not a valid defence as the accused had known about the defect This reasoning may not squarely apply to the present case because it is not in evidence that the defective nature of the brake was known either to the respondent or to the driver of the vehicle. But if such defect could have been found out by reasonable care, the

sudden failure of the brake cannot be a valid defence. *Henderson v.*

Henry E. Jenkins and Sons, 1969 3 All ELR 756 is a case where the brake of the motor lorry in question failed all of a sudden due to sudden

development of a hole in the brake pipe carrying the brake fluid. Such a sudden development of the hole was in that part of the pipe which would

not be visible even on inspection. It was also in evidence in that case that there had been periodical visual inspection of the brake system. The

House of Lords, in their majority judgment, were of the view that the defendants had failed to prove that they took all proper steps to avoid the

danger and that therefore they were liable to damages on the ground of negligence. At page 764 Lord Donovan observed-

The plea of "latent defect" made by the respondent had to be made good by them. It was for them to show that they had taken all reasonable

care and that despite this, the defect remained hidden.

They proved that the pipe in question was visually inspected in site once a week: that the brake pedal was on these occasions depressed to check

for leaks from the pipe and none seen: that nothing more than such visual inspection of the pipe was required by Ministry of Transport rules or the

maker's advice.....

It is obvious that visual inspection of the pipe in situ, however frequent could not disclose corrosion on the hidden part of it. The question,

therefore, suggests itself at once : did not reasonable care require the removal of the pipe at suitable intervals so that the whole of it could be

inspected? It is equally obvious that the answer to this question must depend partly on the age of the vehicle, partly on the mileage it had done, and

partly on the load it had been carrying. All these things affected the measure of reasonable care which the respondents had to exercise.

11. *Barkway v. South Wales Transport*. 1950-1 All ELR 392 is a case of motor accident due to sudden tyre burst. In that case also, there was

evidence about periodical inspection of the tyres of the vehicle, in spite of that, the House of Lords held that the defendants were liable to pay

damages on the ground of negligence. It was pointed out that despite the statements of the defendants' witnesses that their system of tyre

inspection was satisfactory and accorded with the practice of other omnibus companies, the evidence showed that the respondents had not taken

all the steps they should have taken to protect passengers because they had not instructed their drivers to report heavy loss to tyres likely to cause impact fractures. It was in evidence in that case that the tyre burst resulting in the accident could have been due to one or more heavy blows on the outside of the tyre leading to the disintegration of the inner parts. It was also in evidence that such a fracture of the inner parts of the tyre might occur without leaving any visible external mark. Therefore a visual inspection of the tyre would not reveal the latent defect to the tyre which could have been caused due to one or more heavy blows earlier. But the House of Lords pointed out that in such cases it is not enough for the defendant to prove that there had been periodical inspection of the tyre, that in spite of such inspection, the defect could not be found out and that the defendants should be held to be negligent in not having instructed their drivers to report heavy blows to tyres likely to cause impact fractures.

12. In the light of the above decisions, even if the respondent in the present case has adduced evidence that periodical inspection of the brake system had been done and that in spite of such inspection the defect could not have been found out, the presumption of negligence which arose on the doctrine of *res ipsa loquitur* could not be discharged. As pointed out by the House of Lords in 1969 3 All ELR 756, it should be further shown by the respondent that considering the age of the vehicle and other circumstances, whether reasonable care did not require that removal of the pipe carrying brake fluid at suitable intervals so that even the hidden parts of the pipe could be inspected. In the present case there is no evidence that even ordinary visual inspection was ever done. We hold that the claimants (appellants) are entitled to compensation.

13. However, the finding of the Tribunal regarding the quantum of compensation cannot be accepted to be correct. The deceased was aged about 31 years at the time of his death and the Tribunal found on the evidence placed before it that his average monthly income was Rs. 250 and the average loss of benefit to the defendants (claimants) was Rs. 150 per month. There is no controversy regarding the said finding. But the mistake committed by the Tribunal below is in capitalising the above loss of benefit at the rate of Rs. 150 per month by 34 years purchase on the ground that but for the accident, the deceased would have lived for another 34 years and supported his dependents. It is true that the man might live upto

65 or 70 years, but in computing a lump sum compensation various factors have to be taken into consideration. First of all there is the uncertainty of life. Though the man might have lived for the full span of life but for the accident, there is the possibility of the man dying much earlier due to various other causes. The total compensation arrived at by the Tribunal below is wholly disproportionate. If the sum of Rs. 53,000 odd fixed as total compensation is invested on long term deposit in any nationalised banks, the annual income by way of interest at the rate of 7 1/2 per cent. per annum would be about Rs. 3,975. This itself is much more than the loss of benefit arrived at by the Tribunal. As already seen, the Tribunal found that the loss of benefit to the dependents was at the rate of Rs. 150 per month which means Rs. 1,800 per year. The Tribunal below has not realised that if the total compensation is fixed at Rs. 53,000 odd, the interest income alone would be far in excess of the benefit that is lost and still the entire capital would be intact for ever. That is why in making lump sum payment as compensation, courts fix the quantum at 10 to 15 years annual purchase. There may be cases in which the compensation has to be fixed much lower than 10 years annual purchase, taking into account the age of the deceased, the age of the dependants and various other circumstances. In the present case, considering the fact that the deceased was aged 31 years and the other circumstances, we think that about 12 years annual purchase would be just and adequate compensation. Accordingly we fix the total compensation at Rs. 22,000.

14. The Tribunal below has fixed a sum of Rs. 1,500 as compensation payable under the head of pain and suffering of the deceased and loss of expectation of life. The man lived a few hours after the accident and that during that short period he might have suffered from pain had he been conscious. Damages for pain and suffering as well as damages for loss of expectation of life (loss of expectation of a predominantly happy life) if awarded would be part of loss to the estate of the deceased. Such loss could be recovered by the legal representatives of the deceased by virtue of the Legal Representatives Suits Act (Act XII of 1955). If there is a claim for compensation u/s 1-A of the Fatal Accidents Act (Act XII of 1855), a claim relating to the loss to the estate can also be inserted in that claim by virtue of Section 2 of the Fatal Accidents Act. Regarding motor

accidents, the Claims Tribunal constituted under the Motor Vehicles Act takes the place of the civil court and in a claim petition u/s 110-A of the

Motor Vehicles Act, compensation for loss of benefit as well as that for loss to the estate can be claimed, provided the claimants are entitled to the

same under substantive law. In the present case, there is no dispute that the claimants being the widow, minor son and mother respectively of the

deceased are his dependents and, therefore, they are entitled to compensation for loss of benefit as contemplated u/s 1-A of the Fatal Accidents

Act. They can also claim loss to the estate of the deceased as his legal representatives but in cases where the compensation for loss to the estate is

claimed by the same persons who claim compensation for loss of benefit, any amount awarded under the head of loss to the estate has naturally to

be taken into consideration in fixing the compensation for loss of benefit. That is so because any amount awarded as compensation towards loss to

the estate would be a pecuniary advantage derived by such claimants, due to the death of the deceased. Such advantage has to be considered in

fixing the quantum of compensation for loss of benefit, if the persons who claim compensation for loss to the estate are different from those who

claim compensation for loss of benefit, it would be a different matter. But in the present case, the claimants regarding the two leads are the same

set of persons. Therefore, if any amount is awarded towards loss to the estate that has to be taken into consideration in fixing the compensation,

for loss of benefit. As we fix a compendious sum of Rs. 22,000 as compensation, no separate amount is awarded towards loss to the estate.

15. In the result, the appeal is partly allowed and there will be an award in favour of the appellants (claimants) against the respondent for a sum of

Rs. 22,000. The amount shall be deposited in the Tribunal below within six weeks from now. The third claimant who is the mother of the deceased

is very old (the Tribunal below has found her age to be 70 years). Her dependency would be very limited as she may not expect to live for a long

time. Therefore, out of the sum of Rs. 22,000, we direct only a sum of Rs. 2,000 to be paid out to the third claimant (Amaravathiammal, the

mother of the deceased). The balance, namely, Rs. 20,000 shall be equally shared by the other two claimants, namely, the widow and minor son of

the deceased. A sum of Rs. 10,000 representing the share of the widow is to be paid out to her. Another sum of Rs. 10,000 representing the share

of the minor son is to be invested for lone term in a nationalised bank and paid out to him on his attaining majority. In the meanwhile the interest on the abovesaid sum of Rs. 10,000 can be drawn by the widow of the deceased (mother of the second claimant). No costs.