
(1981) 08 MAD CK 0010
In the Madras High Court
Case No : A.A.O. No. 545 of 1979

M. Muthu Krishna

APPELLANT

Vs

R. Brindha and Others

RESPONDENT

Date of Decision : 12-08-1981

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1982) ACJ 428

Hon'ble Judges : Sethuraman, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Thirumalai, for the Appellant; S. Sivasubramaniam, for the Respondent

Final Decision : Allowed

Judgement

Sethuraman, J.—The first Respondent in M.A.C.T.O.P. No. 242 of 1978, on the file of the Motor Accidents Claims Tribunal,

Tiruchirappalli, is the Appellant. On 15th March, 1978, at about 5.30 p.m., he was working as an Assistant Director of Planning Commission,

Tiruchirappalli and was riding his scooter bearing registration No. TEY 6087 with one Raghavendran, who was working in the same office, on the

pillion. The scooter was nearing the railway overbridge adjacent to the junction at Tiruchirappalli. At an intersection of two roads the scooter and a

cycle collided. Due to the impact, the pillion rider fell down and appeared to have become unconscious. He was admitted to the Government

Headquarters Hospital, Tiruchirappalli and thereafter he was removed to a private nursing home for "better treatment". He however died in the

early hours of the 19th March, 1978. Intimation about the accident of Raghavendran was given, to his wife and children who reached

Tiruchirappalli. After the death of Raghavendran the body was being taken to Erode in a motor vehicle. It was intercepted at Kuzhithalai and

brought back to Tiruchirappalli, where there was a post mortem performed at the Government Headquarters Hospital. After the post-mortem the

body was returned and the funeral ceremonies were gone through at Erode.

2. The claimants viz., the widow, the son and three daughters, the daughters being minors, then aged between 7 and 14, filed a claim petition

alleging that the death of Raghavendran was due to the rash and negligent driving of the scooter by the Appellant. The compensation claimed by

them was Rs. 60,000/-. They impleaded the Appellant, the owner of the scooter and the insurance company with which it was insured, as

Respondents.

3. According to the Appellant, in the counter filed by him, the death of Raghavendran was due to natural causes and the accident had nothing to do with it.

4. The insurance company denied any liability on the ground, among others, that the pillion rider was not covered by the insurance policy.

5. The Tribunal framed the following points for determination:

(1) Whether the accident was due to the negligence of the first Respondent?

(2) To what compensation the claimants are entitled?

(3) Whether the second Respondent (insurer) is liable?

(4) Who is liable to pay compensation, if any, awarded?

(5) Whether the death was due to accident?

6. On the first point the finding of the Tribunal was that the accident was due to the negligence of the Appellant and that the death was due to the

accident. The compensation was determined at Rs. 38,000/- and the Appellant was directed to pay it. The insurance company was exonerated

from liability to pay any compensation. The owner of the scooter has filed the present appeal against the above findings of the Tribunal.

7. Mr. K. Thirumalai, the learned Counsel appearing for him, put forward three contentions before us, viz.:

(1) That there was no negligence on the part of the Appellant;

(2) That the death was not due to the accident; and

(3) That, in any event, the compensation determined was excessive and the insurance company should not have been exonerated.

8. The learned Counsel for the claimants as well as the insurance company contested these points.

9. The following points arise for consideration:

(1) Was there any negligence on the part of the first Respondent as a result of which the accident happened?

(2) Was the death due to the accident?

(3) What, if any, is the proper amount of compensation payable? and

(4) Is the insurance company liable to pay any compensation?

10. With reference to the first point, the relevant evidence is that given by P.W. 3, on the one hand and R.W. 1 on the other. P.W. 3 is a clerk in

the Office of the Southern Railway. He claims to have witnessed the accident while he was returning on his cycle from the office. According to him,

he was proceeding on the overbridge towards the south. Ahead of him, there was another cycle. The cyclist was stated to be signalling by showing

his hand to turn towards the west. From the opposite direction a car was coming and it slowed down. Behind the car was the scooter driven by

the Appellant. The witness states that the scooter was coming fast and was attempting to overtake the car when it hit the cycle. The persons

travelling by the scooter were over thrown and the cyclist also fell down. He claims to have given first aid to the cyclist and the driver of the

scooter went to the platform used by pedestrians and the pillion rider was taken in a motor car. As the cyclist was not injured, he went away taking

his cycle. The witness did not know either the person who took the pillion rider in a car or the Appellant. He did not file any complaint with the

police.

11. The Appellant giving evidence as R.W. 1 stated that a cycle coming from the opposite direction was taking a turn without signalling and that he

had to stop the scooter, when the cycle hit it in the front. He took his feet away from the pedal and put them on the ground so as to balance the

scooter and himself. According to him, the pillion rider was in a reclining posture with his hand on the ground. The pillion rider was thereafter taken

to the side used by the pedestrians, when Balakrishnan came in a motor car and took Raghavendran to the State Co-operative Bank to which

Raghavendran intended to go. He (the Appellant) thereafter went to his house and made a complaint the next day to the police.

12. The evidence suggests that Balakrishnan while taking Raghavendran to the State Co-operative Bank found him unconscious and took him to

the Government Headquarters Hospital and gave a police complaint at about 6 p.m. on the same day. The slight damage to the scooter was

rectified that night and on the next day the first Respondent claims to have given information to the police about the accident. It is also in evidence

that the Sub Inspector examined him on the next day, 16th March, 1978 and took a statement from him.

13. Mr. Thirumalai, the learned Counsel for the Appellant before us, contended that P.W. 3, was not actually present at the time of the accident

and that he had given evidence in the criminal case, which was instituted against the Appellant for rash and negligent driving and for causing the

death of Raghavendran. In the criminal Court the Appellant was acquitted. His point was that the evidence of P.W. 3 should not be believed. The

learned Counsel is, however, not in a position to say why P.W. 3, who is an utter stranger, should come and depose in the manner done by him if

he had not even seen the accident. Further, in the cross-examination it was not suggested to him that he was not at all present at the time of the

accident. The only suggestion made was that the accident did not happen in the manner spoken to by him.

14. The Tribunal has believed the version of P.W. 3. We see no reason why we should come to a different conclusion in the matter of appreciation

of the oral evidence of that person. Further, the evidence of R.W. 1 is an interested testimony and therefore, it cannot be accepted as a correct

version of what happened unless there is independent corroboration. The Tribunal also pointed out as to how there is a difference in the Appellants

version in the information given to the police and in the deposition from the witness-box. As against the disinterested testimony of P.W. 3 and the

interested testimony of R.W. 1, we would agree with the Tribunal in accepting the disinterested evidence of P.W. 3. It is indeed unfortunate that

Balakrishnan, who came in his car and who took Raghavendran to the State Co-operative Bank and then to Government Headquarters Hospital,

has not been examined. His evidence would have given better and more reliable picture of what happened. In the absence of such evidence, we

prefer the testimony of P.W. 3, to that of R.W. 1. We, therefore, agree with the conclusion of the Court below that the accident was due to the

negligence of the Appellant in driving his scooter. If he had avoided the cyclist or taken sufficient precaution against the cyclist hitting him, the

accident would not have happened. It is enough for our purpose, if he was negligent, as we find him to be, though he may not have been rash.

15. The next question that arises is whether the death was due to the accident or not. It is in this context that the evidence of P.W. 2 is relevant. Exh.

A-7 is the original post-mortem certificate. As stated earlier, the post-mortem was conducted in the Government Headquarters Hospital,

Tiruchirappalli and P.W. 2, is the Assistant Surgeon, who actually conducted the post-mortem on 19th March, 1978. There was no external or

internal injury to the body as shown by Exh. A-7. It has been noted therein that death was due to ""myocardial infraction"" and ""cerebro vascular

catastrophe"". P.W. 2 himself has stated that ""myocardial infraction"" meant death of heart muscles and the second term used in the autopsy report

meant haemorrhage of a vessel supplying blood to brain tissues. In the chief-examination he stated that these conditions may ensue from a fall from

a running scooter and sudden shock may cause unconsciousness. He found no disease or physical disability in Raghavendran. In the cross-

examination he stated that he noticed blood clot, that, blood clot and thickening of vessels occurred in persons who suffered from hypertension and

that a sudden fall by itself did not cause blood clot. He was of the opinion that in this case the death might be due to natural causes and that from

what he found he could say that the deceased was suffering from hypertension. He was again summoned and in the course of his deposition which

was taken 12 days after the earlier deposition, he stated that Exh. A-7 did not contain any noting of any blood clot. In the course of the cross-

examination he stated that in a normal person, thrombosis, meaning blood clot forming at a particular place, would not be present if he had a fall

and as it was present, he was of the view that the patient must have been suffering from hypertension. He stated also that any blunt hit over the

chest would cause such trauma or shock as to result in death and that haemorrhage and heart failure were complications caused by hypertension

leading to death. He admitted that when he did the postmortem he did not know that Raghavendran had a fall.

16. The evidence of P.W. 2 suggests that the patient was suffering from hypertension. The doctor (P.W. 2) has given his reasons as to why he drew this inference. In the absence of any other and more reliable evidence, the version of the doctor has to be accepted. He had in the proceedings before the criminal Court deposed that the death was due to natural causes, in which event it would rule out any association with the accident. However, his deposition before the criminal Court is not before us and we are not, therefore, able to accept the contention urged on behalf of the Appellant that the death is not traceable to the accident. We, therefore, proceed on the basis that Raghavendran was suffering from hypertension and that hypertension created certain complications when the accident occurred.

17. The absence of any external or internal injury does not by itself rule out the link between the death and the accident. It is not in dispute that Raghavendran was working normally at a particular place, would not be present if he had a fall and as it was present, he was of the view that the patient must have been suffering from hypertension. He stated also that any blunt hit over the chest would cause such trauma or shock as to result in death and that haemorrhage and heart failure were complications caused by hypertension leading to death. He admitted that when he did the post-mortem he did not know that Raghavendran had a fall.

18. The evidence of P.W. 2 suggests that the patient was suffering from hypertension. The doctor was in the office till 5 p.m. on that day. It was at his instance that he was to be taken to the State Cooperative Bank where he wanted to meet a friend. It is on the way to the State Co-operative Bank that the accident occurred. Till the accident, he was in a proper physical condition. The shock which resulted in the myocardial infraction and the cerebral haemorrhage was thus the result of the accident and may not have been experienced, but for it. The contention to the contrary viz., that there was no link between the accident and the death cannot be accepted.

19. We are unable also to accept the Appellant's submission that the deceased jumped out of the scooter when it was stopped in order to avoid hitting the cyclist. In the report given to the police, there is no suggestion that Raghavendran jumped out of the scooter. It is not possible also to accept the submission that Raghavendran did not fall, but he was in a reclining

posture having put his hand on the ground while continuing to be in contact with the scooter. That he fell from the scooter is spoken to by P.W. 3, whose evidence we have already accepted.

20. The discussion of the evidence of P.W. 2 and 3 and all the surrounding circumstances make out that the deceased Raghavendran fell down from the scooter. There is nothing to show that he immediately lost his consciousness. Even P.W. 3 does not state that Raghavendran was unconscious. It is possible that the loss of consciousness arose after he entered Balakrishnan's vehicle which took him ultimately to the Government Headquarters Hospital, Tiruchirappalli. The death is clearly traceable to the accident on the facts herein.

21. Having found that the Appellant was negligent and that the death was due to the accident, it is now necessary to examine the compensation payable. The salary drawn by him at the time of his death was Rs. 575.75 per month as shown by the pay certificate marked as Ex. A-2. It is indeed unfortunate that there is no evidence of the scale of pay in which he was drawing the said sum. The result was that the court below was obliged to proceed on the basis that the sum of Rs. 575.75 would be the salary which Raghavendran would have drawn for the rest of the period of his service. Out of this amount the pecuniary benefit to the family was taken at Rs. 300/- per month. The evidence shows that Raghavendran was staying alone in Tiruchirappalli, while his family was staying in Erode where he had a house. The inference drawn was that the deceased would have spent Rs. 275.75 on himself and remitted the balance to the family. The claimants have not come forward with any evidence as to how much he actually remitted. In these circumstances, we proceed on the basis that the sum of Rs. 300/- represented the contribution to the family.

22. P.W. 1, the son of the deceased and the second claimant, has spoken to the date of the birth of his father. The court below has found that the date of the birth of the deceased was 18.8.1932. He was thus 46 years old when he died. The age of retirement of Central Government employees is 58 and therefore, he could have looked forward to a period of 12 years of service.

The pecuniary contribution to the family living this 12 years period has been taken as Rs. 43,200/- at the rate of Rs. 3,600/- per annum out of

which a lump sum of Rs. 5,200/- has been deducted as provision for any unforeseen contingency. The sum of Rs. 38,000/- has thus been decreed.

We do not find any basis for arriving at this sum of Rs. 5,200/-. Having regard to the fact that Raghavendran was suffering from hypertension, it

will not, however, be possible to take the view that he would have definitely continued in service till his age of retirement. The better method

appears to us to be to apply a multiplier on the sum of Rs. 3,600/- which represents the annual pecuniary contribution to the family. Taking into

account the fact that he was a patient suffering from hypertension and other imponderable factors, we would adopt a multiplier of 10. The total

pecuniary contribution would thus be Rs. 36,000/-.

23. How far the physical condition of the deceased viz., his hypertension, is relevant has now to be considered. In the case of injury to a person in

an accident, the impact or effect of physical abnormalities of the claimant had come up for consideration in British Courts. It is pointed out in

McGregor on Damages in paragraph 151 at page 151, Fourteenth Edition as follows:

It has never been seriously disputed that an admitted or established wrongdoer is liable for any increased injury to his victim by reason of an

abnormal physical susceptibility. Kennedy. K.J.'s statement of this principle in *Dulieu v. White* (1901) 2 D.B. 669 is well known.

If a man is negligently run over or otherwise negligently injured in his body it is no answer to the sufferer's claim for damages that he would have

suffered less injury, or no injury at all, if he had not had an unusually thin skull or an unusually weak heart.

24. Or in the more concise words of Lord Wright in *Bourhill v. Young* (1943) A.C. 92 at 109-110:

If the wrong is established the wrongdoer must take the victim as he finds him.

25. The absence of later decisions in the reports on this point is only proof of the universal acceptance of the principles, which should apply equally

to damage to a chattel with an abnormal physical susceptibility, such as a fragile vase.

In Halsbury's Laws of England, Volume 12, Fourth Edition, in paragraph 1144, page 445, the following has been stated as the principle applicable

to such cases:

In tort, a Defendant who commits a wrong must take the victim as he finds him. It is no answer to a claim for damages to say that the victim would

have suffered no or less injury if he had not had, for example, an eggshell skull. This principle survives the decisions establishing foreseeability as

the test for determining whether damages are recoverable.

Thus, notwithstanding the hypertension, so long as the death is traceable to the accident, it has to be held that the first Respondent would have to

compensate the estate of the deceased. The illness, if any, may pinge on the multiplier to be adopted. But, otherwise, it has no other conceivable

function. A tortfeasor cannot claim any right to kill a man even on his death bed and go scot-free.

26. It is in evidence that the widow viz., the first claimant is receiving a pension of Rs. 250/- and this sum is liable to be received for a period of

seven years, thereafter it would be reduced to one-half. The sum of Rs. 125/- would continue to be paid for the entire period of her life under the

Family Pension Scheme. There is no dispute about the pension scheme giving benefits to the widow when her husband dies in harness. It is,

therefore, necessary to take into account the pension receivable over a 10 years period, which has been taken as a multiplier in the present case.

The pension at Rs. 250/- for a period of 7 years would come to Rs. 21,000/- and the pension at the rate of Rs. 125/- for the rest of the 3 years

would come to Rs. 4,500/- totalling in all Rs. 25,500/-.

27. The debate before us was whether the Family Pension Scheme was liable to be taken into account at all. This question has been examined in

an unreported decision of this Court, dated, 2nd July, 1980, to which one of us, (Ramanujam, J.), was a party in the case of Sundari v. Palani

A.A.O. Nos. 635 of 1976 and 31 of 1977; decided on 2.7.1980. Along with the said appeals, two other appeals were also heard and disposed

of. In the said judgment the contention examined was that the benefits of insurance, death-cum-retirement gratuity, provident fund and family

pension would have to be taken into account. The deceased in that case was a State Government servant. It was held that the benefits of

insurance, death-cum-retirement gratuity and provident fund being collateral benefits could not be taken into account while determining the

pecuniary loss. The earlier decisions of this Court and other High Courts have

been considered therein. We do not think it necessary to cover the same ground on the present occasion. It is enough to reproduce the following passage occurring in that decision:

On a due consideration of the matter, we are inclined to take the view that the benefits of insurance, death-cum-retirement gratuity and provident fund being collateral benefits cannot be taken into account while determining the pecuniary loss, while family pension received by the widow of the deceased could be taken into account. In our view, the criteria for determination as to whether a particular asset or benefit received by the claimant after the death of the deceased is to be deducted from the compensation or not are two : (1) the assets on which the benefit was being taken by him or was available to the family during his life time and (2) the assets which are being created by the deceased out of his savings to be utilised for the benefit of the members of his family in future.

It is only in the first case the benefits received by the claimants could be deducted but not in the second case where the benefits have been paid for by the deceased while alive and those benefits have been merely accelerated as a result of the death of the deceased.

28. The legal position in Britain has been discussed in paragraph 1152 of Volume 12 of Hahbury's Laws of England, Fourth Edition and it is

pointed out that the deductibility of other sums received from public sources, such as unemployment benefit, supplementary benefit and state retirement pensions is not yet authoritatively resolved. Reference is made to the relevant decisions in the footnotes. Similarly in McGregor on

Damages, Fourteenth Edition in paragraph 1184, after referring to the earlier cases where certain benefits were described as completely collateral

matters or as too remote to be brought into consideration, reference is made to the decision in Parry v. Cleaver 1969 A.C.J. 363 (H.L., England)

and it is pointed out:

Then the House of Lords in a further decision of 1969 initiated a reversal of the new trend. In Parry v. Cleaver 1969 A.C.J. 363 (H.L., England),

by a bare majority, the House decided that a disability pension payable to the Plaintiff did not fall to be deducted in assessing damages for loss of

earning capacity. This decision once more put in flux the whole issue of whether collateral benefits should not be ignored and each particular type

of benefit must be examined separately.

29. However, under the Indian law, the position appears to be clear. In *Gobald Motor Service Limited v. Veluswami* 1958 A.C.J. 179 (S.C.), a

claim was made u/s 110-A of the Motor Vehicles Act. The Supreme Court observed that the general principle is that the pecuniary loss can be

ascertained only by balancing on the one hand loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which

from whatever sources come to them by reason of the death. That is, the balance of loss arising to a dependent by the death must be ascertained

after making adjustments for benefits which go to him because of the death. This principle was reaffirmed in *Sheikhupura Transport Co. Ltd. Vs.*

Northern India Transport Insurance Co., . It is, therefore, necessary under the Indian law to take into account the pension that is received by the

family. If from Rs. 36,000/-, Rs. 25,500/- is deducted, the balance would come to Rs. 10,500/- which appears to us to furnish the detriment

suffered and that is the compensation payable to the family. The award of Rs. 38,000/- is reduced to Rs. 10,500/-.

30. The liability of the insurance company has now to be examined. The case of a pillion rider even under a comprehensive policy has been

examined by this Court in the case of *N. Ganapathy v. K. Viswanathan C.M.A.* Nos. 764 of 1977 and 18 of 1978; decided on 29.10.1980. In

the said judgment to which one of us (Ramanujam J.), was again a party. The relevant decisions have been discussed and the matter has also been

considered in the light of the conditions of the private car tariff, which are adopted by all the insurance companies functioning in this country. In the

following passage, the legal position has been set out:

Thus Clause (a) in Section II(1) of Motor Cycle Comprehensive Policy does not cover a risk in respect of a person being conveyed in or on the

motor cycle unless such person is being conveyed by reason of or in pursuance of a contract of employment. Therefore, the comprehensive policy

in relation to a motor cycle specifically excludes the risk to a pillion rider unless such pillion rider is conveyed by reason of or in pursuance of a

contract of employment.

31. In the light of this legal position, the insurance company in the present case is not liable to compensate the death of the pillion rider. Therefore,

we do not find it possible to accept the submission of the learned Counsel for the Appellant that the decree has to be passed as against the

insurance company also in the present case. As he was a passenger, there is no third party liability here. In the absence of any appeal or cross-

objection by the claimants, it is not necessary to go into the question of compensation for loss of consortium and loss of expectation of a

predominantly happy life.

32. The result is that the appeal is partly allowed. The direction regarding interest will apply with reference to the amount now substituted for the

amount granted by the Court below. The parties will bear their respective costs.

31. The compensation is payable to all the claimants, three of whom are minors. The compensation will have to be divided equally between the five

claimants and the amounts due to the minors will be invested in long term deposits in a State Co-operative Bank at Erode. The interest due on the

deposits in the names of the minors would be drawn by the first Respondent during their minority and applied for their benefit.