

(1996) 08 MAD CK 0105

In the Madras High Court

Case No : A.A.O. No"s. 497 and 498 of 1986

Managing Director, Thiruvalluvar Transport, Madras

APPELLANT

Vs

Rani and 7 Others

RESPONDENT

Date of Decision : 28-08-1996

Acts Referred:

Citation : (1996) 08 MAD CK 0105

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Advocate : Aru-Sellambayiram, for the Appellant; P.V. Rajeswari for M/s. R. Balasubramanian, K.S. Narasimhan and Mr. B. Mani, Government Advocate, for the Respondent

Judgement

Govardhan, J.—These two appeals arise out of the order passed by the Motor Accidents Claims Tribunal, Villupuram in MCOP No. 71/84

and 70/1984 respectively. The petitioners in MCOP No. 70/1984 contend briefly as follows: The first petitioner is the wife and other petitioners

are the minor children of deceased Shanmugham. On 1.8.1984 at 12:50 p.m., the first respondent bus has hit at the back portion of the car bearing

registration No. M.D.G. 4151. The car was pushed to the opposite side of the road due to the said impact and it had dashed against a tractor

which was coming in the opposite direction. Shanmugham who was travelling in the car died on the spot. The driver of tractor also died. The

accident was due to the rash and negligent driving of the bus by its driver. Hence the petitioners have filed the petition for compensation of Rs. 1

lakh.

2. The first respondent in his counter, has contended that the accident was not due to the rash and negligent driving of the bus, but it was due to the

rash and negligent driving of the car as well as the tractor.

3. The second respondent has contended in his counter that he was not a necessary party.

4. The third respondent has also contended that he is also not a necessary party. The third respondent has further contended that the car having been insured with the 4th respondent, if there is any liability, the 4th respondent has to be made liable.

5. The 4th respondent in his counter, has contended that he was not the insurer of the vehicle involved in the accident and prayed for the dismissal of the petition.

6. In MCOP. No. 71/1984, the petitioners contended as follows:- The first petitioner is the wife and the other petitioners are the children of the deceased Jayaseelan. On 1.3.1984 at 12:50 P.M., the bus belonging to the first respondent came in a rash and negligent manner, dashed on the back side of the car bearing registration No. M.D.G. 4151 and due to the said impact, the car was pushed to the opposite side of the road and hit at the tractor, which was driven by Jayaseelan. Jayaseelan died on the spot. One of the occupants of the car also died. The accident was due to the rash and negligent driving of the bus by its driver. The petitioners made a claim of Rs. 1 Lakh.

7. The first respondent in his counter has contended that the accident was not due to the rash and negligent driving of the bus, but, it was due to the rash and negligent driving of the car as well as the tractor. The respondents 2 and 3 have contended that they are unnecessary parties to the proceedings.

8. The 4th respondent has contended that they are not the insurers of the vehicle involved in the accident.

9. Since both the petitions arise out of the same accident, in which three vehicles were involved and two died on the spot, a common enquiry was held by the Motor Accidents Claims Tribunal and the Tribunal has held that the accident was due to the rash and negligent driving of the bus by its driver. It has also held that the petitioners in MCOP No. 70/1984 are entitled to a compensation of Rs. 65,000/- and the petitioners in MCOP No. 71/1984 are entitled to a compensation of Rs. 80,000/-.

10. Aggrieved over the same, the first respondent in both the petitions have

come forward with these two appeals.

11. The appellant in both the appeals is the first respondent in the claim petitions against whom, an award has been passed by the Motor Accidents

Claims Tribunal directing it to pay a sum of Rs. 65,000/- to the petitioners in MCOP No. 70/1984 and Rs. 80,000/- to the petitioners in MCOP

No. 71/1984 who are the wife and children of the deceased Shanmugham and the deceased Jayaseelan in the respective MCOPs. The appellant

would argue that the Tribunal has held that the accident was due to the rash and negligent driving of the bus by its driver and it is erroneous since

the bus had only hit at the rear side of the car in which the deceased Shanmugham was travelling and it is the car driver who had hit at the tractor

coming in the opposite direction on the other side of the road resulting in the death of Jayaseelan and therefore, it is a case of contributory

negligence on the part of the appellant's driver, car driver and the tractor driver and therefore, it has to be set aside and the compensation should

be apportioned accordingly. This argument of the learned counsel appearing for the appellant is not tenable since it is not in dispute that it was the

driver of the bus who had hit at the car proceeding in the same direction and it is only on account of the impact it had received, the car had gone to

the other side of the road and while it so happened at that time, the tractor was coming in the opposite direction in its correct side and the car had

dashed against the tractor and on account of this impact Shanmugham, the occupant of the car and Jayaseelan, the driver of the tractor were

crushed to death. The proximate cause for the accident is the bus since the initial act which is the reason for the accident is not in dispute. It cannot

be stated that there is contributory negligence on the part of the driver of the car as well as the tractor driver. The subsequent events of the car

going to the other side of the road and hitting the tractor are consequent to the hitting of the same at its rear side by the bus. One can imagine the

force with which the impact should have been received by the car since it had gone to the other, side of the road and hit at the tractor. Therefore,

the argument of the learned counsel appearing for the appellant that there was contributory negligence on the part of the driver of the car, driver of

the tractor and its own driver is not tenable.

12. The learned counsel appearing for the appellant has also argued that the

accident itself speaks to the effect that there was no negligence on the part of the driver of the bus, and the doctrine of *res ipsa loquitur* is applicable to the facts of the case. According to the learned counsel, the driver of the car was not examined and no reason has been given as to why the car had gone to the other side of the road and when we apply the principles of *res ipsa loquitur* it would lead us to the inference that there was contributory negligence on the part of the three drivers. But, this argument of the learned counsel appearing for the appellant is also not a tenable one since the doctrine of *res ipsa loquitur* is applicable only in cases where the cause for the accident is not known. The cause for the accident is the hitting of the car by the bus driver and the other things have only followed the same and therefore the argument of the learned counsel that even under the doctrine of *res ipsa loquitur*, it must be held that there is contributory negligence is not tenable. It may not be out of context to observe at this juncture that the car was also moving. The bus which came from behind the car, hit at the rear side of the moving car and it is only on account of this hitting by the bus, the car had moved to the other side of the road. Therefore, it cannot be stated that the driver of the car was negligent to hold that there was contributory negligence on his part. The non-examination of the driver of the car is not material to fasten the liability on the first respondent before the Tribunal.

13. The learned counsel appearing for the appellant has argued that the compensation awarded is very high and the Tribunal has not awarded the compensation in the correct manner, except the fact that the Tribunal has awarded, a further sum of Rs. 5,000/- and Rs. 3,600/- respectively in both the MCOP's, towards loss of expectation of life, there appears to be no other defect in the manner in which the Tribunal has fixed the compensation payable adopting multiplier theory. The deceased Shanmugham was aged about 40 years and the Tribunal had held that out of Rs. 450/- he was contributing Rs. 300/- to his family and adopting a multiplier of 15 has fixed the loss of estate at Rs. 54,000/-. Taking the fact that the first petitioner is the wife, the Tribunal has awarded a sum of Rs. 6,000/- for loss of consortium. I am of opinion that the petitioners are entitled to this amount, deducting a sum of Rs. 5,000/- which has been awarded towards loss of expectation of life.

14. Similarly, in the case of the petitioners in MCOP No. 71/1984 taking the monthly earning of the deceased Jayaseelan and deducting a sum of Rs. 289/- towards his personal expenses, the Tribunal has held that he would have contributed Rs. 600/- to his family. Taking his age into consideration, the multiplier adopted by the Tribunal is 15 years. Out of this 15 years, the Tribunal has calculated the loss of estate for the first eight years during which period the deceased would have been in service and calculated the loss of the estate for seven years after his retirement. I am of opinion that this method of calculation cannot be approved and we can adopt a multiplier of 10 years taking into consideration the age of the deceased as 50. If it is so calculated, the total compensation on account of the loss of the estate works out to Rs. 72,000/-. The first petitioner being the wife of the deceased, is entitled to a sum of Rs. 5,000/- towards loss of consortium. Adding together, the petitioners can be awarded a sum of Rs. 77,000/- instead of Rs. 80,000/- as awarded by the Tribunal. In the result, the Civil Miscellaneous Appeal No. 497/1986 is partly allowed. The compensation payable to the petitioners is fixed at Rs. 77,000/- instead of Rs. 80,000/- as awarded by the Tribunal. C.M.A. No. 498/86 is partly allowed. The total compensation payable to the petitioners is fixed at Rs. 60,000/- instead of Rs. 65,000/- as awarded. The petitioners are entitled to interest at 12% per annum from date of petition also, Tribunal. No costs.