
(1999) 04 MAD CK 0018
In the Madras High Court

Marudhu Pandiyar Transport

APPELLANT

Vs

M. Veerammal and Another

RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Citation : (2000) 2 ACC 128 : (1999) 3 LW 811

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Judgement

M. Karpagavinayagam, J.—Marudhu Pandiyar Transport Corporation is the appellant herein. As against the award dated 30.8.1989 made

in M.C.O.P. No. 517 of 1988 on the file of the Motor Accident Claims Tribunal (IV Additional Sub Judge), Madurai directing the appellant to

pay the compensation to the claimant, the first respondent herein, has filed this appeal.

The facts leading to the filing of this appeal could be summarised as follows:

(a) While the claimant Veerammal was travelling in a bus belonged to the Marudhu Pandiyar Transport Corporation on 9.4.1988, the said bus as

well as the other bus belonged to Rani Mangammal Transport Corporation came with a great speed in a rash and negligent manner and collided

against each other. In the said accident, the claimant sustained grievous injury on the hand and 2 or 3 fingers got complete cut.

(b) With reference to the incident, F.I.R. Ex. P2 had been registered by the Police. The sketch is Ex. P3. The Motor Vehicle Inspector's report is

Ex. P5.

(c) The claimant filed a petition claiming a compensation of Rs. 1,00,000/- against both the Transport Corporation buses. In order to establish her

case, the claimant examined herself as P.W. 1 and the Doctor, who gave treatment, as P.W. 2. Exs. P1 to P15 were filed through them.

(d) On behalf of the appellant, the bus driver Chandrasekaran and on behalf of the second respondent, the bus driver Kandasami were examined.

According to the appellant, the accident took place only due to the negligence of the bus driver employed under the second respondent, whereas

the second respondent put entire blame on the bus driver of the appellant.

(e) The Tribunal after recording evidence concluded that the driver of the appellant was wholly responsible for the accident and as such, the

claimant was entitled to get a compensation of Rs. 51,000/- from the appellant.

3. Mr. Pandi, the Counsel appearing for the appellant-Marudhu Pandiyar Transport Corporation though raised several grounds in the grounds of

appeal, he confined himself to the following contentions:

This is a case where both the buses collided against each other. Therefore, the negligence cannot be attributed to the appellant's bus driver alone.

Merely because the driver of the appellant's bus was charge-sheeted for the alleged accident it cannot be said that he alone was responsible for

the accident. When there are materials to show that the accident occurred in the middle portion of the road, the Tribunal cannot observe that the

accident took place beyond the middle portion of the road and that the appellant's bus went to the other side and hit against the second

respondent's bus. This finding is factually wrong. When it is a specific case of the claimant that the accident had occurred due to the negligence of

both the drivers, the Tribunal at least ought to have held that the accident occurred due to composite negligence of both the drivers.

4. Mr. Muniratnam, the learned Counsel for the second respondent, would, however, contend that the finding rendered by the Tribunal was on the

basis of the materials available on record and as such, it cannot be said that the Tribunal went wrong in fastening the criminal liability on the driver

of the appellant alone, especially when the investigation conducted by the Police would go to show that the bus driver of the appellant went in the

wrong side and caused the impact on the rear side of the second respondent's bus. He would further point out, at any rate, that the degree of

negligence on the part of the driver of the appellant was in the higher side when compared to the degree of negligence attributed to the driver of the

second respondent, as there was 8" space available on the left side whereas only 6" was in the opposite side.

5. Mr. Mahendran, the learned Counsel for the claimant, the first respondent herein, on the strength of the stand taken by him before the Tribunal,

would say that the negligence was established by the claimant on the part of both the drivers and as such, both are liable to pay the compensation.

6. Having heard the submissions from the Counsel on the respective side and having regard to the materials available on record, I am of the

considered opinion that the finding with reference to the negligence on the appellant's driver alone is not correct for the following reasons.

7. P.W. 1 would specifically state both in the claim petition as well as in the deposition that the accident had occurred due to the negligence of both

the drivers, since both the buses went to the middle of the road and dashed against each other. She would also state in the cross-examination that

had these buses were driven on the left side of the road, the accident would not have taken place. She would further state:

xxx xxx xxx xxx xxx xxx xxx

8. Though R.W. 2, who is the driver of the second respondent-Rani, Marigammal Transport Corporation, would put the blame on the bus driver

of the appellant, in the cross-examination he would admit that the accident took place only in the middle of the road saying:

xxx xxx xxx xxx xxx xxx xxx

9. A perusal of Ex. P3 sketch would as well make it clear that the accident took place in the middle of the road.

10. In the light of these materials, it cannot be held that the accident occurred only due to the negligence of the driver of the appellant alone.

11. According to the sketch, the road is East-West road. The width of the road is 24". The mud portion on either side is 3". The Tar portion is

18". It is also seen from the sketch that the space available on the left side of the appellant's bus, that is, between the extreme left end and place

where the bus was stopped is 8". The space between where the second respondent's bus was stopped and the extreme right end is 6". From this,

it is clear that sufficient space was available to divert the buses to left side, in order to avoid the accident.

12. R.W. 1 though would state that the fault is on the part of R.W. 2, the other

driver, would admit that he saw the other bus coming with a great speed in the opposite direction. R.W. 2 also would say that when he was going towards the western side, he noticed that the Marudhu Pandiyar Bus was coming in the opposite direction with a great speed. This would make it clear that both of them had not taken precautionary measures by diverting the respective buses to the left side by going slowly and as such, the negligence could be attributed to both the drivers.

13. In other words, had the drivers of the respective buses, on seeing the bus coming from the opposite side, taken some precaution and taken the vehicle to the extreme left of the road, where the sufficient space is available, the unfortunate tragedy would have been averted. The evidence available on record through P.W. 1, R.W. 1 and R.W. 2 would show that both the buses came in a high speed.

14. It is held in Shaik Haroon v. Anand Mahdev Naik 1989 ACJ 945, while referring about the accident involving head on collision, as follows:

Rashness does not consist only in high speed, but consists also in not keeping in mind the rules of safety and procedure. When two heavy vehicles cross each other, they should naturally keep a safe distance between themselves, or otherwise, there is a likelihood of an accident.

15. In Suraj Narain and Another Vs. Snehlata Jain and Others, , the Rajasthan High Court, while dealing with the negligence on the similar facts of the case, would observe as follows:

Both the buses dashed against each other from the sides as they passed closely in the middle of the road.... From the defence it is established that the two buses dashed from the sides by crossing each other and, in that process, the hand was cut.... It is the duty of the driver of the bus to keep the bus at such a distance from the vehicle coming from the opposite direction so that they can safely cross each other at some distance without any risk to the passengers.

16. In the light of the above observations, it is clear from the materials available on record in the instant case that both the drivers did not take precaution by keeping the vehicle at a considerable distance from the vehicle coming from the opposite direction in order to safely cross each other without any risk to the passengers.

17. It is also manifest from the materials that both the buses dashed against each other from the sides as they did not leave enough space in

between. When the buses are coming in the opposite direction in the main road, especially enough space is available, both the drivers are expected

to leave in between minimum space by which the passengers travelling inside the bus, are not adversely affected by the impact of dashing against

each other.

18. Under these circumstances, I am of the view that both the bus drivers are negligent and consequently, the appellant and the second respondent

are liable to pay compensation as they were equally responsible for the accident.

19. It is contended by Mr. Muniratnam, that the space 8" was available at the left side from the appellant's bus and that, therefore, the appellant's

driver could have averted the accident by diverting the bus into left side and as such, more degree of negligence shall be attributed to the

appellant's driver only.

20. The above submission, in my view, does not merit acceptance because admittedly, the accident took place in the middle of the road, as R.W.

2 himself would admit in the cross-examination that the accident took place in the middle of the road. Therefore, we cannot fix the liability or the

negligence with reference to the space left on the left side of the respective buses.

21. It is clear that both of them have contributed equally to the negligence which resulted in the accident, thereby the claimant sustained grievous

injuries. Therefore, the liability can be fastened on both the appellant as well as the second respondent in the ratio 50:50.

22. Though the learned Counsel for the appellant would attempt to make submission with reference to the quantum by pointing out various portions

of the evidence that quantum is excessive, I am not able to agree with the said contention, as, in my view, the quantum has been correctly fixed.

23. For the foregoing discussion, the appeal is allowed. The appellant and the second respondent are directed to pay the compensation of Rs.

51,000/- by following the ratio 50:50. The finding of the Tribunal in other aspects is maintained.

24. In view of the order passed above, the second respondent is directed to deposit 50% of the amount of compensation into the credit of

M.C.O.P. No. 517 of 1988 on the file of Motor Accident Claims Tribunal (IV Additional Sub Court), Madurai, within two months from the date of receipt of this order.