

(2000) 06 MAD CK 0046

In the Madras High Court

Case No : C.M.A. No's. 23, 24, 492 and 493 of 2000 and C.M.P. No's. 4156 to 4159, 5422 and 5423 of 2000

M.D., State Express Transport Corporation (Tamil Nadu Division) Ltd.

APPELLANT

Vs

Shanthi Manoharan and Others

RESPONDENT

Date of Decision : 14-06-2000

Acts Referred:

Citation : (2002) ACJ 464 : (2000) 3 LW 26 : (2000) 2 MLJ 837

Hon'ble Judges : K. Gnanaprakasam, J;A.S. Venkatachala Moorthy, J

Bench : Division Bench

Advocate : G. Muniratnam, for the Appellant; M. Swamikannu, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Venkatachala Moorthy, J.—By a common judgment, the Motor Accidents Claims Tribunal, Chennai, disposed of the two claim petitions, viz., M.A.C.T. O.P. Nos. 3089 and 3802 of 1997. While the aggrieved claimants in M.A.C.T. O.P. No. 3089 of 1997 filed C.M.A. No. 24 of 2000 and the Corporation, in the claim petition, also filed C.M.A. No. 493 of 2000. Similarly, while the aggrieved claimants in M.A.C.T. O.P. No. 3802 of 1997 filed C.M.A. No. 23 of 2000, the Corporation in that claim petition filed C.M.A. No. 492 of 2000.

2. In view of this, all these appeals can be disposed of by a common judgment.

The relevant facts for the purpose of disposal of all the above appeals can be stated as under:

It is the case of the claimants that on 6.6.1997 at about 2.30 a.m. one S. Manoharan was driving a Maruti car bearing registration No. TN. 02-Z 4560 on G.S.T. Road from south to north along with one Kaja Mohideen and when the vehicle was proceeding near Acharapakkam village, a bus belonging to the Tamil Nadu Express Transport Corporation came from the opposite direction at a very

high speed driven in a rash and negligent manner, overtaking a vehicle and in that process crossed the middle line, came to the extreme west side of the road and dashed against the Maruti car, even though the driver of the said car, in his attempt to avert the accident swerved the car to the extreme left side of the road. The driver of the car, S. Manoharan died on the spot. Kaja Mohideen, who was also in the said Maruti car by the side of Manoharan in the front seat sustained injuries.

2-A. The dependants of the said deceased Manoharan as claimants, filed M.C.O.P. No. 3802 of 1997, on the file of the Motor Accidents Claims Tribunal, Chennai, claiming a total compensation of Rs. 76,00,000 (rupees seventy-six lakh only). The claimants are the wife of the deceased, two minor sons and the aged father of the deceased.

2-B. The said Kaja Mohideen, who was sitting by the side of Manoharan in the said car had sustained injuries also filed a petition in M.C.O.P. No. 3089 of 1999, on the file of the Motor Accidents Claims Tribunal, Chennai, claiming a compensation of Rs. 2,00,000 (rupees two lakh only) for the injuries sustained by him under different heads.

2-C. The Corporation resisted both the above said petitions on various grounds. According to the Corporation, the driver of the bus bearing registration No. TN 01-N 0849 was proceeding from Chennai to Salem on scheduled time, leaving Chennai at 12 p.m. and the bus was driven by him at a normal speed, strictly following the traffic rules and regulations. According to the Corporation, while the said bus was nearing Acharapakkam village, a Maruti car bearing registration No. TN 02-Z 4560 came at a high speed from the opposite direction and on seeing it, the driver of the bus immediately swerved it to the left side and brought the bus to a halt by applying sudden brake. The said Maruti car went out of control, crossed the middle line and collided with the stationary bus. In the said accident, the driver of the Maruti car died on the spot and the other occupant of the car sustained injuries. It is the categorical case of the Corporation that the accident took place only on account of rash and negligent driving of the driver of the Maruti car and not due to any lapse on the part of the driver of the bus belonging to the Corporation. The Corporation seriously disputed the extent of compensation claimed by the claimants in both the petitions.

3. The Tribunal after elaborately considering both the oral and documentary evidence came to the conclusion that the accident took place only due to rash and negligent driving of the bus belonging to the Corporation. On the question of compensation payable, the Tribunal fixed a sum of Rs. 41,00,000 (rupees forty-one lakh only) being the amount payable to the claimants/dependants of the said Manoharan (in M.C.O.P. No. 3802 of 1997) and with regard to the injured Kaja Mohideen the Tribunal fixed a sum of Rs. 36,247 being the compensation payable to him under various heads.

4. The aggrieved claimants in both the M.C.O.Ps. as well as the Corporation are

now before this Court by filing the above appeals, about which we have already referred to.

5. The two questions that arise for consideration are: (i) how the accident took place and who were responsible for the accident; and (ii) whether the claimants are entitled to get compensation and, if so, what amount?

6. There is no doubt that there was an accident which took place on G.S.T. Road near Acharapakkam village at about 2.30 a.m. on 6.6.1997 and in which a Maruti car and a bus belonging to the Corporation were involved. Equally, there is no doubt that the car was proceeding from south to north and the bus was proceeding from north to south. While it is the case of the claimants that the driver of the bus came at a very high speed at the relevant point of time and in the process of overtaking a vehicle going ahead of it, crossed the middle line came to the extreme right side of the road and dashed against the Maruti car, even though the driver of the Maruti car swerved to the extreme left to avert the accident. The case of the Corporation is that it was only the Maruti car which was driven at a very high speed and negligently by its driver crossed the middle line, came to the wrong side of the road and hit against the bus, though in the meantime, the driver of the bus applied sudden brake and swerved the bus to left hand side and brought it to a complete halt.

7. For the purpose of considering as to how the accident took place we have to analyse both oral and documentary evidence available on record. Kaja Mohideen, the claimant in M.A.C.T. O.P. No. 3089 of 1997 has been examined as PW 1. The said witness has clearly deposed that the Maruti car driven by the deceased Manoharan in which he was also travelling, was proceeding from Villupuram to Chennai and when the car was proceeding on the G.S.T. Road near Acharapakkam village, a bus belonging to the Corporation which was coming in the opposite direction, i.e., proceeding from Chennai towards Villupuram in the process of overtaking a lorry, crossed the central line, came to the wrong side of the road and dashed against the Maruti car, even though by that time, Manoharan who drove the Maruti car, in question, swerved the car to the extreme left side of the road, i.e., west side and brought it to a complete halt. Kaja Mohideen admittedly sustained injuries. He is the proprietor of a restaurant known as Sterling Snacks at Villupuram. This witness was subjected to cross-examination. We have carefully perused his deposition and we do not find any reason as to why we should take a different view than the one taken by the Tribunal and disbelieve his testimony. We may also add with this, the testimony of Kaja Mohideen is corroborated by the report of the Motor Vehicles Inspector, a copy of which has been marked as Exh. A-33 in this case, wherein it is noted by him with reference to the bus that the damage was only in the front head light grill bumper right hand side and corner body damage and with reference to the Maruti car also the damage was noted. Admittedly, immediately after the accident Kaja Mohideen left the scene of occurrence and proceeded to Villupuram and for this purpose he was helped by many, one of them being the driver of the

bus.

8. Coming to the evidence let in by the Corporation to substantiate its case that the accident took place only due to rash and negligent driving of the Maruti car four witnesses have been examined. The first witness is none else than the driver of the bus, the second witness is the conductor of the bus, the third witness is a cashier working in the Corporation itself at Salem depot while the fourth witness is the conductor again working in the Corporation. Firstly, it has to be pointed out that though the first and second witnesses have deposed that the Maruti car came to the wrong side and dashed against the bus, the other two witnesses examined by the Corporation have not deposed so. Secondly, while the witnesses 1 and 2 would say that on seeing that the Maruti car coming in a high speed on the wrong side of the road, the bus was swerved to the extreme left hand side of the road and brought to a complete halt, the other two witnesses have not spoken to that effect. Thirdly, while in the counter-statement before the Tribunal what was stated is that the Maruti car driven at a very high speed came from the opposite direction, in the evidence, an attempt was made to develop the case by saying that the car came in a zigzag manner. Fourthly, while the driver of the bus deposed that at the time of accident, there was no other witness other than the passengers of the bus, the police records would give an impression that some persons from the nearby shops came to the scene immediately after the occurrence. Fifthly, the third and fourth witnesses examined on behalf of the Corporation appear to be chance witnesses, particularly since none of the passengers travelling in the said bus were examined as witnesses. Sixthly, the plan prepared by the police department would show as if both the Maruti car and the bus were standing nose to nose, even after the accident. Even assuming that the Maruti car came at a high speed and dashed against the bus, which almost came to a halt by then, the Maruti car would have been thrown away from the scene place. We are not for a moment able to accept the plan prepared by the police department. The plan does not even indicate what is the gap between the Maruti car and bus. Seventhly, RW 2 has clearly stated that the Maruti car after hitting the bus scratched the bus to a length of 5 to 6 feet. But this aspect of the matter has not been spoken to by any other witnesses. The report of the Motor Vehicles Inspector marked as Exh. A-33 does not corroborate or support the claim of the two witnesses for the Corporation. Eighthly, even though admittedly the driver of the Maruti car died on the spot and Kaja Mohideen sustained injuries, the first information report which was given long after by the driver nothing is mentioned about this which gives us a clear impression that the testimony of the driver cannot be relied upon. For all the above reasons, we have no hesitation to reject the claim of the Corporation with regard to the manner in which the accident took place and that it was only the driver of the Maruti car who was responsible for the accident, as no consistent case has been put forward by it through these witnesses. In this view of the matter we have to reject the case of the Corporation and we are inclined to accept the case as put forward by the claimants.

9. The next question that arises for consideration is as to what is the amount of compensation that is payable to the claimants in both the cases. Let us now proceed to consider first the claimants in M.C.O.P. No. 3802 of 1997, viz., the dependants of late S. Manoharan. Totally there are four claimants, viz., his wife by name Shanthi Manoharan, aged 33 years, 2 minor sons, aged 11 and 7 respectively and the aged father of the deceased who was 84 years old at the time of the accident. In the petition, the occupation of the deceased Manoharan is given as Managing Director of Sempon Permanent Funds Limited, Madras, Director of Green Hills Chits Private Limited, Chennai and Director of Patel Builders, Chennai and that he was getting a monthly income of Rs. 25,000 to Rs. 30,000. In support of the claim, wife of the deceased, viz., Shanthi Manoharan was examined as PW 2 and one Selvaraj, President of Sempon Permanent Funds Limited was examined as PW 3, Chairman of Green Hills Chits Private Limited was examined as PW 4 and certain documents have also been marked.

10. First let us proceed to consider the claim that the deceased Manoharan was the Managing Director of Sempon Permanent Funds Limited and he was getting good income from that concern. PW 2 has stated that at the time of the accident, the deceased was getting Rs. 10,000 p.m. from Sempon Permanent Funds Limited and a sum of Rs. 5,000 p.m. from Green Hills Chits Private Limited. It is further claimed by her that apart from this, he enjoyed lot of perquisites and other facilities, viz., provision of car; fuel consumption charges; the reimbursement of expenses incurred for the education of the children; telephone facility, provision to encash the earned leave; leave travel concession once in a year; the facility of provident fund, etc. It is also stated that the deceased Manoharan and his family were also owning shares to the extent of Rs. 5,00,000 in Sempon Permanent Funds Limited and but for the untimely death, he would have continued as Managing Director of that Funds Limited and would get increments several fold. She further deposed to the effect that on the date when she was giving evidence before the court, the person who succeeded as Managing Director of the Sempon Permanent Funds Limited was getting a salary of Rs. 1,35,000 per annum. It is also the claim of the said witness that the said concern, viz., Sempon Permanent Funds Limited has been doing very well and every year the concern has been getting more and more profits and that being so, had Manoharan continued to be the Managing Director of the Private Funds he would have enjoyed several increments and would have touched the salary of Rs. 5,00,000 per year in view of the fact that he would have continued to be the Managing Director till his death.

11. The claimants, viz., the dependants of deceased Manoharan in M.C.O.P. No. 3082 of 1987 have filed Exh. A-11, which is the income tax return of the deceased Manoharan pertaining to the assessment year 1995-96. The net income of the deceased shown in that return is Rs. 1,09,000. The next document that can be referred to is Exh. A-16, which shows that the deceased Manoharan was getting a salary of Rs. 1,17,750 per year in the accounting year 1996-97. The other documents, viz., Exhs. A-18 and A-19 would show that the Managing

Director who succeeded the deceased Manoharan was getting a salary of Rs. 1,38,000 per year. The contention put forward by the claimants is that there has been a steady increase in the profits of Sempon Permanent. Funds Limited and that being so it could be easily said that in course of time, deceased Manoharan, had he survived and continued as Managing Director, would have reached the figure of Rs. 5,00,000 by way of salary. These are certain aspects which we have to take note of while examining the contention of the claimants. During the year 1992-93, Sempon Permanent Funds Limited got a profit of Rs. 30,582 and subsequently in 1995-96 it rose to Rs. 1,91,850 and again in 1996-97 though it rose to Rs. 5,58,170 there was a fall in the profits of the Fund in the subsequent year, viz., 1997-98 during which year the profit was only Rs. 3,48,481. Of course, we notice the fact that the Fund did not sustain any loss in the last five years. It cannot be blindly taken that year by year Sempon Permanent Funds Limited would have earned more and more profits with steady growth and that the salary of the Managing Director would also increase. The next aspect to be pointed out. is that, it is not as if the deceased Manoharan was a permanent employee of the company. Of course, he was the Managing Director of the Fund and by virtue of the fact that he and his family members own shares to the extent of Rs. 5,00,000 normally he would have continued without retirement. Another aspect to be taken note of is that the successful running of the Fund of this nature depends upon so many factors. Such a company cannot be equated to another leading company, which is engaged in some manufacturing process. Nowadays these type of companies form a separate class. The facts and circumstances are peculiar in this case and we are of the view that for the purpose of fixing the average income of the deceased Manoharan, we can adopt the following formula:

The salary at the time of hearing of the M.C.O.P. which the new incumbent in the place of the deceased Manoharan was drawing Rs. 1,40,000 per year. The double of this amount would come to Rs. 2,80,000 per year. Now we have to take an average by adding Rs. 1,40,000 to the said sum, i.e., Rs. 2,80,000 which comes to Rs. 2,10,000 ($\text{Rs. } 1,40,000 + \text{Rs. } 2,80,000 = \text{Rs. } 4,20,000$ divided by 2 = Rs. 2,10,000) we are inclined to proceed on the basis that average income of the deceased Manoharan by way of salary would be Rs. 2,10,000 per year and out of the said sum, if we deduct Rs. 50,000 towards the income tax payable after availing of various tax rebates we arrive at a figure of Rs. 1,60,000. After deducting one-third out of this amount, we take a sum of Rs. 1,10,000 as the amount which the deceased would have contributed.

12. To this amount, certain amounts have to be added because as the family members of the deceased Manoharan were enjoying certain benefits during the lifetime of Manoharan.

(a) The next one is the free telephone facility enjoyed by the dependants. The family was provided with a car with fuel facility up to 150 litres per month;

(b) The family members of the deceased were also enjoying leave travel

concession once in a year, i.e., the family members of the deceased Manoharan would be reimbursed the expenses they incurred whenever they go for holiday trips once in a year;

(c) The deceased Manoharan had also the facility to encash the leave;

(d) The deceased Manoharan was also paid rent allowance.

For all these various heads we are inclined to proceed on the basis that the family members of the deceased Manoharan lost the various benefits offered by the company, but for the untimely death they would have availed of all these benefits/concessions which could be monetarily estimated at Rs. 60,000 per year.

13. The deceased Manoharan was a Director in Green Hills Chits Private Ltd. It is claimed on behalf of the claimants that he was drawing a sum of Rs. 4,000 per month as Director of that company. But, this claim of the claimants is falsified by the evidence of PW 4 who is none else than the Chairman of Green Hills Chits Private Ltd. In the cross-examination, the said witness has deposed to the effect that Directors of Green Hills would get only a sum of Rs. 500 to Rs. 600 every month. Hence, as far as the salary of the deceased Manoharan which he was drawing as a Director of the company can be taken only as Rs. 7,000 per year and nothing more.

14. Hence, we add the entire amount, viz., Rs. 1,10,000 (+) Rs. 60,000 and (+) Rs. 7,000, the total amount would come to Rs. 1,77,000. This amount represents the benefit in terms of money which the claimants would have got, but for the untimely death of Manoharan.

15. As far as the multiplier is concerned, considering the fact that the claimant No. 1, viz., the wife of the deceased was 33 years, claimant Nos. 2 and 3 who were aged 11 years and 7 years respectively both of them being the sons of the deceased and the aged father of the deceased who was 84 years old at the time of the accident and also take note of the fact that the deceased died at the time when he was 42 years old and the longevity in the family, we are inclined to adopt the multiplier of 15 and fix the compensation payable at Rs. 26,55,000 (rupees twenty-six lakh fifty-five thousand only). With this we add the conventional compensation, viz., for loss of love and affection, loss of consortium, loss to the estate and funeral expenses at Rs. 30,000 in all. Thus we hold that the claimants would be entitled to a total compensation of Rs. 26,85,000 (rupees twenty-six lakh eighty-five thousand only). The claimants would also be entitled to get interest at the rate of 12 per cent from the date of filing of the petition till the date of realisation.

16. This amount of compensation shall be apportioned in the following manner:

Claimant No. 1, Shanthi Manoharan (M.A.C.T. O.P. No. 3802 of 1997) shall be entitled to get a sum of Rs. 15,00,000 with interest thereon. Out of this sum she will be entitled to withdraw a sum of Rs. 7,00,000 immediately. Out of the balance amount, 50 per cent shall be invested in fixed deposit in her name for a

period of two years in the Bank of Maharashtra, Ashok Nagar Branch, Chennai and the remaining 50 per cent of the amount shall also be invested in the same bank in her name in fixed deposit for a period of four years. The interest accruing from the said sums shall be paid to the respondent No. 1 once in three months.

16-A. A sum of Rs. 5,00,000 (rupees five lakh only) with the accrued interest shall be invested in the same bank in fixed deposit in the name of the minor M. Prasanth for a period of five years till he attains majority whichever is later. The interest that will accrue from the said amount shall also be paid to the mother Shanthi Manoharan once in three months.

Similarly a sum of Rs. 5,00,000 (rupees five lakh only) with interest therein shall also be invested in the same bank in fixed deposit in the name of another minor, viz., M. Siddarth for a period of eight years or till he attains majority whichever is later. Here again, the interest shall be paid to the mother Shanthi Manoharan once in three months.

Both the minor sons, viz., M. Prasanth and M. Siddarth shall be entitled to withdraw the amount after the expiry of the said periods stipulated above. The respondent No. 1 shall produce before the Tribunal an authenticated copy of the birth certificates of the two minors immediately. The balance amount of Rs. 1,85,000 with the accrued interest thereon shall be paid to the claimant No. 4, viz., S. Somasundaram, the father of the deceased Manoharan.

The learned Counsel for the appellant Corporation submits that the Corporation requires three months time to deposit the amounts in the Tribunal as per this judgment and that the execution proceedings initiated already may be stayed for three months.

Heard, learned Counsel for the claimants on this aspect as well.

The Corporation shall deposit the money within a period of twelve weeks from today.

17. As far as the injured claimant, viz., Kaja Mohideen in O.P. No. 3089 is concerned, the Tribunal has awarded a sum of Rs. 36,247. We heard the arguments of the claimant/respondent and we are satisfied that there is no error in the award of the Tribunal in that regard.

18. In the result, all the above appeals are dismissed. No costs. All the connected C.M.Ps. are closed.