
(2003) 04 MAD CK 0196

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 50 of 2002 and C.M.P. No. 461 of 2002

Metropolitan Transport Corporation (Chennai Division II) Ltd. APPELLANT
(Formerly known as Pallavan Transport Corporation Ltd.)

Vs

Krishnaswamy (deceased), Nagarajan, Ganesh, Nagappan, RESPONDENT
Gopi and Karthikeyan

Date of Decision : 30-04-2003

Acts Referred:

Citation : (2003) 4 LW 529 : (2003) 2 MLJ 518

Hon'ble Judges : S. Sardar Zackria Hussain, J;P. Sathasivam, J

Bench : Division Bench

Advocate : A.S. Ramachandran, for the Appellant; A. Subramani, for P. Manavalan, for respondents 2 to 6, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Metropolitan Transport Corporation, Chennai Division II, aggrieved by the award of the Motor Accidents Claims Tribunal (V Judge, Court of Small Causes), Chennai made in M.C.O.P. No. 3679 of 95 dated 27-4-2000, has preferred the above appeal.

2. In respect of death of one Radha in a motor vehicle accident that took place on 8-3-1995, her husband, sons and daughter have prayed for a compensation of Rs. 89,500/-. Before the Tribunal, first claimant/husband of the deceased was examined as P.W.1 and one Ramani as P.W.2 and Exs. P-1 to P-3 were marked in support of their claim for compensation. On the side of the Transport Corporation, their driver was examined as R.W.1. The Tribunal, after holding that the accident was caused due to the negligence of the driver of the Transport Corporation bus, passed an award for Rs. 89,500/- with interest at 12 per cent per annum from the date of petition till date of deposit. Questioning the said award, the Transport Corporation has preferred the present appeal.

3. Heard the learned counsel for the appellant as well as respondents.

4. Learned counsel for the appellant-Transport Corporation, after taking us through the averments made in the claim petition, the defence taken in the counter statement, the evidence of P.Ws.1 and 2 and R.W.1 and the order under challenge, would contend that when the bus slowly took a turn from Medavakkam Tank Road to Kunnur High Road, after getting signal, the deceased lady suddenly got down from the bus through the front exit, fell down on the road and sustained injuries, hence the driver of the bus cannot be blamed for her negligence. In any event, according to him, inasmuch as the deceased got down from the bus in an unauthorised place, the Tribunal ought to have come to a conclusion that the deceased was also responsible to a certain extent. On the other hand, learned counsel appearing for respondents, would contend that since the deceased died due to negligence of the driver of the bus and the Tribunal has granted compensation which is just and reasonable, there is no ground for interference.

5. We have carefully considered the rival submissions.

6. The husband, sons and daughter of the deceased are the claimants. It is specifically stated in the claim petition that on 8-3-95 at about 12.15 hours the deceased travelled as a passenger in the bus route No. 20J by standing near the front foot board side of the bus. At that time, the driver of the bus drove the same in a rash and negligent manner from south to north at Medavakkam Tank Road and at the junction of Kunnur High Road, he took a sudden left turn west of Kunnur High Road in a rash and negligent manner, due to which, the deceased who lost her balance, was thrown out from the front foot board, and fell on the ground, thereby the left rear wheel of the bus ran over her causing grievous injuries to her legs. In support of the above plea, one Ramani, an auto driver was examined as P.W.2. He deposed before the Court that on 8-3-95 around 12 noon while he was standing near Medavakkam Water Tank signal point, he noticed a bus which was coming in route No. 20J came to a halt at the signal point, at that time a female passenger aged about 50, got down from the bus through the front exit, during the course of her getting down, the driver on seeing the green signal, took the bus, as a result of which, the lady lost her balance, fell down and the rear wheel of the bus ran over her. He further deposed that he who took her to the hospital in his auto. He further deposed that he made a statement before the police regarding the manner of the accident. On the other hand, the driver of the Corporation bus was examined as R.W.1. He deposed in his evidence that while going towards Avadi on the Medavakkam Tank Road, a lady passenger got down from the slow moving bus, fell down and sustained injuries. According to him, he was no way responsible for the accident and he further deposed that no case was filed against him by the police. The Tribunal relying on the evidence of P.W.2, eye witness, arrived at a conclusion that while the lady passenger was getting down from the front exit of the bus, the driver took the bus, as a result of which, she fell down and sustained injuries. We have already referred to the plea made in the claim petition and the evidence of P.W.2 as well as R.W.1. Even according to P.W.2, who is an eye-witness, the bus was stopped at the signal

point. At that time, the deceased passenger got down from the bus through the front exit and in that process, she fell down and sustained injuries. There is no reason to disbelieve the evidence of P.W.2, since it was he who took the injured to the hospital and made a complaint to the police. It is clear from the evidence of P.W.2 that the deceased got down from the bus at the signal point. It is not disputed that as per rules the passengers are permitted to get in or get down from the bus only at the bus-stops. Here, as stated earlier, even according to the eye witness examined on the side of the claimant, the deceased while getting down at the signal point, fell down and sustained injuries. It is also not disputed that on getting signal, it is the duty of the driver to proceed further and it cannot be expected that he should verify the foot board whether any passenger is in the process of getting down or getting in to the bus. As observed earlier, the passengers are not expected to get into or get down from the bus at any place according to their choice. In such a circumstance, in the light of the evidence of witnesses examined on the petitioner's side, particularly the evidence of P.W.2-eye witness, we hold that the deceased had also contributed to some extent for the accident. Inasmuch as the deceased being a lady and aged about 50 years, we fix her negligence to an extent of 25 per cent. It is the duty and responsibility of every person/passenger that whenever getting in or getting out from the bus, he should do it only at the authorised bus-stops. He should avoid in venturing this practice other than the bus-stops, especially at the signal points, where there is every possibility of the bus being taken by the driver suddenly, after the green signal comes. In such a circumstance, if a passenger gets down or gets into the bus, he takes the responsibility of his own safety and there is no point in blaming the driver. In this case, if the deceased Radha follows the normal principle and avoids in getting down from the bus, when it was stopped at the signal point, the incident could not have been happened.

7. Coming to the quantum, we have already referred to the fact that the claimants are husband, two sons and a daughter. It is not the evidence that they are depending on the income of the deceased. In the claim petition in column 6 it is stated that the deceased was earning Rs. 40/- per day (Rs. 1,000/- per month roughly). According to P.W.1, the deceased was a flower vendor. Considering the particulars furnished in the claim petition and the evidence of P.W.1, we are of the view that the deceased would earn and contribute at least Rs. 700/- per month and Rs. 8,400/- per year. In the absence of any positive evidence that the claimants were depending on the income of the deceased, we are of the view that application of multiplier 10 would be reasonable and acceptable; accordingly, we fix pecuniary loss at Rs. 84,000/-. The claimants being husband and major sons and daughter, we grant only a sum of Rs. 6,000/- towards loss of love and affection, etc., and altogether we fix a compensation of Rs. 90,000/- in favour of the claimants. In the light of our conclusion that the deceased had contributed to the extent of 25 per cent, we fix compensation of Rs. 67,500/- (Rs. 90,000 - 25% i.e., Rs. 22,500/- = Rs. 67,500/-) in favour of the claimants. The said amount shall carry interest at the rate of 9 per cent per annum from the date of

petition till date of deposit. Inasmuch as the first claimant, husband of the deceased-first respondent herein died pending disposal of the above appeal, it is made clear that claimants 2, 3 and 4 alone are entitled to withdraw the above amount. Civil Misc., Appeal is allowed in part as indicated above. No costs. Consequently, C.M.P. No. 461/2002 is closed.