

(2001) 06 MAD CK 0076
In the Madras High Court

Metropolitan Transport Corporation Limited

APPELLANT

Vs

Lakshmi and Others

RESPONDENT

Date of Decision : 20-06-2001

Acts Referred:

Citation : (2001) 2 ACC 783 : (2001) 3 LW 67

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Judgement

Prabha Sridevan, J.—the appeal is filed by the Transport Corporation which is, aggrieved by the award passed by the Motor Accident Claims Tribunal, Ponneri fixing the liability to pay compensation on the appellant-Corporation.

2. The facts of the matter are on 15.6.1998, Gunasekaran the first respondent's husband and the father of respondents 2 and 3 was travelling on the back seat of a cycle when the bus belonging to the appellant dashed against him resulting in the death of the said Gunasekaran. A claim for a sum of Rs. 5,00,000/- was made for compensation. The case of the respondents was that the bus was driven at a high speed rashly and negligently by the appellant's bus driver.

3. This was resisted by the appellant-Corporation. In particular, the Corporation denied the issue of negligence. According to the counter filed in the Court below the two persons who were on the cycle including the deceased were seen by the bus driver who brought the vehicle to a halt since the cycle was moving in a zigzag fashion. According to the counter both the persons driving the cycle and the aforesaid Gunasekaran who was sitting on the back side of the cycle were in a drunken condition at the time of the incident. It is also the case of the Corporation that death occurred because the said Gunasekaran was in a drunken state and also because proper treatment was not given to him. It was also pointed out that if the bus had dashed the cycle as stated there would have been damage to the cycle which was not so in the instant case. The Tribunal awarded a sum of Rs. 3,32,000/- against the appellant and the appeal has been filed against the said award.

4. The learned Counsel for the appellant referred to the following paragraphs in the judgment:

xxx xxx xxx xxx xxx xxx

This is the finding of the Tribunal in respect of issue Nos. 1 and 2. Issue No. 1 is with regard to whether the accident truly occurred and issue No. 2 is whether the husband of the first respondent and the father of the second and third respondents died.

5. The Tribunal had totally failed to advert itself as to whether there was negligence on the part of the bus driver. Therefore, the learned Counsel would submit that the award of the Tribunal must be set aside. The Counsel for the caveator took notice on behalf of the respondents/claimants and submitted that it was the case of the respondents that the bus driver was rash and negligent in driving the bus and the accident occurred only because of his negligence and, therefore, there was no reason to interfere with the award.

6. The liability to pay compensation arises only if it is found that the death or injury as the case may be arose because of the negligence of the party who is sought to be made liable to pay compensation. In this case the respondents claimed compensation from the appellant Corporation on the ground that the driver of the appellant-bus was solely responsible for the death of Sekar @ Gunasekaran whose legal representatives are the respondents. It is the specific case of the respondent that the driver of the appellant's bus was not negligent on the other hand he has" brought the bus to a halt when he saw the cycle carrying the deceased being driven in the zig-zag fashion and moving towards the bus in a erratic manner. The Trial Court has totally failed to give a finding regarding negligence. The Tribunal has satisfied itself by saying that it is true that the accident has occurred and the accident had resulted in the death of the first respondent's husband and thereafter has proceeded to fix the quantum of compensation. There is absolutely no finding regarding the negligence of the appellant and whether they are liable to pay compensation at that score. In fact the Tribunal has not framed any issue regarding negligence

7. In these circumstances, there is no alternative but to set aside the award and direct the Motor Accident Claims Tribunal, Ponneri to take up O.P. No. 236 of 2000 frame an additional issue regarding negligence and give a finding and thereafter to proceed and decide the original petition in accordance with law. The order of the Court below is set aside. The civil miscellaneous appeal is remanded to the Tribunal at Ponneri for deciding M.C.O.P. No. 256 of 2000 afresh in accordance with law keeping in mind the above directions. The appellant is entitled to refund of Court-fees. The Tribunal is directed to dispose of the original petition within four months from the date of receipt of copy of this order.