

**(1981) 08 MAD CK 0011**

**In the Madras High Court**

**Case No : C.M.A. No's. 209, 210 and 234 of 1980**

M.G. Bros. Lorry Service and Another

APPELLANT

Vs

S. Andalammal and Others

RESPONDENT

**Date of Decision : 11-08-1981**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 304A

**Citation : (1982) ACJ 408**

**Hon'ble Judges : Sethuraman, J;Ramanujam, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

## Judgement

Ramanujam, J.—As all these appeals arise out of the claim petitions filed in respect of the same accident, it is convenient to deal with them

together.

2. On 20. 1. 1978 at about 8.30 p.m. There was a motor accident in Sriperumbudur by pass road. The vehicles which are alleged to have been

involved in the accident are : (1) A car bearing Regn. No. TNH 2565(2)a lorry bearing Regn. No. TMY 3885; and (3) a lorry bearing Regn. No.

MSV 9380. As a result of the said accident the driver of the car and the only occupant, who was none else than the owner of the car, died on the

spot.

3. Alleging that the accident was due to rash and negligent driving of the lorry TMY 3885 by its driver, the widow and the children of the

deceased, Sanjeevi Mudaliar, who was the owner of the car, filed a claim petition M.O P. 76/79 before the Motor Accidents Claims Tribunal,

Chingleput, claiming a sum of Rs. 3,00,000/- as against the owner of the lorry

and the insurer of the lorry. For the death of Mahendran, the driver of the car, his legal representatives filed a claim petition, M.O.P. No. 57/79 before the Tribunal claiming a sum of Rs. 40,000/- as compensation.

4. The driver and the insurer of the lorry TMY 3885, resisted the said two claim petitions M.O.P. Nos. 57 and 76 of 1979, on the ground, that the

accident was pot due to rash and negligent driving of the lorry TMY 3885, by its driver, but another lorry MSV 9380 which overtook the lorry

TMY 3885 dashed against the car and thus the collision was only between the other lorry MSV 9380 and the car TNH 2565 and therefore the

owner of the lorry TMY 3885 and the insurer are not liable to pay compensation towards the accident. They also further contended that the

compensation claimed in both the claim petitions are excessive. Taking into account the defences, the Tribunal set down the following two

questions for consideration:

(1) Whether the accident was due to rash and negligent driving of the lorry TMY 3885 by its driver? and

(2) To what compensation, if any, the claimants are entitled?

5. On the first question, the Tribunal after analysing the evidence adduced by both parties in detail, held that the accident was solely due to rash

and negligent driving of the lorry TMY 3885 by its driver, that the collision was between the said lorry and the car and the allegation of the

Respondent that the collision was between the car and another lorry MSV 9380 has not been established. Regarding the question of quantum of

compensation, the Tribunal held, that the claimants in O.P. No. 76/79 are entitled to compensation of Rs. 90,000/- while the claimants in O.P. No.

57 of 1979 are entitled to compensation of Rs. 15,000/-. The Tribunal, therefore passed an award for a sum of Rs. 90,000/- for the death of

Sanjeevi Mudaliar, the owner of the car and Rs. 15,000/- for the death of Mahendran, the driver of the car. The owner of the lorry TMY 3885

and its insurer, who were Respondents 1 and 2 in the claim petition, have filed CMA Nos. 209 and 218 of 1980 questioning respectively the

award passed by the Tribunal in O.P. Nos. 57 and 76 of 1979. The claimants in O.P. No. 76 of 1979 have filed CMA No. 234 of 1980

contending that the compensation awarded by the Tribunal is too low and that it should be enhanced Thus the common question that arise for

consideration in all these appeals are:

(1) Whether there was a collision between the car and the lorry TMY 3885 or between the car and the lorry MSV. 9380 and which the lorry

driver was responsible for the accident?

(2) What is the fair and reasonable compensation to be awarded in O.P. No. 57 and 76 of 1979 or whether the compensation awarded by the

Tribunal is adequate in both cases?

6. As regards the nature of the accident, according to the Appellants in CMA 209 and 210/80, there was no collision between the lorry TMY

3885 and the car TNH 2565 and the collision in fact was between the lorry MSV 9380 and the car TNH. 2565. Thus the substantial contention

urged by the Respondents in CMA Nos. 209 and 210 of 1980 is that the lorry TMY 3885 was not involved in the accident, which resulted in the

death of the driver of the car and the only occupant who was none else than the owner of the car and that therefore, they are not liable to meet the

compensation claimed. In support of their pleas, they have examined before the Tribunal the driver of the lorry TMY 3885 as R.W.I. He has

deposed that he was driving his lorry TMY 3885 along the left side of the road and when he was bearing the place of the accident the lorry bearing

Regn. No. MSV 9380 driven by P.W. 1, overtook his lorry and in that process, the lorry MSV 9380 hit and dashed against the car TNH 2565,

which was coming in the opposite direction resulting in the instantaneous death of the driver of the car and the owner of the car, who was the only

occupant of the car. On seeing the accident, according to RW. 1 he developed a fear in his mind and lost control of his vehicle, namely the lorry

TMY 3885, as a result of which his vehicle went to the right extreme portion of the road and hit against the telephone post and ultimately got

overturned and fell down on the eastern side of the road. The evidence of R.W.1 apart from the fact that it does not get corroboration from any

other evidence available in this case, is mostly artificial and improbable. If really the collision was between the lorry MSV 9380 and the car TNH

2565 and his vehicle namely the lorry TMY 3885 had nothing to do with the accident, we do not see, how he could lose control of his vehicle and

allow his vehicle to go to the extreme edge of the road on the right and to hit the telephone post. It is true that R.W. 1 has thrown the entire blame

for the accident on P.W. 1 who was the driver of the lorry MSV 9380. Apart from the mere ipse dixit of R.W. 1 there is no other material to

indicate that the lorry MSV 9380 collided with the car, resulting in the death of the driver of the car and the lone occupant, the owner of the car.

The evidence of P.W. 1 which appears to be natural and probable, is to the effect that he was going in front and his lorry was overtaken by R.W.

1 and in that process R.W. 1 's lorry hit against the car, it proceeded further and hit the telephone post and thereafter fell down in the eastern side

and got overturned. It has to be remembered that P.W. 1 has gone to the police station sometimes after the occurrence and reported about the

accident. In that report, he has stated that the collision was between the lorry TMY 3885 and the car TNH 2565. If really, R.W. 1 also went to

the police station and gave report about the accident, he could have stated the manner in which the accident took place. The photographs Exhs. B.

2 to B. 8 filed by the Respondents in the claim petitions sufficiently corroborate the evidence of P.W. 1 and goes against the evidence of R.W. 1.

In Exh. B.2 we see the lorry MSV 9380 driven by P.W. 1 lies on the left side of the road and the back wheels of the lorry MSV 9380 have come

out from their position with the axle. It is further seen that the lorry driven by R.W. 1, TMY 3885 is lying overturned down the road on the right

side of the road and a telephone post has also fallen due to the hitting. Exh. B. 4 shows the distance between the place of the accident and the

place where the lorry driven by R.W. 1 was lying. If the impact was between the lorry MSV 9380 and the car as stated by R.W. 1 then the said

lorry MSV 9380 should have gone to the eastern half of the road in which the car was coming. But as the lorry MSV 9380 is found on the western

side of the road, which is the correct side of the lorry, the theory that, that lorry collided with the car, does not fit in with the position of the vehicle

after the accident. Exh. B.1 the M.V.I's report shows damage to both lorries. As per this report the damage to the lorry which hit the car must be

on the right side of the lorry. The lorry driven by R.W. 1 TMY 3885 had the damage on the right side of his lorry. Four lamps were damaged, right

side corner body bent and cut and the door was also broken. Therefore, the damages to the lorry driven by R.W.1 were more on the right side.

The lorry driven by P.W.1 also had some damages on its right side. On a perusal of Exhs. B.5 and B 6, except a small dent in the lights and mud,

guard, we do not see any other damage to the lorry MSV 9380, on the right side. If the lorry MSV 9380 had caused the impact on the car TNH

2565 certainly the damage to the right side of that lorry must be severe but except a small dent on the back of right side of the lorry, we do not see

any other severe damage. The bridge with which the lorry MSV 9380 had hit can be seen from Exh. B.2 and there is damage to this bridge also.

Considering the damage to the lorry driven by R.W. 1 there were more damages to the right front and to the right body of this lorry. Further the

Motor Vehicles Inspector has mentioned the dent and cut from the right side top body and such a damage could not have been caused by the

mere falling of the lorry on the ground. Therefore, these damages must have been due to the impact between the car and the lorry. Therefore,

considering all these damages to the lorry TMY 3885 we are of the view that it must be the lorry which collided with the car. Yet another

circumstance will also indicate that the collision should have been between the .car and the lorry driven by R.W.1. R.W.1 has been prosecuted by

the police and has been convicted on his own plea of guilty for an offence u/s 304-A of the Indian Penal Code. If really the accident was between

the P.W. 1 's vehicle and the car, we do not see any reason why the police should proceed against R.W. 1 alone. The significant factor to be

noted here is that even before the criminal Court, R.W.1 did not throw the blame on P.W. 1 and on the other hand he pleaded guilty of the charge

and got convicted. This conduct on the part of R.W. 1 shows that his personal theory that the accident was between P.W. 1's lorry and the car, is

clearly an after thought. Merely because that there were certain damages to the lorry driven by P.W.1 no inference can be drawn that due to the

impact between that lorry and the car, those damages were caused especially, when it is seen from the photographs that the damages sustained by

the lorry MSV 9380 should have been due to its hit on the culvert on the left extreme of the road. Considering the photographs filed by the

Respondents themselves, Exh. B.1 report of the Motor Vehicles Inspector. First Information report given by P.W.1 and the conviction of the

criminal Court in preference to the solitary evidence of R.W.1 which appears to us to be artificial and improbable, we have to, therefore, agree

with the conclusion arrived at by the Tribunal, that the accident was due to rash and negligent driving of the lorry TMY 3885 by its driver, R.W. 1.

7. Let us come to the quantum of compensation awarded in O.P. No. 57 of 1979. In that petition, the claimants have claimed 4 sum of. Rs.

40,000/- and the Tribunal has awarded a sum of Rs. 15,000/- taking into account the facts that the deceased Mahendran, the driver of the car,

was getting a sum of Rs. 200/- per month as salary, out of which his contribution to the family was Rs. 150/- per month and the age of the

deceased on the date of the accident. Only after due consideration to the above facts, the Tribunal has computed the aggregate loss of dependency

at Rs. 15,000/- out of which a sum of Rs. 4,000/- has been set apart for the marriage of the 2nd Petitioner, who is the sister of the deceased.

Though the learned Counsel for the Appellants in CMA. No. 218/80 submits that the compensation awarded is excessive, we are of the view that

the sum of Rs. 15,000/- awarded as compensation by the Tribunal is highly fair and reasonable and it does not call for any interference in our

hands and it cannot be said to be excessive, taking into account the age of the deceased, the income that was earned by the deceased and the total

award of Rs. 15,000/-.

8. Coming to the quantum of compensation awarded by the Tribunal in O.P. No. 76/79 the claimants as well as the Respondents in the claim

petition, are vehement in challenging the award of the Tribunal. The claimants in O.P. No. 76/79 contended that the award of Rs. 90,000/-

awarded by the Tribunal is too meagre. On the other hand, the Respondents contended that the sum of Rs. 90,000/- awarded by the Tribunal is

excessive. It is in the light of these rival contentions, we have to consider as to what is the fair and reasonable compensation that could be awarded

to the claimants in O.P. No. 76/79. As regards the income of the deceased, his wife has been examined, who is one of the claimants, as P.W. 3.

According to her, her husband was earning Rs. 20,000/- to Rs. 45,000/- per year in mundy business, in addition to his getting other income,

particularly from agriculture. In support of her case, she has filed Exhs. A.6 and A.7 clearance certificate obtained from the Income Tax Deptt.

Exh. A.6 and A.7 show that for the year 1974-75 the deceased was assessed to Rs. 22,540/-, for the year 1975-76 he was assessed to Rs.

31,400/-, for the year 1976-77 Rs. 23,460/-, for the year 1977-78 for Rs. 50,290/- and for the year 1978-79 he was assessed to Rs. 38,070/-.

Taking note of all these returns, the Tribunal has taken Rs. 40,000/- as the fixed income of the deceased from the business namely (i) mundry business carried on by him in his own name and another business called Muruga vilas in which he was a partner. After fixing the annual income of the deceased at Rs. 40,000/- the Tribunal took the view that that even after the death of the deceased Sanjeevi Mudaliar, the business could be carried on by employing a suitable person on a salaried basis to look after the business and therefore it can be taken that there is a loss of 25% of the income from the business resulting from the death of the deceased. But while calculating 25% as the loss of income it has arrived at Rs. 9,000/- which is the mistake for Rs. 10,000/- as 25% of Rs. 40,000/- is Rs. 10,000/- and not Rs. 9,000/-. Taking the loss as Rs. 9,000/- per year and the age of the deceased, who was aged 50 years on the date of the accident it adopted 15 as the multiplier and the gross loss was arrived at Rs. 1,35,000/-. After giving deductions for a lump sum payment and also other imponderable circumstances such as uncertainty of life", it arrived at a sum of Rs. 1,14,750/- as the net loss of income from the said sum the Tribunal deducted a sum of Rs. 25,000/- received by the claimants from the insurance company being the sale proceeds of the life insurance policy taken by the deceased while he was alive. The Tribunal ultimately arrived at Rs. 89,750/- and rounded off at Rs. 90,000/- and fixed that amount as compensation payable to the claimants. Even taking Exhs. A.6 and A.7 as the basis for finding out the average earnings of the deceased from all sources, it cannot be taken to be Rs. 40,000/- per year as has been held by the Tribunal. It is not in dispute that the deceased was earning the income assessed in his hands for all the above years, consisted of not only the income from two businesses referred to above but also the agricultural income, the house property income and the income from investments. The income from agriculture, house property and from the investments cannot be taken into account for determining the loss of income, for, those are sources which still continued to exist even after the death of Sanjeevi Mudaliar. Therefore, there cannot be said to be any loss from those three sources. If we exclude income received from other resources, the average income per year can be about Rs. 27,000/- only. Even taking 1/3rd of the income as the business loss, arising out of the death of the deceased 25% arrived at by the Tribunal, the annual loss can come only to Rs.

9,000/- . Even if we adopt a different basis, the amount of Rs. 9,000/- can be taken to be fairly the loss of income arising out of the death of the deceased Sanjeevi Mudaliar. The deceased was admittedly doing mundy business in paddy and for that business, the services of the deceased had been completely lost. Even in mundy business, the deceased would have deposited or invested as capital for advancing the amounts to the owners of the paddy and procuring the business. That fact that the services of the deceased Sanjeevi Mudaliar are not available to the business now cannot at all be doubted and that his place can be replaced by employing a suitable person on salaried basis to attend to the business as efficiently as Sanjeevi Mudaliar the deceased, was doing. For such an experienced person in the same business, as the deceased Sanjeevi Mudaliar had, atleast a sum of Rs. 750/- had to be paid as salary per month. Therefore, to replace the deceased Sanjeevi Mudaliar in the business carried on by him, atleast a sum of Rs. 9,000/- has to be spent. Thus the average loss can reasonably be taken to be Rs. 9,000/- per year having regard to the age of the deceased, who was aged 50 years, at the time of accident. Even assuming that the longevity of the deceased is 70 years, as contended by the learned Counsel for the claimants, we can adopt only 10 as the multiplier, for multiplier should be such to yield the same sum of Rs. 9,000/- per every year. Thus the loss of pecuniary benefit comes to Rs. 90,000/-. In addition, the first claimant, who is the widow of the deceased, is entitled to get Rs. 5,000/- as the loss of consortium. We, therefore, increase the award from Rs. 90,000/- to Rs. 95,000/-.

9. A.A.O. Nos. 209 and 210 of 1980 are dismissed and A.A.O. No. 234/80 is allowed in part. There will be no order as to costs in these appeals.