
(1973) 02 MAD CK 0025

In the Madras High Court

Case No : A.A.O. No's. 158 and 159 of 1968, 330 of 1970 and 48 of 1973

M.R.V. Bus Service (P) Ltd.

APPELLANT

Vs

Ravi and Another

RESPONDENT

Date of Decision : 21-02-1973

Acts Referred:

Citation : (1974) ACJ 72 : AIR 1974 Mad 212 : (1978) 87 LW 40 : (1974) 87 LW 40

Hon'ble Judges : N.S. Ramaswami, J;Kailasam, J

Bench : Division Bench

Judgement

N.S. Ramaswami, J.—These four civil miscellaneous appeals arise out of two claim petitions before the Motor Accidents Claims Tribunal,

Chingleput. The said Tribunal disposed of three claim petitions by a common judgment, the claims in all these same accident. The accident in

question occurred on 11-5-1967 at about 8.30 a.m. near Ambattur in Avadi-Madras road. The Vehicle involved in the accident is the bus bearing

registration No. MDF 1376 owned by the 1st respondent in all the three petitions before the Claims Tribunal Minor Ravi (by his next friend) is the

petitioner in M. O. P. No. 60 of 1967. Meyyappan is the petitioner in M. O. P. 61 of 1967 and Annamalai is the petitioner in M. O. P. No. 64 of

1967. Out of these three petitioners, the first two, viz., minor Ravi and Meyyappan, were passengers in the bus concerned. The 2nd respondent in

all these petitions was the driver of the vehicle and the 3rd respondent is the insurer of the vehicle.

2. Admittedly the bus MDF 1376 which had been engaged by a group of persons, was returning from Tirupathi. When the bus was proceeding

towards Madras on the morning of 11-5-1967, it capsized. Minor Ravi, aged 5

years, who was one of the passengers in the bus, got serious injuries on his right forearm and the evidence discloses that this limb has been permanently impaired. Meyyappan, the petitioner in M. O. P. No. 61 of 1967, also received some injuries, though they are not so serious.

3. Annamalai, the petitioner in M. O. P. 64 of 1967, was said to be passing on the road on a cycle and he claimed that the bus in question actually knocked him down before it capsized and thereby he sustained injuries. The compensation claimed by minor Ravi in M. O. P. No. 60 of 1967 is Rs. 27100/-, made up of Rs. 25000/- towards general damages and Rs. 2100/- towards special damages. Meyyapan, the petitioner in M. O. P. 61 of 1967, claimed a total sum of Rs. 5900 -- Rs. 5000 towards damages and Rs. 900/- towards special damages. Annamalai, the petitioner in M.O.P. 64 of 1967, claimed a total compensation of Rs. 15000/-. The case of the petitioner is that the accident was brought about due to rash and negligent driving of the bus in question. The owner of the bus and the insurer thereof, viz, respondents 1 and 3 respectively in the three petitions, contested the petitions. Their main contention has been that there was neither negligence nor rashness on the part of the driver of the bus and therefore the petitioners were not entitled to any compensation. The Tribunal below held that Annamalai, the petitioner in M. O. P. 64 of 1967, had not been knocked down by the bus in question, that he should have been knocked down by a lorry which was going ahead of the bus and that therefore he was not entitled to claim any compensation against the respondents. The said petition was dismissed by the Tribunal and there is no appeal by Annamalai, the petitioner therein, against that decision. So in these appeals we are concerned only with the two petitioners, viz, the petitioners in M. O. P. 60 of 1967. The Tribunal below awarded the entire sum of Rs. 27100/- claimed by the petitioner in M. O. P. 60 of 1967. In M. O. P. 61 of 1967, the Tribunal awarded a total sum of Rs. 2950/- (though the claim was for a total sum of Rs. 5900/-). The Tribunal was of the view that the liability of the Insurance Company was not limited to a sum of Rupees 2,000/- for an injured passenger of the bus and, in the words of the Tribunal "..... the liability of the 3rd respondent is fixed in proportion which Rs. 20,000/- would bear to the compensation awarded to both the petitioners, and the remaining amount petitioners will be entitled

from the 1st respondent. My findings on point 2 in M. O. P. 60 AND 61 of 1967 are accordingly.

4. C. M. A. No. 158 of 1968 is filed by the owner of the bus (1st respondent) challenging the decision of the Tribunal below in M. O. P. 60 of

1967. C. M. A. No. 330 of 1970 is also against the decision in the said O. P. but this is filed by the Insurance Company. C. M. A. No. 159 of

1968 is the appeal filed by the owner of the bus against the decision of the Tribunal in M. O. P. 61 of 1967, and C. M. A. 48 of 1973 is that filed

by the Insurance Company in the said O. P.

5. The first question that arises for consideration in all these four civil miscellaneous appeals is whether the accident was due to rash or negligent

driving of the bus in question. The witnesses who spoke about the accident are Kandayya (P.W. 3), Ramaswami (P.W. 6) and Meyyappan, the

petitioner in M. O. P. 61 of 1967 (P.W. 7), who were all persons travelling in the bus when it capsized.

x x x x x

(Discussion of evidence omitted).

The finding of the Tribunal below that the accident, which resulted in injuries to minor Ravi and Meyyappan, was due to rash and negligent driving

of the bus in question is correct.

6. Regarding the quantum of compensation, there is now no dispute as far as Meyyappan, the petitioner in M. O. P. 61 of 1967, is concerned. As

seen earlier, the Tribunal below has awarded a total compensation of Rs. 2,950/- made up of Rs. 2,500/- as general damages and Rs. 450/- as

special damages and that finding is not being questioned now. As far as this O. P. is concerned the only question would be regarding the

apportionment of the liability against the insurance company. We will come to this question a little later.

7. In M. O. P. No. 60 of 1967, the finding of the Tribunal below that the minor petitioner is entitled to a sum of Rs. 2,100/- towards special

damages is not challenged before us. The only dispute is regarding the general damages of Rs. 25,000/-. The contention on behalf of the appellants

(owner of the bus and the insurer thereof) is that the above sum fixed by the tribunal below as general damages is too very high. Therefore, the

question is whether there is ground to reduce the above said sum of Rs. 25,000/- fixed by the Tribunal below. P.W. 1 was a civil Assistant

Surgeon in the General hospital, Madras, who had examined minor Ravi, he having been admitted in that hospital soon after the accident. There

were three injuries. The first was a lacerated wound, muscle deep, on the right arm. This is comparatively a minor injury. The other two are

serious. The injury described as No. 2 is an extensive lacerated wound over the right forearm and elbow, completely damaging and lacerating the

muscles and fracturing the right humerus. Injury No. 3 is a lacerated wound on the back of the right wrist, exposing the bone. There was no

radiatory pulsation. The child was transferred to the orthopaedic department and he was in the hospital for over two weeks. P.W. 1 says that the

right hand has been permanently disabled. Photographs of this child are marked as Exs. A-10 to A-15. A look at those photographs which had

been taken very much after the accident, shows that the child has practically lost that limb, though it has not been amputated. The forearm and the

hand are completely deformed due to the injuries. The evidence shows that this child was sitting in the right side of the bus and when the bus turned

turtle on its right side, the child had been thrown off and the right forearm and hand had been very seriously crushed. It is not seriously disputed

that the child has practically lost this limb. The question is whether, under the above circumstances, the compensation of Rs. 25000/- awarded by

the Tribunal is so high that it calls for interference by this court.

8. In a case like this, under the head "general damages" compensation may have to be awarded taking into consideration (1) pain and suffering,

both past and future, (2) loss of what are called amenities, i.e., the pleasures that make life tolerable for most people; (3) the chance of marriage

becoming bleak; (4) loss of earnings, (5) the cost of the attention to the victim, if any, he will need during the rest of his life; and (6) the shortening

of life due to the injury. But in this case the injury being to the right forearm and hand, it has not been claimed that due to this injury the child's life

has been shortened. Therefore this child would be entitled to claim compensation under the first five heads. It is always extremely difficult to assess

the quantum under the above heads. Birkett LJ observed in *Bird v. Chocking and Sons Ltd*, 1961 2 TLR 1260--

The assessment of damages in cases of personal injuries is, perhaps, one of the most difficult tasks which a Judge has to perform.....The task is so difficult because the elements which must be considered in forming the assessments in any given case vary so infinitely from other cases that there can be no fixed and unalterable standard for assessing the amounts for those particular elements. Although there is no fixed and unalterable standard, the courts have been making these assessments over many years, and I think that they do form some guide to the kind of figure which is appropriate to the facts of any particular case, it is being for the Judge, or for the appellate court if they are reviewing the matter, to consider the special facts in each case; for I agree..... that one case cannot really be compared with another. The only thing that can be done is to show how other cases may be guided, when, therefore, a particular matter comes for review, one of the questions is, how does this accord with the general run of assessment made over the years in comparable cases?" Venkatadri, J., had to deal with a similar case in *Avesha Begum v. Veerappan*, 1966 1 MLJ 374. That was a case where a girl aged 5 years had sustained a permanent injury in her pelvic bone which prevented free movement of her legs for all time to come. Considering the disfigurement caused to the child, the psychological reactions to the same, uncertain marriage prospects, difficulty of child bearing and all other circumstances, the learned Judge held that the claim of Rs. 15,000/- made on behalf of the child towards general damages was neither too low nor too high. The Tribunal below having awarded only a sum of Rs. 5,000/-, Venkatadri, J., allowed the appeal filed on behalf of the above said child and awarded compensation of Rs. 15,000/- towards general damages as claimed. In that judgment, Venkatadri, J., has referred to a number of decisions of the Courts in England which speak of the difficulties in assessing the compensation payable in a case like this. The Tribunal below, after referring to the judgment of Venkatadri, J., in the above case, stated that in the case before Venkatadri, J., the child was a girl which need not work for earning a livelihood and it was not expected to earn for the maintenance of others and that in the present case, the child being a boy and the future bread-winner of the family, the compensation of Rs. 25,000/- claimed cannot be considered to be too high.

9. We consider that the distinction drawn by the learned Tribunal between the present case and that before Venkatadri, J., is not right. In modern

times, it is not correct to assume that a girl is not expected to work for earning a livelihood, as stated by the Tribunal below and that only a boy

would become the future bread-winner of the family. The injuries sustained by the victim in the present case, though fairly serious, in that the right

forearm has been deformed, the same cannot be said to be at any rate more serious than the injuries sustained by the girl in the case before

Venkatadri, J. There the child had sustained a permanent injury in the pelvic bone which prevented free movement of her legs for all time to come.

The permanent impediment of the pelvic bone is certainly a very serious matter, especially for a girl child. As the child has not been in a position to

have free movement of her legs and the pelvic bone has been seriously affected and such impairment is a permanent one, it is quite likely that the

child would not be in a position even to enjoy sex life. In any event we do not consider that the injury to the boy in the present case calls for more

compensation than that what has been awarded in the case of the girl before Venkatadri, J.

10. The learned Counsel for the respondent referred to the decisions in *Flint v. Lovell*, 1935 1 KB 354, *Davis v. Powell Duffryn Associated*

Collieries Ltd., 1942 AC 601 and *Morey v. Wood field*, 1963 3 All ER 533, and contended that once the trial Judge assesses the compensation,

the same should not be varied by the appellate court unless the appellate court is convinced either that the trial Judge acted upon some wrong

principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of the appellate court, and

entirely erroneous estimate of the damage to which petitioners are entitled. But it is clear that even the courts in England do make a distinction

between an assessment of damages made by a trial Judge and that made by jury. It has been pointed out in a number of cases that if the trial in

which the compensation has been awarded in by a Judge alone, an appeal is a rehearing of the case and accordingly the court of appeal can vary

the amount of damages awarded to what they consider is the proper amount. Of course, the assessment made by the trial Judge is not to be

interfered with lightly. Even so, the appellate court has to interfere if the sum awarded is out of line with the run of awards made in comparable

cases. The principles are recognised by the courts of appeal in England. In Charlesworth on Negligence 4th Edn. para 1260, the position is

summed up thus--

On a trial by Judge alone, an appeal is a re-hearing of the case and accordingly the court of appeal can vary the amount of damages awarded to

what they consider is the proper amount. The court has, however, said: "Unless we come to the conclusion that the learned Judge took an

erroneous view of the evidence as to the damages suffered by the plaintiff, or made some mistake in giving weight to the evidence that ought not to

have affected his mind, or in leaving out of consideration something that ought to have affected his mind, we ought not to interfere." The appellate

court will not interfere, unless the judge has made "a wholly erroneous estimate of the damage suffered," Although the court of appeal are slow to

interfere with the award of a judge, they will do so more readily than in the case of the award of a jury, and in particular they will do so more

readily than in the case of the award of a jury, and in particular they will interfere if the sum awarded is out of line with the run of awards made in

comparable cases in recent years. The tendency is towards a standardisation of damages, although it is recognised that exact standardisation is

impossible and that the limits of variation are wide.

11. In *Perumal and Another Vs. State of Madras, J.*, had to consider the measure of damages in respect of the death of an infant. In that case, the

Tribunal below had awarded a sum of Rupees 3,000/- for the loss of the life the child. This was enhanced by a learned Judge to a sum of Rs.

5,000/- In doing so, the learned Judge observed--

Yet another difficulty that besets the courts is this. Most appellate courts refuse to interfere with the quantum of compensation awarded by the trial

courts on the ground that the sum awarded is neither unduly high not unduly low. This principle of judicial neutrality has resulted in a lack of

uniformity in the decisions of the trial Courts. In my experience, I have found that the compensation awarded for the death of an infant of the same

age varies from Rupees 1,000/- to Rs. 10,000/-, according to the discretion of the Judge concerned. The range of variation between one trial

Judge and an other in fixing the amount of compensation is almost whimsical and bewildering..... In the absence of statutory guidelines, I thing that

for the purpose of securing uniformity some workable formula should be evolved which can be usefully followed by the trial courts, after making

marginal adjustments in the light of the peculiar facts of each individual case.

No doubt, these observations were made in the case of death of an infant and not in the case of permanent injury to an infant. Even so, the

principle that there should be certain amount of uniformity with regard to award of compensation would apply even to the present case. As already

seen, Venkatadri, J., held in *Ayesha Begum v. Veerappa*, 1966 1 MLJ 374, that a compensation of Rs. 15,000/- in the case of injuries causing

permanent infirmity of a child aged about 5 years is neither too high nor too low. We think that in the present case also, the proper compensation

payable is only Rupees 15,000/- and not Rs. 25,000/-.

12. There is no dispute that the injured boy (minor Ravi) is entitled to the sum of Rs. 2,100/- towards special damages as fixed by the tribunal

below. Therefore, minor Ravi would in all be entitled to a total sums of Rs. 17,100/-.

13. The only other question is regarding the liability of the Insurance Company. On this point the tribunal below is not right. Under the provisions of

the Motor Vehicles Act, before the amendment of 1969, indisputably the liability of the Insurance Company is limited to a sum of Rs. 2,000/- per

passenger in a bus if the policy is one conforming only to the provision of the Motor Vehicles Act. That the position was not disputed by any of the

parties before us. The amendment provision, which has increased the liability of the Insurance Company, has no application to the present case as

the accident occurred very much prior to the amendment and the claim itself had been made much earlier to the amendment. Therefore, the liability

of the Insurance Company would be only to the extent of Rs. 2,000/-, In the case of each of the two injured, viz, minor Ravi and Meyyappan.

14. The result is, C. M. A. No. 159 of 1968 filed by the owner of the bus is partly allowed, but C. M. A. 158 of 1968 is dismissed. C. M. A. 330

of 1970 and 48 of 1973 filed by the Insurance company are partly allowed and it is directed that out of the sum of Rs. 17,100/- awarded to minor

Ravi (petitioner in M. O. P. 60 of 1967), the 3rd respondent Insurance Company is liable to pay only a sum of Rs. 2,000/- and the balance is

payable by the owner of the bus, viz., the first respondent, and similarly in M. O.

P. No. 61 of 1967, the Insurance Company would be liable to pay only Rs. 2,000/- out of the total sum of Rs. 2,950/- awarded to Meyyappan, the petitioner in that case, and the balance of Rs. 950/- is to be borne by the first respondent, viz., the owner of the bus. There would be no order as to costs in any of these appeals.

15. Order accordingly