

(1974) 04 MAD CK 0011
In the Madras High Court

Muniammal

APPELLANT

Vs

G. Mohan and Others

RESPONDENT

Date of Decision : 26-04-1974

Acts Referred:

Citation : (1974) 2 MLJ 258

Hon'ble Judges : S. Maharajan, J

Bench : Division Bench

Judgement

S. Maharajan, J.—This is an appeal by the claimant against the order of the Motor Accidents Claims Tribunal, Madras, dismissing her

petition u/s 110-A of the Motor Vehicles Act, claiming a compensation of Rs. 15,000 for the death of her husband, Munuswamy in a lorry

accident. The accident took place at about 10-30 A.M. on 3rd November, 1969, at the junction between Waltax Road and the Basin Water

Works Street. The deceased was pulling a hand cart laden with medicines in a northerly direction along the Waltax Road (which is a north-south

road), and was turning in an easterly direction towards the Basin. Water Works Street, when a lorry bearing MDU 5802 belonging to the third

respondent and insured with the second respondent came at great speed in a southerly direction knocked against the cart, ran over Munuswamy

killing him on the spot, proceeded to a distance of about 40 feet, then knocked against another cart and stopped short after travelling a further

distance of 20 feet. Exhibit P-3 is the rough sketch of the scene of accident prepared by P.W. 5, the investigating police officer and it shows that

the Waltax Road is 50 feet broad at the scene of accident and the accident itself took place about 20 feet to the west of the eastern edge of the

road. The lorry was loaded with 93 bags of rice. Judging from the distance it travelled after the double collision, there can be little doubt that it was

driven at an excessive speed. According to the lorry-driver, who has been examined as R.W. 1, there were a number of lorries parked on either

side of the road. Having regard to these admitted facts as well as to the circumstance that the lorry was crossing a junction between the Waltax

Road and the Basin Water Works Street, one would expect the driver of the lorry to have come at a considerably lower speed. According to the

lorry-driver, he saw the hand cart of Munuswamy turning into Basin Water Works Street at a distance of 30 feet and thereupon he swerved his

lorry to the left-and applied the foot-brake, but the foot-brake did not act because of a rupture of the brake cylinder. The evidence of R.W. 2, the

Motor Vehicles Inspector, who inspected the lorry a few hours after the accident, is that the foot-brake had completely failed due to the failure of

the rear right side wheel cylinder. Having regard to the evidence of R.W. 1 and R.W. 2, the Tribunal came to the conclusion that the accident was

an inevitable one and that it was due to an unforeseeable defect in the wheel cylinder. Upon this finding, the Tribunal held that the accident was not

due to rashness or negligence on the part of the lorry-driver and that consequently, the claimant was not entitled to any compensation.

2. Learned Counsel for the appellant has advanced the legitimate criticism that the Tribunal has accepted a plea which was not put forward by the

respondents in their counter. Though the first respondent, who is the driver of the lorry, came into the witness box to speak to the inevitable

character of the accident he did not choose to file a counter to the petition of the appellant. As for the counter filed by the second respondent, the

insurer, the only plea taken therein was that the accident was the result of negligence on the part of the hand-cart-puller and not the result of any

rashness or negligence of the lorry-driver. Be it noted that in this counter the plea of inevitable accident was not so much as hinted at. As for the

third respondent, who could speak with authority upon the condition of his vehicle, he did not file even an independent counter. He merely adopted

that of the insurance company. It was only during the enquiry and that, too, during the cross examination of the last witness of the appellant that the

theory of brake-failure was suggested. No doubt R.Ws. 1 and 2 followed P.W. 5 into the witness box and spoke to the latent defect of the

vehicle. Having regard to the evidence of the Motor Vehicles Inspector R.W. 2, the theory that the driver had lost control of the vehicle because of the sudden failure of brakes cannot be ruled out. The further question arises whether by merely invoking the suddenness of the brake-failure the owner of the vehicle can be said to have discharged the burden that the law throws upon his shoulders. Where the facts established show that the proper and natural inference arising therefrom is that the injury complained of was caused by the lorry driver's negligence or when the doctrine of *res ipsa loquitur* applies and a presumption of fault is raised against the driver of the lorry and vicariously against the master, the latter, if they are to succeed in their defence, must overcome the inference or the presumption by contrary evidence. The burden on them will be to show how the act complained of could have reasonably happened without negligence on their part. If there was sudden brake-failure" and if it was due to a latent defect, which was not ordinarily visible on external inspection, has the driver or his master shown that he had been properly maintaining and inspecting the internal parts of the lorry periodically? One would expect the lorry-owner to have examined some automobile engineer, who had previously inspected the internal parts of the lorry or the engineer who had replaced the internal parts if they had been found to be worn out. The evidence of the Motor Vehicles" Inspector in this case is that the failure of the wheel cylinder might be due to the part being worn out. The evidence of R.W. 1, the driver is that the lorry is of Fargo make of 1950 model. The accident took place in November, 1969, that is to say, nearly 19 years after it had been manufactured. What did the owner of the lorry do during these 19 years? Did he get the internal brake cylinder inspected or replaced at any time by any engineer? Did he ever have the lorry serviced and kept in good repair? These are questions which remained unanswered by the evidence adduced on the side of the respondents"-- questions which it is the duty of the respondents to answer to the satisfaction of the Court. The lorry is a huge vehicle which has been plying for hire for a long time and the owners of the lorry owe a duty to society to keep such dangerous vehicles in good condition. At any rate, unless, in a case like this, the owner adduces evidence to show that he has taken reasonable care in maintaining the vehicle in good condition and having it inspected periodically for defects, he cannot escape liability.

3. A division Bench of this Court in Lakshmiammal and Others Vs. State of Tamil Nadu, has held that where it is alleged that there had been a

latent defect which the driver of the bus could not know, and the accident was caused as a result of such latent defect resulting in the failure of the

brake the respondent can get over liability only if he further shows that the latent defect was not discoverable in spite of reasonable care. I feel

bound by this ruling, which, if I may say so with respect, lays down the correct legal position. Learned Counsel for the insurance company Mr.

Devanathan, would, however, bring to my notice the ruling of the Privy Council in Tan Chye Choo v. Chong Kew Moi (1970) A.C.J. 325 in

support of the proposition that neither the owner nor his driver could be held liable in case of a mechanical break-down due to a latent defect. But

that was a case where there was evidence given by the driver of the taxi that the car was inspected at periodical intervals and that there had been

no failure to take proper steps to maintain the car. In fact, the trial Judge in that case held that "the respondent had done all that she could be

expected to do". This finding of the trial Judge was accepted by the Privy Council and it is on the basis of that acceptance that they exonerated the

driver and the owner of the vehicle of any negligence. But in this case there is not a title of evidence as to whether the owner of the vehicle

periodically had the lorry examined and rectified and kept in good repair. I would, therefore, hold that the respondents have failed to discharge the

burden which undoubtedly lies upon them. It would then follow that they cannot be exonerated of the liability to compensate the appellant for the

death of her husband.

4. The next question arises, what is the quantum of compensation to be awarded? The Tribunal has given a finding in this behalf and fixed the

compensation at Rs. 10,400. The deceased Munuswamy was 40 years old at the time of accident. He was a packer in a firm of Chemists and

druggists drawing a salary of Rs. 100 per mensem. He had no children and his only dependant was his wife, who is the claimant. There was a

prospect of his living for another 20 years. The Tribunal was right to hold that he would have spent at least Rs. 50 every month upon his wife. The

value of the dependency would then come to Rs. 600 per annum. Taking into account the relevant factors, the compensation may be fixed at Rs.

8,000. The amount will carry interest at 6 per cent. per annum from the date of the claim i.e., 26th November, 1969 upto the date of deposit.

5. The appeal is allowed with costs. Time for payment two months.