

(1999) 07 MAD CK 0080
In the Madras High Court

Muthuswamy and Another

APPELLANT

Vs

Periasamy and Others

RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Citation : (2000) 2 ACC 501

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Judgement

M. Karpagavinayagam, J.—The claimants are the appellants herein.

2. According to the claimants, on 19.8.1888 when the wife of the first claimant was travelling in the bus belonging to the first respondent insured with the second respondent, due to the rash and negligent driving of the but, the bus dashed against bridge, as a result of which, the deceased sustained injuries and she was taken to hospital wherein she died later. Hence, the claimants filed an application seeking compensation of Rs. 1,50,000/-.

3. The Tribunal concluded that the accident took place due to bursting of tyre and as such, the driver of the bus could not be held to be negligent. But however, under the head of "no fault liability", the Tribunal found that the claimants would be entitled to Rs. 25,000/- as compensation.

4. This award is the subject-matter of challenge before this Court in this appeal.

5. Heard the Counsel for the appellants and the second respondent.

6. Admittedly, the owner of the vehicle or the driver had not cared to appear before the Tribunal and they remained ex parte. So, ultimately, the Tribunal directed the Insurance Company, who is the second respondent herein, to pay the amount of compensation to the claimants.

7. On going through the records, it is clear that the finding of the Tribunal to the effect that the driver of the bus was not negligent, is wrong, in view of the direct

authority on this point rendered by this Court in Govindammal Vs. Pallavan Transport Corporation, a witness would state before the Court that the accident took place due to the negligent driving of the driver, the FIR which was given to the police by one of the passengers, would clearly show that due to bursting of tyre, the vehicle turned to the left side and hit against the tamarind tree and thereby, the impact had taken place. On the basis of this, the Tribunal concluded that the accident was due to bursting of tyre and as such, the driver cannot be held responsible.

9. In the decision cited Supra, it is held that when a fatal accident due to bursting of tyre takes place, the burden is on the owner of the vehicle to prove that the defect was latent, despite his reasonable care and in the absence of the materials for the same, it cannot be held that the driver or owner of the vehicle was not responsible.

10. In the instant case, as indicated above, both the driver and the owner of the vehicle had neither filed a counter nor examined any witness to discharge the said burden. So, when such burden is not discharged, the Insurance Company with which the vehicle was insured by the owner of the vehicle, cannot escape from the liability.

11. Admittedly, there is no evidence whatsoever to show that the driver of the bus had taken care to see that the tyres were in a good running condition. When the driver had not stepped into the witness box to explain how the tyre bursting occurred and that it was on account of the latent defect in the tyres, the Tribunal cannot hold that the respondents cannot be directed to pay the amount under "fault liability".

12. Under these circumstances, I am of the view that the finding with reference to the absence of proof in regard to the negligence on the part of the driver is quite wrong and the same is liable to be set aside and accordingly, it is set aside.

13. When it is concluded that the driver was found to be negligent, naturally, the owner of the vehicle and the Insurance Company are liable to pay the compensation. In such an event, "no fault liability" would not arise.

14. As per the claim petition, there are six claimants. The first claimant is the husband of the deceased and other claimants are sons and daughters. They have claimed Rs. 10,000/- towards pain and suffering, since the deceased died only in the hospital and also claimed Rs. 1,40,000/- towards loss of life.

15. Though there is statement of P.W. 1, the husband that the deceased was doing some milk business, we need not go into the details about the income. It is enough for us to deal with the heads, such as, loss of love and affection.

16. The age of the deceased at that time was 45 years, the age of the husband was 49 years and the 6th claimant-minor Padmini was aged about 10 years. Under these circumstances, towards the heads of loss of love and affection, loss of companionship and pain and suffering, it would be appropriate to hold that the

claimants would be entitled to Rs. 1,00,000/- as a consolidated amount. Accordingly, the award is modified.

17. Therefore, the respondent-Insurance Company is directed to pay the said amount alongwith interest(r) 12 per cent per annum from the date of application till the date of payment.

18. In the result, the appeal is partly allowed. No costs.