
(1990) 06 MAD CK 0031
In the Madras High Court
Case No : Civil M.P.A. No. 763 of 1984

Nagarathinam

APPELLANT

Vs

Murugesan and Others

RESPONDENT

Date of Decision : 13-06-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 2

Citation : (1991) ACJ 673

Hon'ble Judges : V. Ratnam, J

Bench : Single Bench

Advocate : K.J. Chandran, for the Appellant; A.K. Kumarasamy and K.S. Narasimhan, for the Respondent

Final Decision : Dismissed

Judgement

V. Ratnam, J.—This appeal, at the instance of the owner of the lorry bearing registration No. TDU 1536, is directed against the award of the Motor Accidents Claims Tribunal, Chengalpattu in M.A.C.O.P. No. 459 of 1982 awarding a sum of Rs. 16,400/- as compensation to respondent Nos. 1 and 2 in respect of the death of their son Raman in an accident that took place on 20.7.1982 involving the lorry of the appellant

2. According to the case of respondent Nos. 1 and 2, their son, deceased Raman, was sleeping under a tree near the petrol bunk in Tambararn Sanatorium on the night of 20.7.1982 and at that time, the lorry belonging to the appellant, which was driven negligently, ran over him and killed him and in respect of that, compensation in a sum of Rs. 50,000/- should be awarded to them. In the counter filed by the appellant, she contended that the lorry was parked in a corner as deceased Raman was sleeping under the tree and owing to the vibration caused by the passing traffic on the highway, the lorry started moving resulting in the accident and deceased Raman was also responsible for the accident. The quantum of compensation was also characterized to be excessive and on the higher side. The third respondent, insurance company, in its counter,

besides adopting the counter of the appellant, put forth the plea that the accident did not happen in a public place and, therefore, no liability could be fastened on the insurance company.

3. Before the Tribunal, the second respondent and another person who was working in the petrol bunk were examined as PWs 1 and 2, while, on behalf of the appellant and the third respondent, Exhs. B-1 and B-2 were marked and the manager of the petrol bunk, the driver of the vehicle and the Assistant Divisional Manager of the third respondent gave evidence as RWs 1 to 3. On consideration of the oral as well as the documentary evidence, the Tribunal found that deceased Raman was not in any manner responsible for the accident, but that the accident was caused only by the negligence and carelessness of the driver of the lorry belonging to the appellant, that the accident took place within the petrol bunk premises and, therefore, the compensation amount of Rs. 16,400/- determined as payable should be paid by the appellant and not the third respondent, insurance company. In accordance with these findings, the Tribunal passed an award directing the appellant to pay to respondent Nos. 1 and 2 the compensation amount of Rs. 16,400/-, the correctness of which is questioned in this appeal.

4. Learned counsel for the appellant first contended that the evidence clearly establishes that the accident took place outside the petrol bunk premises and, therefore, the third respondent, insurance company, would be liable to pay the compensation amount awarded by the Tribunal. On the other hand, learned counsel for the third respondent, insurance company, submitted that even according to the plan submitted along with the accident report by the appellant, marked as Exh. B-2, the appellant had accepted that the accident had taken place within the premises of the petrol bunk and, therefore, the Tribunal was right in its conclusion that the accident had taken place within the petrol bunk premises.

5. For the determination of the question whether the accident took place within the premises of the petrol bunk or outside it, the oral evidence available is not very helpful. The second respondent examined as PW 1 has not given any useful evidence with reference to the manner in which the accident took place, though she had given details of the earnings of her deceased son Raman. PW 2, who was working in the petrol bunk and was not on duty on the day when the accident took place, in the course of his chief-examination, stated that deceased Raman was sleeping on the road and that the lorry belonging to the appellant took a wrong turn and ran over him. However, in the course of his cross-examination, PW 2 stated that the lorry of the appellant, which was parked in the petrol bunk, moved of its own accord and ran over Raman, who was sleeping under a tree and killed him. To a suggestion in the course of the cross-examination at the instance of the third respondent, PW 2 denied that the accident took place within the petrol bunk premises. Thus, even the evidence of PW 2 does not assist in deciding whether the accident took place within the

petrol bunk premises or outside it. RW 1, the manager of the petrol bunk, in his chief-examination, stated that the deceased Raman was sleeping under a neem tree outside the fencing of the petrol bunk and that the lorry belonging to the appellant, which was parked after filling up diesel on uneven ground, moved of its own accord and ran over deceased Raman. In the course of his cross-examination, RW 1 accepted that the petrol bunk was situate east of G.S.T. Road at a distance of 23 feet from the tar road and that he could not give the measurements correctly. A suggestion put to RW 1 to the effect that the accident took place within the petrol bunk premises was denied by him. The driver of the vehicle examined as RW 2 stated that the tree under which deceased Raman was sleeping is not within the petrol bunk premises and that he was not aware as to what the appellant had informed the insurance company regarding the accident. He also denied that the accident was the outcome of his negligence and carelessness. RW 3 gave evidence with reference to the claim submitted by the appellant under Exh. B-2 and according to him, even as per the accident report submitted by the appellant under Exh. B-2, the accident had taken place within the premises of the petrol bunk. In the course of his cross-examination, he denied the suggestion that deceased Raman was not sleeping within the petrol bunk premises, though he accepted that in Exh. B-2 the place where deceased Raman was sleeping was not shown, but that the place of the accident had been indicated. It is thus seen from the evidence of PWs 1 and 2 and RWs 1 to 3 that their evidence is not very helpful in deciding the question of the place of accident. The only other piece of evidence which is available is Exh. B-2 submitted by the appellant to the third respondent, insurance company, on 27.7.1982, about a week after the accident took place. There is no reason as to why the appellant in that accident report given soon after the accident, should have stated something incorrect. Under column 7 (i) of the accident report, while giving the nature as well as cause of the accident, the appellant had stated that the vehicle TDU 1536 was kept stationary in the petrol bunk, as the driver and the cleaner were attending to the other works and owing to the vibration of the earth caused by the running of vehicles on the highway, the vehicle moved accidentally from the spot and the right front wheel ran over the chest of deceased Raman, who was sleeping on the edge of the ground, resulting in his instantaneous death. In the sketch appended to the accident report, the appellant had indicated the place of the accident and it is clearly seen there from that the place of the accident lies within the petrol bunk premises. The indication of the place of the accident in the sketch appended to the accident report by the appellant clearly shows that even according to her, the accident had taken place only within the petrol bunk premises. The only person who could have offered some explanation as to the contents of the accident report is the appellant and she has not been examined at all. There is also no material made available by the appellant to discredit the statements made by her in the accident report, Exh. B-2 and under those circumstances, the Tribunal was quite right in relying upon Exh. B-2 to hold that the accident took place only within the petrol bunk premises and not outside it. The first contention of learned counsel for the

appellant has, therefore, to be rejected.

6. Learned counsel for the appellant next contended that even if the accident had taken place within the premises of the petrol bunk, that would be a public place within the meaning of Section 2(24) of the Motor Vehicles Act, as a place to which the public has a right of access and, therefore, the third respondent, insurance company, cannot be heard to disown its liability for the payment of the amount of compensation. Reference was also made by the learned counsel in this connection to the definition of the expression "public place" occurring in the other enactments. On the other hand, learned counsel for the third respondent, insurance company, submitted that a public place would be one to which all members of public, without exception, would have a right of free access and a petrol bunk would not become a public place merely because persons intending to buy petrol, diesel or oil enter the premises for the purpose of transacting business. Reliance in this connection was also placed upon the decision in *K. Somasundaram & Bros. v. Vijayam* 1978 TLNJ 56

7. u/s 2(24) of the Motor Vehicles Act, a place in order to be a public place must be one to which the public have a right of access. This would mean that the access as of right should be available to one and all, irrespective of whether such persons have access to the petrol bunk for the purpose of purchasing petrol, diesel, oil, etc., or not. It may be that when owners of cars or vehicles desire to purchase petrol, diesel, oil, etc., they enter the petrol bunk for that purpose. But the right of entry exercised by them for a specific purpose cannot be equated to a right of access for the public at large. It may be that a petrol bunk might be entered upon by the members of the public with no particular business to be transacted and it is common knowledge that through the precincts of petrol bunk, even short cuts are taken by the members of the public. But such user either by the owners of the vehicles or even stray user by a few members of the public would not render the place a public place within the meaning of Section 2(24) of the Motor Vehicles Act. The question whether a petrol bunk would be a public place came to be considered and decided in the decision relied on by learned counsel for the third respondent, insurance company and referred to earlier. Balasubramaniam, J., observed as follows:

...It is true, as suggested by the appellants' counsel, a petrol bunk is a place where all and sundry persons intending to buy petrol, oil, etc., might enter for the purpose of transacting business. It might even be that members of the public who have no particular business with the bunks might stroll there. It is usual to find petrol bunks constructed and being run near the cross roads to attract customers. It might be a matter of common knowledge that the pedestrians who have no need for petrol or oil often take short cuts through the precincts of petrol bunks. But these factual considerations or tendencies will not render a petrol bunk "a public place" within the meaning of the statutory definition. The question whether the "public", meaning thereby all members of the public without exception, could have a right of free access to the place. The answer, in

my view, is no. The owner of a petrol bunk and anyone acting for him has every right to prevent any individual or any section of the people, who have no business to transact with him, from entering the premises. This is the test.

The above observations fully bring out the concept of a public place for purposes of the Motor Vehicles Act and in view of this, it is unnecessary to refer to the definition of a public place occurring in other enactments. Reference in this connection has also to be made to the decision in *Rajammal v. Associated Transport Co.* 1970 ACJ 44 (Mad) where the definition of a public place u/s 2(24) of the Motor Vehicles Act came to be considered and it was pointed out that the criterion is whether the public has a right of access to the place and it will not be a public place merely, if as a matter of fact, the public has access. Applying the principle laid down in the decisions referred to earlier, it has to be held that the accident in this case did not take place in a public place and, therefore, the third respondent, insurance company, cannot be fastened with liability for the payment of compensation to respondent Nos. 1 and 2. The second contention of learned counsel for the appellant also cannot be accepted.

8. That the accident took place only on account of the negligence of the driver of the lorry belonging to the appellant is clearly established by the evidence. PW 2 in the course of his cross-examination at the instance of the third respondent, insurance company, stated that even after filling up diesel in the lorry, the engine was running. He also denied that it was not correct to say that the accident did not take place due to the negligence of the driver and that the accident was not on account of the vibration caused by the passing of the other vehicles on the road resulting in the movement of the stationary lorry of the appellant. RW 1 in the course of his chief-examination stated that the place where the lorry of the appellant was parked by the driver was uneven and sloping and that enabled the lorry to move of its own accord. The driver of the lorry examined as RW 2 stated that after filling up diesel, he had parked the lorry nearby and he was attending to some other work, when he heard that the lorry was moving and the movement was owing to the vibration caused by the passing lorries on the highway. He also accepted that the lorry was loaded at the time of the accident. It is rather difficult to believe that a laden lorry, if it had been parked properly in gear and brake, would have started moving of its own accord. That the driver had also not taken reasonable precautions while parking the lorry is clear from the fact that he had not left the vehicle in gear or had put the brakes on, but would appear to have allowed the engine to run, as could be seen from the evidence of PW 2. RW 2 was also obliged to accept that the cleaner had also not taken care to prevent the movement of the lorry by placing effective obstacles under the wheels of the lorry. On the other hand, RW 2 had stated that the cleaner had kept a very small and inadequate wooden piece under the wheel and that shows that the driver as well as the cleaner were per se negligent in the matter of parking the lorry and rendering it stationary. Necessarily, therefore, it follows that the accident was the outcome of the carelessness and negligence of the driver of the lorry belonging to the appellant and the Tribunal was right in

holding so. No argument was raised before this court regarding the quantum of compensation awarded by the Tribunal and there is, therefore, no need to go into that aspect. Thus, on a consideration of the facts and circumstances and the evidence, no case is made out to interfere with the award of the Tribunal. The Civil Miscellaneous Appeal is, therefore, dismissed with the costs of respondent Nos. 1 to 3.