
(2014) 03 MAD CK 0139

In the Madras High Court

Case No : C.M.A. Nos. 1006 to 1008 of 2014 and M.P. No. 1 of 2014

New India Assurance Co. Ltd.

APPELLANT

Vs

Periyammal

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304-A

Citation : (2014) 4 MLJ 423

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Aggrieved by the Award, dated 20.07.2012 made in M.C.O.P. Nos. 1524, 1525 and 1526 of 2009, on the file of the Motor Accident Claims Tribunal, (Additional District Judge and Special Judge for E.C. Act Cases), Salem, New India Assurance Co. Ltd., has preferred this Appeal. An accident has occurred on 07.08.2009 at 18.30 hours, in which 3 persons, namely, Sasikumar, Manikandan and Srinath died. At the time of accident, one Sasikumar was riding a Bajaj Appachi Motor Cycle bearing Regn. No. MH-02-BH-3964. Manikandan and Srinath have travelled as pillion riders, and when all the three were proceeding, in front of National Sago Factory, Muthampatty, a bus bearing Regn. No. TN-30-W-4142 rushed from opposite direction, which was driven by its driver in a rash and negligent manner, without following any traffic rules and regulations, and dashed against the said motor cycle. All the three persons died. In this connection, a criminal case has been registered in Crime No. 626/2009 under Sections 279 and 304-A of IPC against the driver of the bus, by Valappady Police. Legal heirs of the deceased have filed separate claim petitions which is tabulated hereunder:

In the claim petitions, it is averred that the accident occurred only due to rash and negligent driving of the bus, by its driver, and had the driver taken little care, it could have been avoided and thus, they attributed negligence on the part

of the driver of the bus.

2. The Insurance Company opposed the manner of accident, liability and without prejudice to the same, questioned the quantum of compensation, claimed under various heads.

3. Before the Motor Accident Claims Tribunal, on behalf of the respondents/claimants, to prove the manner of accident, mother of the deceased Manikandan, namely, Smt. Periyammal, has been examined as P.W. 1, mother of the deceased minor Srinath, namely, Smt. Isabella has been examined as P.W. 2, mother of the deceased Minor Sasikumar, namely, Smt. Sulochana and brother, namely, Sasikannan, have been examined as P.W. 3 and P.W. 4 respectively and one Moorthy stated to be an eye-witness has been examined as P.W. 5. Ex. P. 1 dated 7.8.2009 is the Certified copy of First Information Report. Ex. P. 2 dated 8.8.2009 is the Post-Mortem Report. Ex. P. 3 dated 11.8.2009 is the MVI Report. Ex. P. 4 dated 7.8.2009 is the charge sheet. Ex. P. 5 dated 7.8.2009 is the Death Certificate. Ex. P. 6 is the Legalheirship Certificate. Ex. P. 7 dated 8.8.2009 is the Post-Mortem Certificate of Srinath. Ex. P. 8 dated 1.9.2011 is the Transfer Certificate of Srinath. Ex. P. 9 dated 8.8.2009 is the Post-Mortem Certificate of Sasikumar. Ex. P. 10 dated 1.9.2011 is the Transfer Certificate of Sasikumar. Ex. P. 11 dated 26.8.2009 is the MVI Report. Ex. P. 12 dated 29.7.2009 is the Insurance Policy and Ex. P. 13 dated 7.8.2009 is the Rough Sketch. On behalf of the respondents before the Tribunal, an official from the Insurance Company has been examined as P.W. 1 and the Driver of the bus bearing Regn. No. TN-30-W-4142 insured with the appellant insurance company has been examined as R.W. 2 and Exs. R. 1 to R. 3 have been marked. Ex. R. 1 is the Insurance Policy of Toyota Qualis. Ex. R. 2 dated 10.11.2011 is the notice from the Advocate. Ex. R. 3 dated 16.11.2011 is the Acknowledgement Card.

4. Upon evaluation of pleadings and evidence, the Claims Tribunal found that R.W. 2 driver of the bus was negligent in causing the accident. As the policy was in force, liability has been fixed on the insurance company to pay the compensation, as determined.

5. Heard the learned counsel appearing for the parties and perused the materials on record.

6. Challenging the finding in fixing the negligence on the part of the driver of the bus bearing Regn. No. TN-30-W-4142 and insured with the appellant insurance company, Mr. Elveera Ravindran, learned counsel appearing for the appellant insurance company submitted that when three persons had travelled in the motor cycle, contrary to the statutory provisions and as the motorcyclist could not balance the vehicle, due to carrying excess passengers than permitted, the accident had taken place and in the above said circumstances, the motorcyclist has also contributed negligence in causing the accident and therefore, the Claims Tribunal erred in fixing the entire negligence on the part of the driver of the bus in entirety.

7. To prove the manner of accident, the respondents/claimants have adduced oral evidence and marked Ex. P. 1 First Information Report registered against the driver of the bus in Crime No. 626 of 2009 under Sections 279 and 304-A of IPC and Ex. P. 4 charge sheet filed against the driver of the bus. Though R.W. 2 driver of the bus has deposed that the bus was driven in a careful manner and it was the motorcyclist who caused the accident, during Cross-Examination, he has clearly admitted that charge sheet has been filed against him.

8. On the aspect as to whether, merely because, 3 persons travelled in the motorcycle, that alone would constitute negligence or contributory negligence, as the case may be, this Court deems it fit to consider a few decisions:

(i) In *Managing Director, Tamil Nadu State Transport Corporation, (Coimbatore Division-I) Ltd. Vs. Abdul Salam, Jameela, Laila, Sainabha, Kabeer, Meharaj and P. Selvaraj*, this Court considered the aspect of negligence, where three persons travelled in a Motor Cycle and collided with a vehicle, which came in the opposite direction, resulting in the death of the one pillion rider. The Tribunal awarded compensation to the legal representatives of the deceased. On appeal by the State Transport Corporation, this Court in paragraph-2 of the judgment held as follows:

Apart from that, when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to loose his control over the vehicle. Even though such travelling of three persons in a motor cycle is contrary to the statute, still the enforcement wing do not care to take note of the same and failed to take action against their illegal action. Virtually because of the failure on the part of the enforcement wing, such travelling of three persons in two wheelers have become a regular sight. Even though the highway patrolling is available but it is rare sight to see a highway patrolling vehicle. The travelling of three persons has become rampant in the mofussils and in the city; especially among the youngsters like the college students. When that be the case, the enforcing authority is expected to enforce the statute with some strictness to avoid any untoward incident. There is no purpose in conducting the Road Safety Week without infusing the road sense in compliance of the Rules and Regulations of the statute in the minds of those who are using the vehicles.

(ii) In *Ravikumar v. Manager, Indian Textiles Co-operative Ltd.*, 2005 ACJ 1560 the Court considered as to whether double riding of a bicycle by itself would amount to negligence. In paragraph 8 of the judgment, it is held that, "when there was two people on the bicycle, even though there is no evidence to indicate precisely how and under what circumstances the accident took place. The Court drew the inference from the fact of double riding that cycle would have been to be rather unstable and if that is the case it is obvious that the cycle could not have been moving in a safe manner. In that context, the Court held that when the cycle is over loading by two persons riding on it, that it would certainly be oscillating in a zig zag manner which would have been the obvious reasons for

the collision".

(emphasis applied)

(iii) In *The Fazilka Dabwali Transport Co. Pvt. Ltd. Vs. Madan Lal*, , the Apex Court held that merely because two persons rode the bi-cycle, that by itself cannot lead to an inference that they have contributed to the accident. On facts, contributory negligence was not proved.

(iv) In *Narpal and Another Vs. Kanta Devi and Others*, , the Punjab and Haryana High Court held that the deceased could not be held to be solely responsible for causing accident, as he was carrying three pillion riders, along with empty drums of milk in a motor cycle.

(v) The Rajasthan High Court in *National Insurance Company Vs. Kastoori Devi and Others and Shanti Devi and Others*, , considered a case as to whether mere travelling of four persons in the motor cyclist, by itself amounts to contributory negligence. The Court held that merely because more persons travelled in a motor cycle, contributory negligence cannot be admitted, unless there is evidence to show that they contributed to the accident.

(vi) In *Mohinder Singh Sohal and Another Vs. Ramesh Kumar and Others*, , the Bombay High Court held contributory negligence cannot be held for carrying more persons than permitted by law. On facts, the Court went on to hold that when the driver of the motor vehicle was driving with due care and caution, it cannot be held that there was contributory negligence.

(vii) In *The United India Fire and General Insurance Co. Ltd. and Another Vs. Mst. Sayar Kanwar and Others*, , a Division Bench of the Karnataka Court, held that merely because three persons travelled in the motor cycle, it does not amount to contributory negligence.

(viii) The decision reported in *Managing Director v. Abdul Salam and Others* (supra) of this Court, was considered elaborately by another Division Bench of this Court, with reference to the statutory provisions, in *Kattabomman Transport Corporation Limited Vs. Vellai Duraichi and Others*, and the latter Bench held that three persons travelling in a motor cycle does not by itself amounts to contributory negligence. This Court held that in the absence of any evidence to prove that the rider or the pillion rider contributed to the accident, no contributory negligence can be attributed to the motorcyclist.

9. Except R.W. 1, the company has not examined any one. The oral testimony of the respondents/claimants as regards the manner of accident is duly corroborated by Ex. P. 1 FIR dated 7.8.2009, Ex. P. 4 Charge sheet dated 7.8.2009 and Ex. R. 13 Rough Sketch dated 7.8.2013. The testimony of R.W. 2 driver of the bus is neither supported by any independent witness nor corroborated by any document.

10. The next contention to be considered by this Court is that the motorcyclist

did not possess a valid and effective licence at the time of accident and that has been omitted to be considered by the Tribunal while advertng to the aspect of negligence. R.W. 1, official of the insurance company has clearly admitted in his cross-examination that he had not enquired the Regional Transport Officer as to whether the deceased motorcyclist Sasikumar, had a valid and effective driving licence. No document has been marked on the side of the insurance company to prove that the Regional Transport Authority was neglected to ascertain, as to whether the motorcyclist had any licence. The contention of the insurance company on the aforesaid aspect to fix contributory negligence, on the part of the motorcyclist that he did not possess the driving licence is also not proved by any clinching evidence. Nevertheless, non-possession of driving licence alone would not be a contributing factor, to hold that the deceased or the injured, as the case may be, was negligent in causing the accident. How the vehicle was driven, at the time of accident is the key factor, in deciding negligence.

11. In the absence of any concrete evidence, the finding of the Claims Tribunal, fixing the negligence on R.W. 2 cannot be said to be perverse warranting interference. Another contention of the insurance company is that the Claims Tribunal has erred to appreciate, Ex. P. 13 Rough Sketch showing that the accident occurred in the middle of the road and that therefore, contributory negligence ought to have been fixed. This Court has held that rough sketch alone would not determine the manner of accident. In this context, reference can be made to the decision of this Court in the Divisional Manager, New India Assurance Co. Ltd., Cuddalore v. District Superintendent of Police, Vellore and two Others 2012 AAC 2451 (Mad) : LNIND 2012 MAD 1565 : (2012) 4 MLJ 670.

14. Rough sketch drawn by the police, in a road accident cannot be taken as a conclusive proof, as to the manner of accident, for the reason that, on the main road or on a high way, depending upon the speed, weight of the vehicles involved in the accident, the last minute attempt on the part of the drivers involved in the accident to swerve the vehicles, to avoid any head on collision, the control of the vehicles, on account of the impact or the injuries sustained by the drivers, the position of the vehicles, may change. After the accident, the vehicles cannot always be expected to come to a sudden halt. In a case involving two or more vehicles, after the impact, the vehicles would come to a halt, on account of either the driver losing control over the vehicle or if the driver, not injured seriously, depending upon gravity of the injuries, and still able to control the vehicle, he would stop the vehicle. If both the drivers sustain injuries and not in a position to control, depending upon the factors stated supra, which are illustrative, the vehicles would come to a halt. There may be a possibility a vehicle like a motor cycle, with a lesser weight may even be dragged on in the same direction, in which, a bigger vehicle is operated...

12. In the result, the findings of the Claims Tribunal is confirmed and the Civil Miscellaneous Appeals are dismissed. The connected Miscellaneous Petitions are closed. No costs. The appellant/insurance company is directed to deposit the

entire award amount, with proportionate accrued interest, less the amount already deposited, to the credit of respective M.C.O.P. Nos. 1524, 1525 and 1526 of 2009, on the file of the Motor Accident Claims Tribunal, (Additional District Judge and Special Judge for E.C. Act Cases), Salem, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, except the minor, the respondents/claimants are permitted to withdraw the amount as per their apportionment, by making necessary application before the Tribunal. The share of the minor shall be deposited in any one of the nationalised banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minor shall be paid to the guardian once in three months, till the minor attains majority.