

(1980) 07 MAD CK 0038

In the Madras High Court

Case No : C.M.A. No's. 356 and 357 of 1977 and Memo of Cross Objections in both appeals

Oriental Fire and General Insurance Co.

APPELLANT

Vs

V. Ganapathi Ramalingam

RESPONDENT

Date of Decision : 23-07-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : AIR 1981 Mad 299 : (1981) 94 LW 290

Hon'ble Judges : Swamikkannu, J; Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.—Both these appeals and the connected memorandum

*Against order of Motor Accident Claims Tribunal (Sub. J.) Cuddalore D/- 24-3-1977.

Of cross objections arise out of the same award passed in M. A. C. T. O. P. Nos. 15 and 41 of 1974, on the file of the Motor Accidents Claims Tribunal, Cuddalore, and, therefore. they are dealt with together.

2. On the morning of 11-10-1973, there was a collision between a bus MDF 6676 and a car MSS 549 in Kothattai village, Virdhachalam. taluk, on the Virdhachalam-Chidambaram road. As a result of the said collision, the driver of the car died instantaneously and the occupant of the car sustained serious injuries. On the ground that the accident was due to the rash and negligent driving of the bus, by its driver, the dependants of the driver of the car. who died instantaneously, claimed a compensation of rupees one lakh in O. P. 15 of 1974, filed before the Motor Accidents Claims Tribunal. Cuddalore, The occupant of the car, who was injured as a result of the accident. filed a claim in O. P. 41 of 1974, claimed a compensation, of Rs. 15000/-.

3. These two claims were opposed by the owner of the bus as also the Insurance company with which the bus had been insured. Their objection was that the

death of the , deceased Ganapathi who was driving the car was not due to the rash and negligent driving, of the bus MDF 6776 and that in any event "the compensation claimed was excessive. With regard to the compensation claimed for the injuries sustained" by the petitioner in O. P. 41 of 1974, their defence. was that the accident was not due to the rash and negligent driving of the bus by its driver and that the compensation claimed was fanciful.

4. On these rival Pleadings, two questions; that were taken up for consideration by the Tribunal were- (1) Whether the accident was caused due to the rash and negligent driving of the driver of the bus MDF 6776? and, (2) To what compensation both the claimants will be entitled if the first question is to be answered in the affirmative?

5. The Tribunal, after a detailed consideration of the evidence adduced by the parties, held that the accident was purely due to the rash and negligent driving of the bus by its driver and, therefore, the owner of the bus as also the insurance company are liable to meet the claim for compensation put forward by the legal representatives of the deceased as well as injured in O. P. 15 and 41 of 1974, respectively. On the question of compensation, the Tribunal held in O. P. 15 of 1974. that the deceased. who. was driving the car, was a practising lawyer at Chidambaram. at the time of the accident and earlier he has been Practising as an advocate at Cuddalore from 1958 to 1964, that at, the time of his death he was earning sum of 500/- per month that he was aged 41 years at the time of his death and that, therefore, it can easily be presumed that he would have continued profession as a lawyer and , earned at least Rs. 500/- per month for a further Period of 25 years. He, therefore, quantified the loss of Pecuniary benefit to the family at Rs. 1,50,000/-. But taking into account the benefit of the lump Sum Payment, he passed an award for Rs. 75,000/-. Out of the said sum of Rs. 75,000/- the Tribunal directed Rupees 10,000/- to be Paid to the mother of the, deceased, the 6th _Claimant in O. P. 15 of 1974, and the balance will go to the benefits of the other claimants. On the question of compensation payable to the claimant in O. P. 41 of 1974. the Tribunal took the view that there is no evidence for loss of earnings arising out. of the injuries sustained by the claimant and that the claimant is, however, entitled to a sum of Rs. 1,600/- towards cost of medical treatment and Rs.5,000 for pain and suffering all in all. 4xed an aggregate, compensation of Rs. 15,000/- as against the claim made for a sum of Rs.. 15.000/-.

6. As against the award Passed in O . P. 1 of 1974, the Insurance Company has filed C. M. A. No. 357 of 1977, and as against the award passed in O. P. 41 of 1974, the Insurance Company filed C. M.A. No. 356 of 1977. In both the appeals, the claimants have filed cross objections contending that they are entitled to get higher compensation than the amount actually awarded by the Tribunal * The substantial question urged by the insurance Company in both the appeals is that u/s 95 " (2) (b) of the Motor Vehicles Act. its liability is

restricted to Its. 50,000/- in respect of *a single accident and, therefore its

liability cannot in any event exceed

Rupees 50,000/- and that the award of the Tribunal directing the Insurance company to pay, Rs. 75,000/- in O. P. 15 of 1974 and another sum of Rs. 6,000/- in O. P. 41 of 1974. will be a clear contravention of the said statutory - provision. It is true in this case, the Tribunal has passed two awards, one for - a sum of Rs. 75,000/- in O. P. 15 of 1974 and another for a sum of Rs. 6,000/- in O. P. 41 of 1974, in respect of the same accident, thus making the insurance company liable in all for a sum of "Rupees 81,000/-. If the limitation provided u/s 95 (2) is to apply, the total aggregate liability of the Insurance company in respect of one accident cannot exceed more than Rupees 50,000/-. But if the limitation contained in Section 95 (2) does not apply, then the Insurance Company is liable to indemnify the owner of the bus to the entire extent of his liability without any limit. We have to therefore consider the applicability of Section 95 (2), of the Act to the facts of this case. The deceased Ganapathi and the injured Ganpathi Ramalingam were all occupants of the car with which the bus collided. Therefore, so far as the bus is concerned they are all third parties. The liability in respect of third parties is dealt with in Section 95 (1) (b) (i) of the Act. Section 95 requires a policy of insurance, so as to satisfy the requirements of the Act. to cover any liability which may be incurred by the insured in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place and also against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. The proviso to Section 95 (1) deals with the liability of the insured in respect of persons carried in the insured vehicle and that does not in any way deal with the liability of the insurer in respect of the death of or bodily injury caused to third parties by use of the vehicle in a public place. Section 95 (2)., however, says that -subject to the Proviso to subsection (1). a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits. A sum of Rs. 50,000/- if it is a goods vehicle in respect of the death or bodily injury to employees other than the driver not exceeding six in number who are being carried in the vehicle and in respect of persons other than passengers carried for hire or reward in a vehicle, a sum of Rs. 50,000/- in all and in respect of passengers Rs.50,000/- in all where the "vehicle is registered to carry not more than 30 passengers -and Rs. 75,000/- in all if the vehicle is registered to carry more than 30 but not , more than 60 passengers and a sum of rupees one lakh in all if the vehicle is registered to carry more than 60 passengers. In addition to the above limits, a limitation of Rs. 10,000/- for each individual passenger in respect of a motor car and Rs. 5,000/- for each individual passenger in the case of other Vehicles has. also been provided.

7. According to the learned counsel for the Insurance company, the limitation contained in Section 95 (2) applies not only to the liabilities incurred in respect of passengers or other persons traveling in the bus but also in respect of third parties who were injured or died in the accident. Reliance is placed in support of this plea on two decisions of this court Jayalakshmi and Others Vs. The Ruby

General Insurance Co., Madras and Another, and The South India Insurance Co., Bombay Vs. Lakshmi and Others, . The learned counsel contends that the liability of the bus owner cannot in any event exceed Rs, 50,000/-.

8. However, the learned counsel appearing for the owner of the bus is well as the claimants contend that, the limitation provided for in sub-section (2) of Section 95 applies only to the persons carried in the vehicle in respect of the "death of or bodily injury caused to the persons carried in the vehicle Which Was responsible for causing the accident and not in respect of third parties who were injured in the accident and that in this case the deceased -and the injured not being the passengers or other persons carried in the bus, the Insurance Company is liable to indemnify the owner of the bus under sub7section (1) of Section 95 the Act to the extent of actual compensation fixed by the Tribunal arising out of the accident. The learned counsel also contended that in any event the insurance in this case being comprehensive, the -limitation contained in Section 95 (2) cannot apply here and that. the decisions referred to , above dealt with Act Insurance policies and not comprehensive policy as inthis case.

9. It is not in dispute in this that the Policy is a comprehensive The learned counsel for the Insurance company does not also dispute the preposition put forward by the other side the limitation provided for in section 95(2) will not apply to vehicles which have been comprehensively insured to cover all risks, It is seen at , the decisions above referred to dealt with Act insurance cases .It has been conceded by the learned counsel for the insurer that the said decisions will not apply to a case of Comprehensive insurance. In view of the said position, we have to hold that the liability of the insurer in this case cannot be limited to Re. 50,000/-

10. Though the learned counsel has challenged the finding of the Tribunal that the accident was caused by the rash and negligent driving of the bus by its driver. we are of the view that the materials on record are quite sufficient to establish the rashness and negligence *m the Part of the driver of the bus. The learned counsel for the appellant fairly concedes "that neither the owner of the bus nor the Insurance Company bad adduced any evidence to show that the accident was not due to the rash and negligent driving of the bus by its owner. On the question of negligence, we have got the evidence of P. Ws. 2 and 3. Both of them had traveled in the car Which was dashed against by the bus. Their evidence clearly shows that the bus entered the bridge after the car had almost reached the other Ride of the bridge and this is supported by the report of, the Motor Vehicles Inspector. who has visited the scene after the occurrence and who has prepared his report and plan EiL P. 3, though rough. Sketch showing the scene (of occurrence "Which was prepared by the Inspector of Police. Chidambaram, during the course of investigation, shows the actual place where the collision took place. From the sketch it is seen that the bridge is V2 ft. North to South and 18 ft. in width and that the accident had taken place 0 ft. from the southern end of the bridge and the scene of collision was on the extreme western

side of the bridge. The Car was Proceeding from South to North and it was going on the western side of the road- The bus, which was going from North to South, had no justification to come to the western side of the bridge and this shows that the bus was being driven on the wrong side of the road. The sketch further shows that the car was pushed to the southern side of the bridge and the car fell into the channel about 45 ft. from the bridge. It is also seen that the bus, even after collision. has traveled to a distance of 436 ft. This would clearly indicate that the driver of the bus was not - only rash and negligent but also drove the vehicle at a hectic speed. We are, therefore, of the view that the finding of the Tribunal that the bus was driven rashly and negligently cannot be taken exception to.

11. Then coming to the memorandum of cross objections filed by the claimants, we are of the view that the claimant in O. P. 41 of 1974, is not entitled to any higher compensation, it has been claimed in the- claim petition that the claimant has lost his kuruvai crop valued at Rs. 5000 and there was a partial loss of samba crop to the extent of Rs. 2000. The Tribunal held that the loss by way of crops has not been established by the claimant. The learned counsel for the claimant would say that admittedly there was loss of earnings as a result of the long and continued treatment which the claimant as the village headman, was having for the Purpose of curing the injuries sustained by him. But in the claim petition, there has been no reference to loss of earnings as a village headman and such a claim has been put forward only in the memorandum of cross objections filed before this court. In view of the fact that there is no material at all to prove the loss of earnings of the claimants, we do not think that the claimant is justified in claiming any amount towards loss of earnings. The Tribunal has awarded a sum of Rs. 5000 for pain and suffering and Rs. 1000 towards cost of medical treatment. It is not the claimant's case that as a result of the injury he has suffered any permanent disability. In those circumstances, the award of Rs. 6000 as compensation by the Tribunal can be taken to be fair and reasonable.

12. Coming to the cross objections filed in O. P. 15 of 1974, the learned counsel for the claimants submits that though the Tribunal has computed compensation of Rs. 75000 under the head "loss of Pecuniary benefit to the dependants", it has not awarded any amount for loss of expectation of life which is one of the heads under which compensation can be claimed on the ground of loss to the estate. It is seen from the order of the Tribunal that the deceased was earning a sum of Rs. 500 Per month at the time of the accident and he was aged 41 years. It computed the loss of earnings taking Rs. 5W as the monthly dependency. The total dependency has been calculated assuming that the deceased ,would have lived for a further period of 25 years and ultimately giving allowance for, the. lump sum Payment it determined the total compensation at Rupees 7MM. Ant, however. while computing compensation, the Tribunal has riot adverted to the claimants" entitlement for compensation under the head of less of expectation of life. In this case, the only bread winner of the family has died at the age of 41

and the loss of expectation of life can easily be estimated at Rupees 5000. In addition to grant of Rs. 75000 as compensation towards the pecuniary loss suffered by the dependants, a further sum of Rs. 5000 is granted as and for loss of expectation of life. Thus the total compensation payable to the claimants in O. P. 15 of 1974 will come to Rupees 80,000 as against Rs. 75000 awarded by the Tribunal.

13. The result is both C. M. As. 356 and 357 of 1977 and the cross objections filed in C. M. A. 356 of 1977 are dismissed and the cross objection filed in C. M. A. No. 357 of 1977 is allowed in Part and the award is enhanced to Rs. 80,000 out of which Rs. 10,000 will be paid to the 6th claimant. There will be no order as to costs. The enhanced amount will carry Interest at 6 per cent per annum from the date of the claim petition till date of payment. The Share of minor claimants 4 and 5 will be deposited in a nationalized bank -till they attain majority.

14. Order accordingly