

(2006) 09 MAD CK 0011

In the Madras High Court

Case No : C.M.A. (NPD-S) No. 391 of 1998, C.M.P. No's. 3400 and 8649 of 1998

Pallavan Transport Corporation Limited

APPELLANT

Vs

Seethamma, S. Kondiah alias Peda Kondiah and Akkamma

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2006) 4 LW 95

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; G. Balaji Prasad, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—This Civil Miscellaneous Appeal, preferred by Pallavan Transport Corporation, is directed against the judgment dated

29.08.1997 passed by the Motor Accident Claims Tribunal, (V Judge) Court of Small Causes, Chennai in M.A.C.T.O.P. No. 1851 of 1995.

2. In respect of death of one Kondiah in a motor accident that took place on 14.04.1995, his legal representatives i.e. brother and sisters filed a

Claim Petition u/s 166 of the Motor Vehicles Act, 1988, claiming a compensation of Rs. 2,93,390/-.

3. According to the claimants, on 14.04.1995 at 6.10 a.m. when the deceased Kondiah was crossing the Parthasarathy bridge opposite to

Railway Colony in Thiruvottiyur High Road in West-East direction, a bus bearing Registration No. TML 1613, belonging to the Transport

Corporation, driven rashly and negligently in North-South direction, ran over him and he died on the spot. It is case of the claimants that they are

the legal representatives of the deceased and they are entitled to receive compensation from the Transport Corporation whose driver is the cause

for the accident by his rash and negligent driving. In support of their case, the second respondent/claimant one Srinivasan, an eye-witness to the

accident and T. Amaldass, Sub-Inspector of Police (Traffic Wing) were examined as P.Ws. 1 to 3 respectively. As far as documentary evidence is

concerned, six documents including First Information Report, copy of draft sketch, Salary Certificate and Death Certificate were marked.

4. On the other hand, the Transport Corporation filed its counter and contended that on 14.04.1995, its bus was on its trip from Korukkupet to

Vivekanandar Illam; after alighting and carrying the passengers at Thanga Salai bus stop at 6:10 a.m., the bus was proceeding its trip and while so,

a man crossed the road, all of a sudden and in the process, dashed against the bus slightly and got injured and was admitted in hospital and died

there subsequently. It is the case of the Transport Corporation that the accident occurred only because of the careless act of the deceased in

crossing the road and not due to rash and negligent driving of the bus driver and as such, it is not liable to pay the excessive compensation claimed

by the claimants. Further, it went on to contend that the claimants have to prove their legal heirship. On its side, the bus driver was examined as

R.W.1 and no exhibit was marked.

5. After examining the oral and documentary evidence and holding that the bus driver was the cause for the accident, the Tribunal, passed an

award for a sum of 1,80,000/- with Interest at the rate of 12% per annum from the date of petition till the date of deposit. Challenging this

judgment of the Tribunal on the aspects of negligence and quantum, the Transport Corporation has come on appeal before this Court.

6. Mr. M. Krishnamoorthy, learned Counsel for the Transport Corporation has contended that:

a. The Tribunal has fixed the negligence on the part of the bus driver based on the decision of the criminal court and not on the basis of the

evidence available before it and this is against the well-settled principle that the judgment of the criminal court should not be relied upon while fixing

negligence;

b. The deceased died because of his unmindful act of crossing the road all of a

sudden and not because of the rash and negligent driving of the bus driver;

c. The claimants are not entitled to receive compensation as they have not produced legal heirship certificate to prove that they are the legal heirs of the deceased; and

d. The award of compensation is on the higher side and cannot be sustained.

7. Per contra, Mr. G. Balaji Prasad, learned Counsel for the respondents/claimants has contended that the Tribunal has fixed the negligence not on

the basis of criminal court judgment alone; but it has relied on the deposition of R.W. 1, the driver, during his cross-examination and also on the

evidence of P.W.2, an eye-witness to the accident and P.W. 3, Sub-Inspector (Traffic Wing). He has further argued that the claimants are solely

dependant on the income of the deceased and that being the case, the compensation of Rs.1,80,000/- awarded by the Tribunal is quite reasonable

and is also based on Ex.P.2, Salary Certificate issued by Chennai Corporation.

8. Heard both sides.

9. The three points which emerge for consideration in this appeal are that who is responsible for the accident, whether the bus driver or the

deceased, whether the claimants are entitled to receive the compensation and whether the amount awarded by the Tribunal is justifiable.

10. The occurrence of the accident on 14.04.1995 at 6:10 a.m. in Thiruvottiyur High Road is not disputed. P.W.2, Srinivasan who was crossing

the road with the deceased along with several others, has deposed that the bus ran over the deceased and it is only the bus driver who was

responsible for the accident. It is he i.e. P.W.2 who has lodged the complaint with the police. Had the bus driver not been guilty, he could have

given the complaint which is not the case here. P.W. 3, Amaldass has deposed that on the basis of the complaint received from P.W. 2, a criminal

case was filed against the driver and after investigation, he was convicted before the George Town III Metropolitan Magistrate Court and he had

also paid a fine of Rs. 3,000/-. That apart, R.W. 1, the driver himself has deposed during cross that since he was proved guilty after investigation,

he had paid a fine of Rs. 3,000/-. Thus, it is clear that the finding of the Tribunal that the bus driver was the cause for the accident, is based not

only on the criminal court judgment but also on the basis of other evidence, as stated above. Accordingly, the finding of the Tribunal with regard to fixing of negligence is confirmed.

11. Coming to the quantum of compensation, based on the autopsy conducted on the deceased, it is not in dispute that he, who was aged 47, was a bachelor and the claimants are his legal heirs. Ex.P.2 shows that the deceased was employed as a Sweeper in Chennai Corporation, drawing a salary of 2,257/-. Since the deceased was a bachelor, it can quite naturally be presumed that, after setting aside a portion of his income towards his savings and maintenance expenses, he would have contributed a definite sum to the claimants, on his own accord and not as a matter of duty.

12. In response to the contention of the counsel for the appellant that the claimants are not dependant on the deceased, the counsel for the respondents/claimants has relied on a decision of this Court reported in United India Insurance Co. Ltd. Vs. Kasiammal and Others, to justify that loss of earning of deceased is loss of estate of deceased and also to legal representatives and as such, legal representatives can file a claim petition, irrespective of dependency on the deceased and the relevant paragraph reads as under:

As pointed out earlier, the compensation amount is being paid to the legal representatives on account of untimely death of their ancestor. The dependency of the legal representatives is a question to be considered and does not mean only the dependents can claim compensation. The compensation being the amount for the loss to the estate of the deceased, it has to be considered as to whether the legal representatives had been put to loss because of the death of the deceased. Wherever the deceased is an earning member, naturally his savings is an accumulation for the estate which can be divided by the legal representatives after the death of the deceased. As the legal representatives had been put to loss of the earning of the deceased, the legal representatives are also entitled for the compensation.

13. On his arugment that even brothers and sisters who are the legal heirs of the deceased can claim compensation, the counsel for the respondents/claimants has placed reliance on a decision of the Apex Court in the case of Gujarat State Road Transport Corporation v. Ramanbhai

Prabhatbhai and Anr. reported in 1987 ACJ 561 and the relevant lines read as under:

We should remember that in an Indian family, brothers, sisters and brothers children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of an motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which we have already held, has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicle accidents.

14. The above two decisions make it clear that the respondents/claimants in the case on hand are very much entitled to receive compensation for the death of their brother who is the bread-winner of their family.

15. As already stated, from Ex. P. 2, Salary Certificate, it can be seen that the deceased was drawing a salary of Rs. 2,257/- per month. After deducting one-third of that amount towards his maintenance, the Tribunal has fixed the monthly contribution of the deceased as Rs. 1,500/- and thus, his annual contribution has been arrived at Rs. 18,000/-. Though the correct multiplier to be applied for the age group of 45-50 years is only

13, the Tribunal has adopted the multiplier of 10 only and arrived at the pecuniary damages and the total compensation as Rs. 1,80,000/-. Since the dependants are only brother and sisters of the deceased and not his children, spouse or parents, I am of the view that the application of a lesser multiplier by the Tribunal as against the actual multiplier, need not be interfered with and in that view of the matter, the award of compensation of Rs. 1,80,000/- with Interest @ 12% p.a. from the date of the claim petition till the date of deposit fixed by the Tribunal is confirmed.

For the afore-mentioned reasons, the appeal preferred by the Transport Corporation deserves no consideration and is liable to be dismissed and accordingly, it is dismissed with no order as to costs. Consequently, connected C.M.P. Nos. 3400 and 8649 of 1998 are also dismissed.