

(1990) 06 MAD CK 0014

In the Madras High Court

Case No : C.M.A. No's. 69, 128 and 144 of 1984

Principal, Tamil Nadu Theological Seminary

APPELLANT

Vs

A. Saraswathi and Others

RESPONDENT

Date of Decision : 29-06-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 2, 36, 38, 95

Citation : (1991) 2 ACC 163 : (1991) ACJ 310 : (1990) 2 LW 75

Hon'ble Judges : K.M. Natarajan, J;K. Venkataswami, J

Bench : Division Bench

Advocate : V.M. Lenin, for Calvin Jacob, for the Appellant; K. Alagiriswamy, Advocate-General, P. Pandi, A. Ramanathan and K.S. Narasimhan, for the Respondent

Judgement

K.M. Jatarajan, J.—These three civil miscellaneous appeals arise out of the common order in M.C.O.P. No. 115 of 1982 on the file of the

Motor Accidents Claims Tribunal/Subordinate Judge, Madurai. The second respondent before the Tribunal is the appellant in C.M.A. No. 69 of

1984. The claimants are the appellants in C.M.A. No. 128 of 1984 for enhancement of the compensation. The first respondent is the appellant in

C.MA No. 144 of 1984.

2. The brief facts which are necessary for the disposal of these appeals can be stated as follows: The appellants in C.MA No. 128 of 1984 who

are the claimants have filed M.C.O.P. No. 115 of 1982 claiming compensation of Rs. 8,00,000/- on account of the death of the deceased

Anantharamakrishnan who is the husband of the first claimant, father of the second claimant and son of the third claimant. The case of the claimants

is that on 30.9.1981 the deceased Anantharamakrishnan left his house at about

8.30 a.m. and while he was proceeding to his office on his scooter bearing registration No. MDK 3331 on Madurai Vaigai Albert bridge, one P.R.C. bus bearing registration No. TMS 5965 belonging to the first respondent was proceeding in front of him. The driver of the vehicle TMS 5965 suddenly stopped the vehicle. Immediately the deceased also stopped his scooter. At that time the omnibus LMV bearing registration No. TNA 677 belonging to the second respondent was also proceeding in the same direction, namely, south to north. The driver of the omnibus drove the said vehicle in rash and negligent manner without adhering to the rules of the road and with rapid speed and dashed against the scooterist from behind and then dragged him to the right side. As a result of the same, the scooter and the deceased got jammed between the halted P.R.C. bus and the omnibus. The scooter was reduced into a tangled mass of twisted metal. The scooterist sustained multiple fatal injuries and his head was crushed side to side and it has lost his appearance. The skull had got fractured irregularly into several pieces. As a result of the injuries, the scooterist succumbed to the injuries on the spot. It is stated that but for the rash and negligent driving of the second respondent's driver and the indiscreet negligence on the part of the first respondent's driver, the accident would not have occurred. On enquiry, compensation for negligence has to be determined by the Tribunal. Criminal proceedings also have been instituted against the driver of the second respondent in Crime No. 57 of 1981 and it is pending enquiry before the Judicial First Class Magistrate No. 2, Madurai. Hence, they are liable to pay the compensation claimed. It is further stated that the deceased was a clerk in the Central Bank of India at the time of the accident. He is aged 31 years. He married the first petitioner on 5.5.1979 and out of the happy married life, the second petitioner who is aged 1 1/2 years was born. The mother of the deceased is aged. The separation of her son at such a young age is a tragedy befallen her and her mental anguish is enormous. The deceased was hale and healthy. But for this accident, he would have lived upto the maximum span of life. He has got 30 years of service to his credit till the retirement on 24.5.2011. As a clerk, he would have approximately drawn a salary of Rs. 8,15,000/-. The first petitioner who is young and aged about 29 years has to face various problems. The loss of consortium cannot be

estimated by means of monetary measure. The future of her only son is a problem for her. Hence, she claimed a compensation of Rs. 8,00,000/-.

3. The said application is resisted by the respondents and in the statement of objections filed by the first respondent besides denying the allegations

in the claim petition it is submitted that the bus of the first respondent was proceeding at a very moderate speed towards north in the down gradient

portion of the road on the left with all care and caution. At that time, an old lady, a vendor of orange fruits, was carrying on her head a basket full

of orange fruits. While she was going on the western platform of the road, an orange fruit fell down from the basket and rolled across the road in

front of the bus. Suddenly, she ran across the road to pick up the same. The driver of the bus stopped the same and saved the lady from being run

over. Soon after he stopped the bus, there was a crash behind his bus. It is stated that late Anantharamakrishnan was coming on his scooter behind

the bus very closely without keeping sufficient distance and he was followed by the van TNA 677 driven by the driver of the second respondent in

good speed, in a rash and negligent manner. He dashed violently against the scooter and both crashed with the rear right portion of the stationary

bus. It is further stated that the van driver as well as the deceased Anantharamakrishnan were responsible for the accident. The matter was

reported to the police by the driver of the first respondent and they charged the driver of the van in C.C. No. 282 of 1981 on the file of the Judicial

First Class Magistrate No. 2, Madurai and it is pending. It is also stated that the quantum of compensation claimed is excessive and beyond all

proportions.

4. In the statement of objections filed by the second respondent, it is averred that the deceased Anantharamakrishnan was wholly and mainly at

fault. He was not even granted a valid licence to drive scooter. It is further stated that the driver of the P.R.C. bus, while proceeding towards

north, noticed the sudden crossing of a lady to pick up an orange fruit which fell down from her basket and rolled on the road. The P.R.C. bus

driver suddenly applied brakes to save the life of the lady. The scooterist who was going behind was not vigilant and he did not take note of

stopping of the bus. At that time the scooterist went to the wrong side to overtake the P.R.C. bus and dashed against the P.R.C. bus which was

about to be stopped. The dashing of the scooter was so severe and serious that the scooter and scooterist fell in between the P.R.C. bus and the van and the dash is in between the scooter and the P.R.C. bus. The allegation that the vehicle of the second respondent dashed against the scooterist with a rapid speed and dragged him into the right side is factually incorrect. It is further stated that the driver is defending the criminal case and the particulars given for claiming the compensation are all not admitted. Further, the first petitioner is given a job in the bank where her husband was working and she was decently paid. Hence the claim for Rs. 8,00,000/- is out of proportion and exorbitant. It is further stated that only the insurance company, the third respondent, is liable to compensate the loss.

5. The third respondent in its objections while adopting the statement of objections of the second respondent with regard to the extent and the quantum except the liability would submit that the second respondent is not in any way responsible for the accident mentioned in the petition and as such the second respondent as well as the third respondent are not liable to pay compensation. It is further stated that the petitioners have to strictly prove the necessary ingredients for quantum of compensation and finally submitted that as per the insurance policy issued to the second respondent for its vehicle TNA 677, the liability of the third respondent is limited to Rs. 50,000/- only.

6. On the pleadings, the Tribunal framed five points. On the side of the claimants, PWs 1 to 5 were examined and Exhs. P-1 to P-19 were marked and on the side of the respondents, RWs 1 to 4 were examined and Exhs. R-1 to R-9 were marked. The Tribunal for the reasons assigned in the order came to the conclusion that the accident happened as a result of the rash and negligent driving of the vehicle belonging to the second respondent as well as the negligent driving of the vehicle belonging to the first respondent and consequently fixed the liability of the first respondent at 25 per cent and that of the second respondent at 75 per cent and finally held that respondent Nos. 1 to 3 are liable to compensate the loss. The compensation was fixed at Rs. 3,60,000/- out of which the insurance company is directed to pay a sum of Rs. 50,000/- as per the policy. The first respondent is directed to pay a sum of Rs. 90,000/- while the second respondent is directed to pay the compensation of Rs. 2,20,000/- and the

third respondent was directed to pay a sum of Rs. 50,000/-. Out of the said sum, petitioner Nos. 1 and 2 are each entitled to Rs. 1,50,000/-and

the third petitioner was entitled to Rs. 60,000/-, towards compensation. The respondents are directed to deposit the amount within two months

and if they fail to pay the amount, they are liable to pay interest at 6 per cent per annum. Aggrieved by the said award, the three appeals are filed

by the claimants as well as respondent Nos. 1 and 2.

7. Learned counsel for the appellant in C.M.A No. 69 of 1984, Mr. Lenin, submitted that the court below ought not to have believed the evidence

of PW 5 as his evidence is contrary to the facts which are proved by documents. He would further submit that the injuries on the deceased, which

are on his right side, probabalise the case of the appellant that the accident took place when the deceased attempted to overtake the bus of the first

respondent and the court below has failed to consider this aspect in fixing the liability on the appellant and also on the first respondent in the

M.C.O.P., namely, Managing Director of the Pandian Roadways Corporation. According to him, the doctrine of *res ipsa loquitur* is applicable in

this case and the liability is to be fixed not only on the driver of the van belonging to the appellant but also on the driver of the Pandian Roadways

Corporation bus as well as the deceased and the liability should be only 1/3rd and not more on the appellant.

8. The learned Advocate-General appearing for the first respondent, who is the appellant in C.M.A. No. 144 of 1984, drew the attention of this

court to the evidence of PW 5 and submitted that the Tribunal failed to draw proper inference from the evidence of PW 5, an independent witness

with regard to the actual occurrence. He would submit that the finding of the Tribunal that the driver of the appellant's bus is also liable for

contributory negligence is erroneous as it does not arise for consideration on the facts and circumstances of the case. He would also submit that the

Tribunal failed to note that it is the specific case of the claimants themselves that the deceased had already stopped his scooter 5 feet away from

the appellant's bus and the driver of the van belonging to the fourth respondent came and dashed against the scooter causing the death and as such

the driver of the appellant's bus cannot be held liable for contributory negligence. It is the further contention that the mere fact that the driver of the

appellant's bus failed to give signal when he stopped the bus would not constitute contributory negligence, as in the instant case, he had to stop the vehicle to save another person who suddenly crossed the road.

9. The appellants in C.M.A. No. 128 of 1984 are the claimants and they claimed enhanced compensation and also challenged the judgment

limiting the liability of the insurance company to Rs. 50,000/-. The learned counsel would submit that though the appeal is restricted to Rs.

6,00,000/-, yet the appellants are entitled to compensation as made in the petition for Rs. 8,00,000/-. He would further submit that the Tribunal

failed to consider the relevant facts, namely, the age of the deceased, his last drawn pay and his pensionary and other benefits and the age of the

claimants while fixing the quantum. The learned counsel would mainly argue that the Tribunal misdirected itself (Sic. while interpreting) the legal

effect of Section 95(2), Sub-clauses (a) and (b) of the Motor Vehicles Act in restricting the liability of the third respondent, insurer, to Rs.

50,000/-. He would further submit that the appellants are entitled to reasonable interest u/s 110-CC of the Motor Vehicles Act and as enunciated

in various decisions in this behalf and the Tribunal erred in restricting interest on the compensation at 6 per cent per annum after the expiry of two

months from the date of judgment without any valid and sufficient reason therefor. He would also submit that the deduction made out of Rs.

4,50,000/- is also not proper.

10. Per contra, the learned counsel for the insurance company submitted that the judgment of the Tribunal restricting the limit of liability on the

insurer is perfectly legal and correct and does not call for interference in view of the relevant provisions of the Motor Vehicles Act and decisions.

According to him, Section 95(2)(c) will not apply and Section 95(2)(b) alone will apply. Lastly, he would submit that the quantum of compensation

awarded to the claimants is excessive and not in accordance with the principles laid down in various decisions.

11. The following points arise for determination in these appeals:

(1) Whether the learned Tribunal in fixing joint liability on respondent Nos. 1 and 2 at the ratio of 25 per cent and 75 per cent is correct?

(2) Whether the Tribunal is justified in restricting the liability of the third respondent insurance company to Rs. 50,000/- by invoking Section 95(2)

(b) and not Section 95(2)(c) ?

(3) Whether the claimants are entitled to any compensation and what is the correct compensation amount payable to the claimants?

12. As regards the first point, it is not in dispute that on 30.9.1981 at about 8.30 a.m. when the deceased was proceeding on his scooter bearing

registration No. MDK 3331 on the Madurai Vaigai Albert bridge, the driver of the P.R.C. bus belonging to the first respondent bearing

registration No. TMS 5965 suddenly stopped the vehicle without giving any signal. Then the vehicle, namely, omnibus bearing registration No,

TNA 677 belonging to the second respondent which was also proceeding in the same direction behind the deceased, dashed against the deceased

from behind and as a result of the same, he sustained fatal injuries and died on the spot. The contention of the first respondent was that since a

vendor of oranges suddenly crossed the road in order to pick up an orange which fell on the road and in order to save her, he had to stop the

vehicle suddenly and the mere fact that he had not given signal for the vehicle coming from behind would not make him liable for death of the

deceased and as such he is not in any way liable. In this connection, he relied on the evidence of PW 5. On the other hand, it was the contention of

the second respondent that the deceased was also responsible for the accident as he overtook the bus and dashed against it and as a result of the

same, he sustained injuries and in any event the Tribunal ought to have held that both respondent Nos. 1 and 2 as well as the deceased are equally

responsible for the accident, that the contribution has to be fixed according to the ratio equally and that respondent Nos. 1 and 2 are equally liable

to pay compensation of 1/3rd each. It is the case of the claimants that the deceased was not at all in any way responsible for the accident, that it is

only due to the rash and negligent driving of the vehicles belonging to respondent Nos. 1 and 2 that the accident occurred, that respondent Nos. 1

and 2 alone are responsible and that the finding of the trial court is perfectly legal and correct and no interference is called for.

13. As regards the accident, we have got the evidence of PW 5 on the side of the claimants and the evidence of the drivers of both the vehicles

examined as RWs 1 and 3 and also the evidence of the investigating officer PW 2, Inspector of Police and also the exhibits, Exhs. P-1 to P-13 and

Exhs. R-1 to R-8. That the driver of the van TNA 677 belonging to the second respondent was rash and negligent in driving the said vehicle and

he was responsible for the death of the deceased is established by overwhelming documentary and oral evidence. It is also not seriously disputed

by the learned counsel appearing for the second respondent. It is to be noted that the driver of the first respondent gave a complaint Exh. P-4

against RW 3, the driver of the second respondent and on the basis of the same, a criminal case was registered in CrI. No. 578 of 1981 and he

was prosecuted. The evidence of PW 2 coupled with the mahazar prepared by him for recovery of the blood-stained earth, glass pieces, scooter

seat and other items, as well as the observation mahazar Exh. P-2 and the rough sketch Exh. P-23 and the evidence of PW 2 regarding the

position of the three vehicles involved in the accident and the body of the deceased when he inspected the scene the same day at about 9.45 a.m.

within an hour of the accident clearly supported the case of the claimants that it was due to the rash and negligent driving of the van by RW 3, the

driver of the second respondent that the accident occurred and the deceased sustained serious injuries and as a result of the same he died. The

photos taken at the scene place which are marked as Exhs. P-6 to P-12 and also the photos which were marked on the side of the respondents as

Exhs. R-1 to R-4 also corroborated the evidence of PW 2 and the eye-witnesses PW 5 and RW 1. Even RW 3 admitted the correctness of the

physical features in the said photographs. The report of the Motor Vehicles Inspector, which is marked as Exh. P-5, reveals the damage to all the

three vehicles and also probabilises the case that the van TNA 677 dashed against the scooter MDK 3331 driven by the deceased and the

scooter as a result of the same dashed against the bus TMS 5965. It is seen from the evidence of PW 2 that there is a yellow line in the middle of

the road and the road is sloping from south to north and the location of the van in the above place with reference to the yellow line clearly shows

that he has violated the traffic rules. The evidence of PW 5 also clearly establishes that it is only because of the rash and negligent driving of the van

by its driver, namely, RW 3, that the occurrence took place. PW 5 was coming in the opposite direction and he has categorically stated that when

the bus driver applied sudden brakes, the scooter was at a distance of 5 feet behind the bus and since the driver of the van drove the same at a

high speed and in negligent manner, he dashed against the deceased who was driving a scooter. There is absolutely nothing to reject his evidence.

Besides that, there are other clinching circumstances to hold that the driver of the van should have been rash and negligent in driving the van at the

time of the accident. On the date of occurrence, two of the lecturers of the 2nd respondent college got into the van at about 8.30 a.m. at

Arasaradi, Madurai and they wanted to reach the Social Services University at any cost by 9 a.m. RW 3 also agreed to the same. It is not in

dispute that on the way from the place where these two lecturers got into the van there was heavy traffic and it has been so admitted by RW 3

himself. When he passed through the crowded locality and reached the scene place at 8.50 a.m. he was keeping a distance of 35" before his van.

He was driving the vehicle in such a way upto the scene and while he approached the scene place, the gap between his van and the bus in front of

him was only 25". It is also admitted that the place of occurrence is a down gradient. It is clear from the various answers elicited from RW 3 that

he was also rash and negligent in driving the van at the time of the occurrence. Further, it is seen that he was having a defective eye vision and it is

seen as is evident from his admission. The certificate in respect of the same was produced in the criminal case. Hence, we do not find any difficulty

in holding that the driver of the van, namely, RW 3 was rash and negligent and it is only as a result of the same that the accident occurred and the

deceased met with his death.

14. Now coming to the liability of the first respondent, we have to consider the evidence of PW 5 in the light of the evidence given by RW 3, PW

2 and the admissions made by RW 1 and various exhibits filed in this case. It is not in dispute that the bus belonging to the first respondent was

proceeding from south to north followed by the scooter driven by the deceased which was followed by the van driven by RW 3. It is also not in

dispute that the driver of the bus belonging to the first respondent applied sudden brakes without giving any signal, that the van dashed against the

scooter which dashed against the bus and that the deceased and the scooter got in between the bus and the van and as a result of the injuries, he

died. PW 2, Inspector of Police, inspected the scene place at about 9.30 a.m. immediately after the occurrence, that is, within half an hour and he

noted the physical features of the vehicles involved in the accident and also the place in which the deceased was found. He took photographs,

drew rough sketch and prepared observation mahazar which are marked as Exhs P-2, P-3 and P-6 to P-12. The Motor Vehicles Inspector also

inspected the scene place and submitted a report Exh. P-5 giving his opinion. It is seen from the report of the Motor Vehicles Inspector that the

accident did not occur on account of any mechanical defect and that the van TNA 677 dashed against the scooter MDK 3331 which dashed

against the rear body of TMS 5965 stage carriage. PW 5 is an eye-witness to the occurrence. It is seen from his evidence that he was coming in

the opposite direction on a scooter and that at the time of the occurrence, he found the P.R.C. bus stopped by applying brakes with terrific noise.

The scooterist was found at a distance of 5" and the van came at a high speed and dashed against the scooter and the scooter dashed against the

bus and the deceased died. He also noticed damages to all the three vehicles.

15. The learned Advocate-General appearing for the first respondent submitted that in view of the admission of PW 5 that he noticed the

scooterist standing with the scooter at a distance of 5" after stretching his legs on the ground, it cannot be said that the driver of the bus was

negligent. He also stated that when he first saw the accident, he noticed the van dashing against the scooter. The evidence of PW 5 has to be read

along with other evidence adduced in this case. It is seen from the sketch prepared by PW 2 that the version of the driver RW 1 that he suddenly

applied brakes in order to save the vendor of oranges is false as the bus was not stopped by the side of the vendor and in front of the orange fruit;

but it went ahead after crushing the orange fruit and stopped after crossing the place. The physical features noted in Exhs. P-2 and P-3 with regard

to the location of the three vehicles and the body of the deceased probabalise the case of the claimants that the accident took place only due to the

rash and negligent acts of the drivers of both the vehicles. It is to be noted that all the three vehicles sustained damages as is evidenced by Exh. P-

5, the report of the Motor Vehicles Inspector. Even RW 1, the driver of the bus, admitted in his evidence that it is necessary to show signal by

waving his hands before the brakes are applied and also red signal is to be shown to the vehicles coming from behind. He also admitted that while

applying brakes in this case, he did not do so, as he noticed the old woman crossing the road half-way. He also admitted in evidence that there is a bend at the southern side and the road is not running straight but only curved. There are two boards. One board is to the effect that the vehicles should be driven slowly to the left and the other board is that on any account the vehicle should not cross the yellow line. He admitted that the old woman was at a distance of 300" away from the curved portion. If really RW 1 proceeded at a speed of 10 kmph at the time of the occurrence, there is no difficulty in applying the brakes after showing sign to the vehicle coming from behind. From the answers elicited in his evidence it is clear that he has not applied the brakes as per traffic rules and that he did not take proper care. It is clear from the evidence of RW 3 that the driver of the bus belonging to the first respondent was running at a high speed and that if he had shown signal while applying brakes, the accident would not have happened. It is also in evidence that the driver of the bus left the terminus at about 8.28 a.m. and the occurrence took place at 8.55 a.m. In between the distance of 6 miles, there are 20 bus stops and at each bus stop the bus stopped for 2 minutes. Admittedly there was crowd in the bus and people got in at each bus stop. Therefore, the version of the driver of the bus that he drove the vehicle at a speed of 10 kmph is false. It is also not in dispute that the road was sloping towards north and that it was a low gradient. It cannot be said that the driver of the bus was not negligent in not showing the signal and following the normal procedure in applying sudden brakes. The old woman who is said to have crossed the road was also not examined. The Tribunal rightly took into consideration the material fact, namely, the driver of the first respondent bus has not followed the traffic rules and he has admittedly failed to show the signal to the vehicle coming behind while applying brakes. The road is also curved and sloping one. The occurrence took place immediately after the curved portion. It is clear that he was also responsible for the accident. If he had shown the signal, the vehicle which was coming from behind, namely, the driver of the van, would not have proceeded further and dashed against the scooter which in turn would not have dashed against the bus. If really he was driving the bus at a slow speed, there was no necessity for him to apply sudden brakes to avert an accident. It is clear from the evidence of RW 1 that he saw the vendor of oranges at a distance of 10". Considering the

physical features, namely, the place where the bus was stopped with reference to the orange fruit, the version of the driver of the bus was rightly rejected by the Tribunal.

16. The learned Advocate-General for the first respondent relied on two decisions reported in *Ghanshyam v. Laxmanswaroop* 1979 ACJ 476

(MP) and *Parkinson v. Liverpool Corporation* (1950) 1 All ER 367 (Sic. The first decision) relates to a case where the petitioner boarded a

tempo as a passenger. When the tempo was proceeding on the road, all of a sudden a boy ran from one side of the road to the other and the

tempo driver, in order to avert the accident, had the only option of applying brakes. He applied the brakes which resulted in the accident in which

the appellant received injuries. It is the admitted case that the boy suddenly appeared in front of the vehicle and the driver had to exercise

discretion on the spur of moment to avert accident. In the circumstances, it was held that the driver was not in any manner negligent. That was a

case where the petitioner was inside the tempo and sustained injury while the brakes were applied to avert an accident when a boy suddenly ran

across the road. The said decision is not applicable to the facts of this case. Here, the accident occurred on account of the failure on the part of the

driver of the P.R.C. bus to follow the traffic rules and give signal to the vehicle coming behind while applying the brakes and it is only because of

his failure that the vehicles coming from behind dashed against each other and as a result of the same the accident took place. The negligence of the

driver is very clearly established. The decision relied on by the first respondent is not helpful. That was a case where the passenger in the tempo

sustained injury while applying brakes and the question of showing any signal to the incoming vehicle does not arise in that case. In the

circumstances of the case, it was held in that case that the driver was not responsible. Similarly, in the case of *Parkinson v. Liverpool Corporation*

(1950) 1 All ER 367 the passenger in the omnibus had left his seat and was walking down the gangway with the intention of alighting at the next

stopping place. At that time, the driver applied brakes to avoid running over a dog. The passenger was thrown to the floor of the vehicle and

sustained injuries. It was held in that case that the driver acted as an ordinary and careful driver, as he was faced with a sudden emergency caused

by the dog's appearance in front of the omnibus and therefore the driver was not guilty of negligence. In this case, even from the evidence of the driver, it is seen that he has not acted as an ordinary and careful driver. In view of the traffic rules, it is his duty to show signal to the vehicle coming from behind it by waving his hands and also lighting the red light behind the vehicle in order to avert dashing. But he has failed to do it. It is only because of the negligent act of the driver of the first respondent that the accident took place.

17. In this connection, our attention was drawn to the decisions reported in *Gobald Motor Service v. R.M.K. Veluswami* 1958-65 ACJ 179 (SC)

and *Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co.* 1977 ACJ 343 (SC). In *Pushpabai's* case, their Lordships observed:

Normally, it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence.

The learned counsel for the claimants relied on this decision and submitted that the burden is on the drivers of the respondent Nos. 1 and 2 to

establish that the accident happened due to some other cause than their own negligence and in this case the burden has not been discharged. On

the other hand, there are materials to hold that on account of rash and negligent driving, not only of the driver of the van but also the driver of the

P.R.C. bus, the accident occurred and as a result of the same the scooterist succumbed to the injuries. In this connection our attention was drawn

to the evidence of the doctor, PW 1, who conducted autopsy and his evidence has not been challenged by the first respondent. As already

noticed, the physical features were noted by the investigating officer and the damage to the vehicles. In the circumstances of the case, we have no

hesitation in holding that the driver of the first respondent is also liable for contributory negligence and that the first respondent is liable to

compensate the loss sustained by the claimants. The court below rightly considered the extent of liability as regards respondent Nos. 1 and 2 and

fixed it at the ratio of 25 per cent and 75 per cent. We are of the view that the ratio adopted by the Tribunal is perfectly correct and no

interference is called for. Accordingly we hold that both respondent Nos. 1 and 2 are liable to compensate the loss sustained by the claimants at

the ratio of 25 per cent and 75 per cent as fixed by the Tribunal.

18. The next question to be considered is whether the order of the Tribunal restricting the liability of the insurance company, third respondent, to

Rs. 50,000/- is legal and proper.

19. The contention of the learned counsel for the claimants is that the vehicle, namely, the van belonging to the second respondent will not come u/s

95(2)(b) of the Motor Vehicles Act, but only u/s 95(2)(c) and as such, the insurance company is liable to pay the amount of compensation

determined by the Tribunal and it should not be restricted. On the other hand, the learned counsel for the insurance company submitted that this

vehicle will certainly come under the vehicle referred to in clause (2) (b) of Section 95 and as such, the Tribunal's finding restricting the liability to

Rs. 50,000/- is correct. For proper appreciation, it is worthwhile to quote the provision of Section 95(2) which reads as follows:

95(2). Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the

following limits, namely-

(a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the

Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding

six in number, being carried in the vehicle;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of, or in pursuance of, a contract of

employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger;

(c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees six thousand in all in respect of damage to any property of a third party.

The question that now arises for consideration is whether the van TNA 677 is a vehicle in which passengers are carried for hire or reward or by

reason of, or in pursuance of, a contract of employment. The vehicle is described in the policy Exh. R-9 as "TNA 677 Matador van, carrying

capacity of passengers 15". As regards the limitation as to use, it is stated that it is being used as hotel/school technical omnibus and Rs. 90/- was

paid as premium under the head "passenger". It is seen from Endorsement No. 13 (b) attached to and forming part of policy, for legal liability to

passengers excluding liability for accidents to employees of the insured arising out of and in the course of their employment, an additional premium

of Rs. 95/- was paid. It is seen from Exh. P-5, report of the Motor Vehicles Inspector that the said vehicle has been described as LMV omnibus

and fitness certificate was also issued to the vehicle and the particulars were also noted as 798/81/1988/MKG/MDN/18.2.88. The learned

counsel appearing for the insurance company drew our attention to the definitions of the vehicles u/s 2 of the Motor Vehicles Act, wherein u/s

2(18-A) "omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver. While describing motor

car u/s 2(16) it is stated that motor car means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid

carriage. "Motor cab" has been defined in Section 2(15) as any motor vehicle constructed, adapted or used to carry not more than six passengers

excluding the driver, for hire or reward. It is submitted that the vehicle TNA 677 omnibus cannot be a motorcar and as omnibus, the vehicle in

question has obtained fitness certificate. Fitness certificate is contemplated only in the case of transport vehicles. Section 36 of the Act deals with

special provisions in regard to transport vehicles and Section 38 deals with the certificate of fitness of transport vehicles. Transport vehicle is

defined u/s 2(33) as public service vehicle or a goods vehicle. It is to be noted that private vehicle does not require any fitness certificate. The

fitness certificate so far as the van TNA 677 is concerned is valid till 18.2.1988.

20. The learned counsel for the insurance company drew the attention of the court to the relevant rules under the Tamil Nadu Motor Vehicles

Rules wherein under Rule 55 (i) it is provided that in the case of a transport vehicle other than a motor cab both registration marks shall exhibit the

letters and numerals in two separate horizontal lines, the letters above and the numerals below while in all other cases the registration marks may

exhibit the letters and numerals either in two horizontal lines as aforesaid or in one horizontal line. Rules 101, 102 and 103 deal with the procedure

and issue of certificate of fitness in respect of transport vehicles. Rule 189-B which deals with the grant of Statewide public carrier's permit, deals

with tourist omnibus. Under Rule 294-A, vehicles used for public purpose referred to therein were exempted from taking out permits.

21. The learned counsel for the insurance company submitted that even as per the evidence of RW 3, Edward Ramani and Aruldoss, who were

employed as lecturers in the second respondent college, got into the van and he was asked to take them to the Social Services University by 9

a.m. as they were to be there at that time. That the vehicle was utilised for taking the employees of the 2nd respondent college from the college to

the university is not in dispute. RW 2, the Principal of the second respondent college, also stated that the van was used for the use of the college

and that those lecturers were travelling in the van at the time of the accident. He would say that no hire was charged. The learned counsel for the

insurance company submitted that by reason of employment, they were taken in the van and as such it would fall u/s 95(2)(b), being a vehicle in

which passengers were carried by reason of the contract of employment In this connection, the learned counsel drew the attention of this court to

the decision in *Vandyke v. Fender* (1970) 2 All ER 335 and also the passages occurring at page 705 of Bingham's Motor Claims Cases, 7th

Edn., where the two cases *hazard v. Universal Insurance Co.* (1937) 3 All ER 79 and *Vandyke v. Fender* (supra) were referred to. The learned

author has summarised the case *Vandyke v. Fender* (supra) as follows:

Vandyke and *Fender* were moulders employed by the second defendants at a foundry 30 miles from their homes. The second defendants arranged

with *Fender* to lend him a car in which he could drive to work, bringing *Vandyke*

and two other employees. Although the arrangements for providing the car and paying him an allowance for petrol was part of Fender's contract of service neither he nor Vandyke was obliged to use the car if they did not wish to do so. It was not a term of their contract of service that they must use it. When riding as a passenger in the car on the way to work Vandyke was injured in an accident for which Fender was held to blame.

Held: Vandyke was in the vehicle "by reason of...a contract of employment" but not "in the course of his employment".

The learned counsel relying on the ratio in the above decision submitted that by the travelling of the two college lecturers in the college van from the

college to the university, it can be safely stated that they are passengers carried by reason of contract of employment. In this connection, our

attention was drawn to Exh. R-9 policy wherein also it is stated that a comprehensive policy was taken in connection with the commercial vehicle

and accordingly premium was paid. Hence, we find much force in the contention of the insurance company that the vehicle would come u/s 95(2)

(b) and not u/s 95(2)(c). When once it is held that it comes u/s 95(2)(b), the latest decision of the Supreme Court reported in National Insurance

Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC) is in all fours applicable in this case. It was held in the above-quoted decision:

Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with

regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-section

(2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the insurance company and

separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if risk of any other nature,

for instance, with regard to the driver or passenger etc. in excess of statutory liability, if any, is sought to be covered it has to be clearly specified in

the policy and separate premium paid therefor. This is the requirement of the Tariff Regulations framed for the purpose.

That was also a case where in respect of commercial vehicle, a comprehensive policy was taken as in this case. Their Lordships after referring

various decisions and also quoting the limits of liability as indicated in the policy, in para 6 of the judgment, which is similar to the one in the instant case, held in para 7 as follows:

A perusal of the policy, therefore, indicates that the liability undertaken with regard to the death or bodily injury to any person caused by or arising

out of the use (including the loading and/or unloading) of the motor vehicle falling u/s II (1) (i) has been confined to "such amount as is necessary to

meet the requirements of the Motor Vehicles Act, 1939". This liability, as is apparent from clause (b) of Sub-section (2) of Section 95 of the Act,

was at the relevant time Rs. 20,000/- only. The details of the premium also indicate that no additional premium with regard to a case falling u/s II

(1) (i) was paid by the owner of the vehicle to the insurance company. It is only the vehicle which was comprehensively insured, the insured's

estimate of value including accessories (I.E.V.) thereof having been shown as Rs. 40,000/-. In this view of the matter the submission made by

learned counsel for the respondents that the appellant had in the instant case undertaken an unlimited liability does not obviously have any

substance. The liability under the policy in the instant case was the same as the statutory liability contemplated by clause (b) of Sub-section (2) of

Section 95 of the Act, namely, Rs. 20,000/-. An award against the appellant could not, therefore, have been made in excess of the said statutory

liability.

In the instant case also, as is seen from the policy, the limit of the amount of the company's liability u/s II-1 (i) in respect of any one accident is

such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939. As against the limit of the amount of the company's

liability u/s II-1 (ii) in respect of any one claim or series of claims arising out of one event, it is shown as Rs. 50,000/-. The premium paid is shown

as below:

Basic premium Rs. 176/-

1/2% I.E.V. Rs. 260/-

S.R.C.C. Rs. 130/-

Passengers Rs. 90/-

Driver Rs. 8/-

Total Rs. 664/-

The insured's estimate of value including accessories is Rs. 50,000/-. The latest decision of the Supreme Court cited above is in all fours

applicable to the case on hand. Applying the said ratio, it cannot be said that the finding of the Tribunal restricting the liability to Rs. 50,000/- is in

any way illegal or improper so as to warrant this court to interfere with the same.

22. As regards the enhancement of compensation made by the claimants, it is submitted by the learned counsel for the appellants that the date of

birth of the deceased is 24.5.1951 and he joined service on 5.6.1970. But for the accident, he would have continued in service till 24.5.2011 and

he would have become an officer from 1.7.1983. He would have received Rs. 8,00,000/- and more by way of salary during this period. These

details have not been disputed by any of the respondents. The learned counsel for the claimants submitted that the Tribunal is not correct in

deducting 20 per cent out of the compensation arrived at Rs. 4,50,000/-. He has submitted that the Tribunal has also not taken into consideration

the three pay revisions which will yield a substantial potential income. He would also submit that though the claimants have restricted their claim to

Rs. 6,00,000/- in the appeal, it is for the court to estimate the claim and the court is bound to grant just amount irrespective of the amount claimed

by the claimants. On a careful analysis of the entire materials placed before us, we find that the Tribunal took into consideration the relevant factors

in fixing the compensation. The Tribunal has rightly come to the conclusion that the deceased Anantharamakrishnan would have contributed a sum

of Rs. 900/- per month towards family expenses to PW 4 and he would have spent Rs. 500/- for his expenses. On that basis, he has calculated the

contribution to the family at Rs. 10,800/- per annum and multiplied it by 29 years, till the date of his retirement, which comes to Rs. 3,13,200/-.

For the loss of consortium to the wife as well as love and affection to the child, he has fixed a compensation of Rs. 36,800/-. Towards loss of

gratuity a sum of Rs. 22,150/- is awarded and towards provident fund the deceased would have got Rs. 63,169/- if he was alive and retired

peacefully and on that score the Tribunal awarded a compensation of Rs.

1,00,000/-. Thus, under all the three heads, it comes to Rs. 4,50,000/-.

The Tribunal deducted 20 per cent towards lump sum payment and consequently awarded Rs. 3,60,000/-. In the circumstances and in view of the

materials placed before this court, we are of the view that the compensation fixed by the Tribunal is just and reasonable and there is absolutely

nothing to enhance the same on any score.

23. The contention of the learned counsel for the claimants is that the Tribunal has awarded interest at 6 per cent per annum only if the

compensation was not deposited within two months. It was pointed out that interest is awarded from the date of default of such payment and that

the direction in regard to payment of interest is not correct. We find much force in the contention of the learned counsel for the claimants. In this

connection, the learned counsel for the claimants drew the attention of this court to the decisions in *Narcinva V. Kamat v. Alfredo Antonio Doe*

Martins 1985 ACJ 397 (SC) *Chameti Wati v. Delhi Municipal Corporation* 1985 ACJ 645 (SC) *Jagbir Singh v. General Manager, Punjab*

Roadways 1987 ACJ 15 (SC) and *Indrani v. S. Ramalingam* 1989 ACJ 1007 (Mad) and submitted that the Tribunal ought to have awarded

interest at least from the date of petition when the claim was made. In *Chameli Wati v. Delhi Municipal Corporation* (supra), it was held as follows:

We are of the view that the Division Bench of the High Court erred in the exercise of its discretion u/s 110-CC of the Motor Vehicles Act, 1939,

in not awarding interest on the amount of compensation finally determined by it from the date of the application. It is undoubtedly true that u/s 110-

CC, the Division Bench of the High Court had discretion to award interest at such rate and from such date not earlier than the date of the

application as it may think fit in the exercise of its discretion. But it is well settled that every discretion conferred by statute must be exercised

judicially on the basis of the facts and circumstances of a particular case. Here when the learned single Judge enhanced the amount of

compensation, he awarded interest on the enhanced amount at 6 per cent per annum from the date of his judgment and the Division Bench also,

when it further enhanced the amount of compensation, directed that interest at the rate of 6 per cent per annum be paid on the enhanced amount

from the date of its judgment and not from the date of the application. The

learned single Judge as well as the Division Bench totally ignored the fact that the enhanced amount of compensation awarded by them was in their judgment the correct amount of compensation payable to the appellants on account of the death of the deceased resulting from the accident. The learned single Judge and the Division Bench should have therefore awarded interest on the enhanced amount of compensation from the date of the application. We accordingly set aside the judgment of the Division Bench as also the judgment of the learned single Judge in so far as these judgments direct that interest shall be payable on the enhanced amount of compensation from the date of the respective judgments and instead, we direct that interest shall be payable on the enhanced amount of compensation as finally determined by the Division Bench at the rate of 12 per cent per annum from the date of the application for compensation.

In *Jagbir Singh v. General Manager, Punjab Roadways* 1987 ACJ 15 (SC) it was held:

In regard to the interest, however, we think the petitioners are entitled to a higher rate of interest than that awarded by the Tribunal and confirmed by the High Court. We find that in *Narcinva V. Kamat v. Alfredo Antonio Doe Martins* 1985 ACJ 397 (SC) this court awarded interest at 12 per cent from the date of the accident up to the date of payment. Subsequently in *Chameli Wati v. Delhi Municipal Corporation* 1985 ACJ 645 (SC) a larger Bench of this court awarded compensation (Sic. interest) at 12 per cent per annum from the date of the application for compensation. We are of the opinion that the petitioners should be entitled to interest at 12 per cent per annum from the date of the application for compensation to the date of payment. We order accordingly.

In *Indrani v. S. Ramalingam* 1989 ACJ 1007 (Mad) a Division Bench of this court allowed interest at the rate of 12 per cent per annum from the date of the petition. It is needless to multiply the various decisions of the Supreme Court and other High Courts on this subject and it will suffice to state that it has been uniformly held that the claimants are entitled to interest from the date of petition till the date of payment at 12 per cent per annum. Accordingly the order passed by the court below directing payment of interest at 6 per cent per annum from the date of default of payment of the money in pursuance of the award is hereby modified and instead, the

respondents are directed to pay interest in respect of the amount payable by them at 12 per-cent per annum from the date of petition till the date of payment and the award has to be modified accordingly.

24. In the result, C.M.A. No. 69 of 1984 and C.M.A. No. 144 of 1984 are dismissed. C.M.A No. 128 of 1984 is allowed and the order of the

Tribunal directing the respondents to pay interest at 6 per cent per annum on the compensation two months after the date of judgment if they failed

to pay the amount is hereby set aside and instead, respondent Nos. 1 to 3 are directed to pay interest from the date of the petition till the date of

payment in respect of the amount payable by them at 12 per cent per annum and in other respects, the award passed by the Tribunal is confirmed.

However, in the circumstances of the case, the parties are directed to bear their respective costs in these appeals.