

(1981) 08 MAD CK 0041

In the Madras High Court

Case No : Appeal Against Order No"s. 5 and 128 of 1980

R. Rajamanickam alias Kolandai

APPELLANT

Vs

K. Saroja and Others

RESPONDENT

Date of Decision : 03-08-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(2)

Citation : (1982) ILR (Mad) 251

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

Bench : Division Bench

Advocate : V. Shanumgam, N. Gopalakrishnan, K.S. Narasimhan and R. Ravichandran, for the Appellant; S. Jagadeesan, V. Subramaniam and V. Mohan, for the Respondent

Judgement

Ramanujam, J.—As the above two appeals arise out of the same award, they are dealt with together.

2. On 29th August 1977, Lorry T.M.P. 9579 was going from Perumbalai to Ponnagaram. Near Kadamadai the lorry got into a pit and as a result of the sudden and violent jolt one Rajendran, who was traveling in the lorry standing behind the cabin got his head hit against a steel rod in the body of the lorry as a result of which he sustained a fracture in his right parietal region. He was removed to the Government Hospital at Dharmapuri from where he was taken to the General Hospital at Madras on 1st September 1977. In spite of the best treatment the said Rajendran died on 5th September, 1977. Alleging that the accident took place on account of the rash and negligent driving of the lorry by its driver, a sum of Rs. 50,000 was claimed as compensation by the parents of the deceased Rajendran by filing Original Petition No. 29 of 1978 before the Motor Accidents Claims Tribunal, Dharmapuri at Krishnagiri.

3. The said claim petition was opposed by the driver the owner and the insurer of the lorry, who have been cited as Respondents 1 to 3 in the claim petition. In their separate statements they had coded that the deceased Rajendran was a

trespasser into the lorry, that the lorry was not driven rashly and negligently by its driver that the lorry was driven at a normal speed and that while the lorry was proceeding in an up gradient speed of the road near Kadamadai the first Respondent and the cleaner heard a noise inside the lorry and found that the deceased had sustained an injury by himself hitting against a steel rod in the body of the lorry. They also contended that in any event the compensation claimed was excessive. The Insurance Company, the third Respondent, took the plea that in any event it is not liable to indemnify the owner of the lorry as regards the accident. Taking note of the said rival contention the Tribunal framed the following question for its consideration:

1. Whether the accident took place on account of rash and (SIC)glugent driving of the lorry T.M.P. 9579. ? and
2. What is the quantum of compensation,?

On the first question, the Tribunal held, mainly relying on the evidence of P.W. 2, that the lorry driver was rash and negligent and if he had not driven the lorry at a higher speed, the accident would not have occurred and, therefore, all the Respondents are liable to pay compensation in relation to the said accident Which resulted in the death of the said Rajendran. The Tribunal then proceeded to quantify the compensation. Relying on the decision in *Rajindar Kaur v. Union of India* 1 wherein a final year Engineering Student aged about 21 years died in a rail accident and the Court had granted a sum of Rs. 36,000/- as compensation, the compensation in this case has been fixed at Rs. 30,000. In these appeals the findings of the Tribunal both on the question of rashness and negligence on the part of the lorry driver and also quantum of compensation has been challenged. Appeal Against Order No. 5 of 1980 has been filed by the owner of the lorry and Appeal Against Order No. 128 of 1980 has been filed by the Insurer with which the lorry had been insured. Thus, the three questions that are to be considered in these appeals are: (1) Whether the accident was solely due to the rash and negligent driving of the lorry by its driver; (2) What is the compensation payable in respect of the accident and (3) Whether the insurer of the lorry is liable to indemnify the owner of the lorry for, the death of the said Rajendran either on the basis of Section 95 of the Motor Vehicles Act or on the basis of the policy issued in this case covering the lorry in question. Though the learned Counsel for the Appellants strenuously contend that the evidence on record does not justify the finding of the Tribunal that the driver of the lorry was rash and negligent, after going through the evidence on record, particularly the evidence of P.W. 2, we are satisfied that the finding of the Tribunal on this part of the case is supported by the evidence on record. It is true the Appellants case before the Tribunal was that the deceased Rajendran was a trespasser into the lorry and that he stealthily got into it while it was stopped at a place called Both an aickenpatty and when the cleaner had gone to fetch water for the radiator and therefore there is no vicarious liability on the part of the owner of the lorry in respect of the injury that caused the death of the said trespasser. P.W. 2 claims to be an

eye witness, and he as deposed that he was also traveling in the (SIC) in question along with the deceased for going to the college that he Larry which was being driven at a high speed got into a pit with a s(SIC)den jol as a result of which the deceased got his head hit against a steel rod in the body of the lorry and sustained griev(SIC)s injuries. The presence of P.W. 2 in the lorry has been disputed by the driver of the lorry who has been examined as R.P. 2. But the evidence of R.W. 2 is quite artificial and improbable on this aspect. No. motive has been suggested as against P.W. 2. Apart from the evidence of P.W.2 the farther of the deceased has been examined as P,W,1 and he has deposed that hi came along with his son to the main road, that son got into the lorry in question for the purpose of going to Dharmapuri to attend the college and that as there were already three persons near the driver"s seat, Rajendran was allowed to get into the back side of the cabin. The evidence of P.W. 1 is sufficiently corroborated by the evidence of P.W. 2, the eye witness. The evidence of R.W. 2 that the deceased was a trespasser into the lorry cannot be accepted. For, even according to him when the cleaner went to fetch a pail of water for the radiator, he was near the lorry and therefore we do not see how without the knowledge of the driver the deceased could have got into the lorry and even if the deceased got into the lorry without the permission of R.W. 2, the latter would have asked him to get down from the lorry. However, there is no evidence that the deceased was traveling in the lorry for hire or reward. R.W.2 in his evidence his however, admitted that if the lorry has been driven slowly there would not have been any jolt. From this admission one can clearly infer that because the lorry was driven at a high speed there was a jolt while the lorry got into a pit and as a result of such jolt, the occupant, namely, the deceased of the lorry got injured. We have, therefore, to agree with the finding of the Tribunal that there was rashness and negligence on the part of the driver of the lorry and that the accident was due to such cash and negligent driving of the lorry. Coming to the quantum of compensation, it is already seen that the Tribunal has awarded a sum of Rs. 30,000 as again a claim for Rs. 50,000!-. But the Tribunal has merely relied on a decision in *Rajinder Kaur v. Union of India*¹ where with reference to the death of a final year Engineering student aged about 21 years a sum of Rs. 36,000 has been awarded. Even adopting the said judgment as the basis as has been done by the Tribunal in this case, we are of the view that the sum of Rs. 30,000 awarded in this case is somewhat excessive, since the deceased Rajendran, who was studying in the first year B,Sc. cannot be equated with a student, who was studying final year Engineering Course and, who in all (SIC), would have got employment as soon as he came out of the college. So far as the deceased Rajendran is concerned he was a first year B.Sc. student and he was only 20 years of age. There is no evidence in this case as to whether Rajendran was a bright student, who was likely to come up in life. Though his father as P.W. 1 has deposed that he was inclined to make his son as M. Sc., Graduate, there is. no material to show whether the student in this case was bright and would ultimately complete the M.Sc., Course. Taking all these factors into consideration we are of the view that a sum of Rs. 20,000 will be a fair and reasonable

compensation in this case. The Tribunal has limited the liability of the Insurance Company to Rs. 10,000 treating the deceased as a passenger in the lorry. However, it has been held by this Court in Janab Abdul Jabbar Sahib v. Muniammal alias Peddak kaiya (Judgment in Appeal Against Order No. 125 of 1977, dt. 22nd July 1.980) that the Insurance Company is not liable to indemnify the owner of the vehicle except in respect of the employees not exceeding six in numbers either u/s 95(2) of the Motor Vehicles Act or under the terms of the policy issued in this case Section 95(2)(a) of the Motor Vehicles Act limits the liability the insurer to the death or bodily injury to the employees other than the driver not exceeding six in number being carried in the vehicle. Admittedly, the deceased was not an employee and therefore the insurer is not required to insure the death or bodily injury sustained by an occupant of a lorry. The insurance policy issued in respect of the lorry in question has been marked as exhibit B-2 and it is seen, on a perusal of the same, that it is only an act policy and not a comprehensive one. As we have already found under an act policy the insurer cannot be made liable to the death or bodily injury to persons other than employees. There is no liability on the part of the Insurance Company to indemnify the owner of the lorry in respect of the accident in question. Thus the award of the Tribunal is reduced from Rs. 30,000 to Rs. 20,000 and the award as against the Insurance Company is set aside. The award amount of Rs. 20,000 is directed to be paid by the driver and owner of the lorry who are Respondents 1 and 2 in the claim petition. Accordingly Appeal Against Order No. 5 of 1980 is partly allowed and Appeal Against Order No. 128 of 1980 is allowed. There will be no order as to costs.