

(2012) 09 MAD CK 0252
In the Madras High Court
Case No : C.M.A. No. 2591 of 2003

R. Ramasamy

APPELLANT

Vs

Managing Director, Jeeva Transport Corporation Limited,
Erode

RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Citation : (2013) 1 ACC 692 : (2012) 7 MLJ 333

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : N. Nallappan, for the Appellant; A. Babu, for the Respondent

Final Decision : Dismissed

Judgement

Ms. Aruna Jagadeesan, J.—This Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 10.10.2002 made in M.C.O.P. No. 346 of 1994 by the learned Subordinate Judge (MACT) Tirupattur, whereby the Tribunal dismissed the respective claim petitions filed by the owner of the lorry, claiming compensation for the damages caused to the lorry and the Respondent Transport Corporation, holding that both the drivers of the lorry and the bus belonging to the Respondent Transport Corporation were responsible equally in causing the accident. The facts leading to filing of this appeal are that on 24.3.1994, at about 3.40 p.m., when the lorry owned by the appellant/claimant was proceeding from Vaniyambadi towards Tirupattur, the bus belonging to the Respondent Transport Corporation coming from Tirupattur towards Vaniyambadi, near Salai Nagar, collided with the lorry, due to which both the vehicles were damaged. According to the claimant, due to the impact, the front portion of the lorry was completely damaged and the Appellant had spent more than one lakh for repairing the lorry which was extensively damaged. Therefore, he claimed a compensation of one lakh for the damages caused to the lorry before the Tribunal.

2. According to the Appellant, the accident took place due to the rash and negligent driving of the driver of the bus. In the counter filed by the Respondent,

it was denied that the accident occurred only due to the rash and negligent driving of the driver of the bus and it is stated that the bus was driven cautiously on the left side of the road and the lorry, which came in the opposite direction, was driven in a zig-zag manner rashly and negligently. It is further stated that on seeing the lorry driven in a zig-zag manner, the bus driver stopped the bus on the mud portion of the extreme left side of the road and in spite of such precaution, the lorry was driven to its right side and dashed against the right front portion of the bus causing extensive damages to the bus and injuries to some of the passengers. Therefore, according to the Respondent, negligence was on the part of the lorry driver.

3. In the course of trial, the lorry driver was examined as P.W. 2 and an eye witness said to have witnessed the accident was examined as P.W. 3. On the side of the Respondent, the conductor and driver were examined as R.W. 2 and R.W. 3 respectively. They have marked observation magazar as Exhibit R-3 and the plan as Exhibit R-5. At the conclusion of the trial, after analysing the evidence, the Tribunal passed the impugned award, attributing negligence on both the drivers of the bus and the lorry equally.

4. I have gone through the materials on record including the impugned award and given anxious consideration to the submissions made by the learned Counsel on either side.

5. The main contention in this appeal is on the question as to whether the accident had occurred due to the rash and negligent driving of the bus driver or whether both the drivers of the bus and the lorry were responsible for the accident. There can be no quarrel with the proposition that the claimant in a claim petition must prove that the driver of the offending vehicle is guilty of rash and negligent driving. In the instant case, both the drivers of the vehicles involved in the accident have entered into the witness box to tender their respective evidence.

6. According to P.W. 2 and P.W. 3, the accident had occurred in the curve on the Vaniambadi-Tirupattur Road. P.W. 2 has stated that while he was driving the lorry on the left side of the road, the bus came in the opposite direction and dashed against the right front portion of the lorry. P.W. 3 has stated that the bus came from Tirupattur towards Vaniambadi and in the curve, since it was driven at a high speed, it dashed against the lorry. The conductor and driver of the bus, who were examined as R.W. 2 and R.W. 3, have consistently stated in their evidence that on seeing the lorry being driven in a zig-zag manner, the driver of the bus swerved the bus to the mud portion of the road and in spite of such precaution, the lorry came and dashed against the right front portion of the bus.

7. At the outset, the plan does not show any curve in the place of the accident and it is seen that it is only a straight road. The observation magazar also does not indicate any curve in the place of the accident. Therefore, the testimony of P.W. 2 and P.W. 3 that there was a curve and the accident had occurred in the

said curve is not supported by any document. It is seen from the plan, which indicates the position of the vehicles after the accident, that the front portion of the bus had gone to the mud road and the lorry has crossed the central median to its right side. In the absence of any evidence, we cannot say that in view of the impact, the vehicles had come to the said position.

8. The Tribunal, after analysing the evidence, has held that the accident had occurred in the middle of the road and accordingly fastened negligence on the part of both the drivers of the vehicles. According to the Tribunal, it is head on collision and therefore, both the drivers equally contributed to the negligence. In my opinion, there is no illegality or perversity in the findings of the Tribunal, warranting interference with the said findings. No material has been brought out by the learned Counsel for the Appellant to infer negligence solely on the part of the bus driver in causing the accident. The nature of impact and the manner of accident establish a high degree of probability that the accident had occurred following the head on collision between the bus and the lorry. Therefore, I am of the considered view that the accident had occurred due to negligence of both the drivers and the Tribunal was right in holding that the accident had occurred due to composite negligence and rash driving of both the drivers of the bus and the lorry and rightly dismissed the claim petitions filed by the Appellant/owner of the lorry and the Respondent Transport Corporation. I do not find any infirmity or illegality to interfere with the same. In the result, this civil miscellaneous appeal is dismissed. No costs.