

(1981) 07 MAD CK 0011

In the Madras High Court

Case No : C.M.A. No's. 439, 440 and 441 of 1979, C.R.P. No. 2413 of 1979 and
Cross-Objections in C.M.A. No. 340 of 1979

Rajeswari Transports (Firm)

APPELLANT

Vs

M.G. Rajan and Others

RESPONDENT

Date of Decision : 21-07-1981

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2)

Citation : (1982) ACJ 118

Hon'ble Judges : V. Sethuraman, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K. Sengattian, for the Appellant; K.S. Narasimhan, for the
Respondent

Final Decision : Dismissed

Judgement

G. Ramanujam, J.—Since all these matters arise out of the claim petitions filed in respect of the same accident, they are dealt with together.

2. On 14th June, 1978, at about 3:00 p.m . there was a collision between jeep TNU 5282 belonging to Theni Allinagaram Municipality and the

bus TNU 4725 belonging to one Rajeswari Transports near Nallakaruppanpatti in Periakulam-Batlagundu Main Road. The officers of the

Allinagaram Municipality were proceeding in the jeep to Dindigul for the purpose of having consultation with their advocate and the officers who

travelled in the jeep were the Special Officer, the Municipal Engineer, one Narayanaswami and one Sanitary Inspector by name Jayavelu, apart

from the driver. As a result of the impact, all the occupants of the jeep sustained grievous injuries. After getting treated for those injuries, the injured

filed claim petitions before the Motor Accidents Claims Tribunal, Madurai,

claiming various amounts as compensation in respect of the injuries sustained by them respectively.

3. The said claim petitions, O.P. Nos. 204, 205, 206 and 208 of 1978, were opposed by the owner of the bus, the proprietor of Sri Rajeswari

Transports and the insurance company with which the bus had been insured. Their case was that there was a curve on that portion of the road

where the accident took place, that the jeep was driven by its driver in a rash and negligent manner without sounding horn and at a terrific speed in

the curve, that the bus driver who was coming in the opposite direction was attempting to overtake a lorry and at that time, the jeep came rashly

and negligently and hit against the bus. They also contended that the compensation claimed in each of the claim petitions was in any event

excessive. Thus, in the face of the above pleadings, the trial Court set down the following three questions for consideration:

(1) Whether the Petitioner in M.A.C.O. Ps. 204, 205, 206 and 208 of 1978, were injured on account of the rash and negligent driving of the bus

TNU No. 4725 by its driver?

(2) What is the quantum of compensation each of the Petitioners is entitled?

Though there was another issue as regards the damage sustained by the jeep, it is unnecessary to consider the said issue in these appeals, as there

is no appeal relating to the extent of the damage sustained by the jeep.

4. The Tribunal, after considering the evidence adduced by the parties, both oral and documentary, held that the accident was solely due to the

rash and negligent driving of the bus by its driver and that the driver of the jeep has not been shown to have been rash and negligent. Coming to the

quantum of compensation, the Tribunal has awarded various sum, as compensation, to the claimants in each of the claim petitions, the details of

which will be noted and discussed a little later. The Tribunal, however, held that so far as the insurance company is concerned, its liability is

restricted to Rs 50,000/- in all and that, therefore, its liability to each of the claimants has been proportionately fixed subject to its liability being

limited to Rs. 50,000/-. The owner of the vehicle has filed these appeals and the civil revision petition challenging the award of the Tribunal,

contending that the amounts awarded by the Tribunal to the various claimants are excessive. The learned Counsel for the Appellant has also raised

a legal plea that the policy in this case being comprehensive, the liability of the insurance company should be taken to be unlimited and cannot be restricted to Rs. 50,000/- on the basis of the provisions of Section 95(2) of the Motor Vehicles Act.

5. The claimants in O.P. No. 205 of 1979, who are the Respondent in C.M.A. No. 440 of 1979 have filed a Memo, of cross objections claiming a higher compensation.

6. Thus the questions that arise for consideration in all these matters are:

(1) Whether the accident occurred due solely to the rash and negligent driving of the bus by its driver?

(2) Whether the compensation awarded to each of the claimants by the Tribunal is fair and reasonable? and

(3) Whether the liability of the insurance company in this case can be legally limited to Rs. 50,000/- as had been held by the Tribunal?

7. We would like to dispose of the third question as to the extent of the liability of the insurance company first. The learned Counsel for the

Appellant, relying on the decision of this Court in Oriental Fire and General Insurance Co. Vs. V. Ganapathi Ramalingam, contends that since the

policy issued by the insurer in respect of the bus in question is a comprehensive one, the insurer's liability should be taken to be unlimited. It is true,

in that case, a Division Bench of this Court to which one of us was a party, has held that limitation of liability against insurance company upto Rs.

50,000/- towards compensation in respect of passengers or persons other than a passenger contained in Section 95(2) of the Motor Vehicles Act,

is inapplicable to third parties when the policy is a comprehensive one. In this case, that the Tribunal has limited the liability of the insurance

company to Rs. 50,000/- seems to have been based not only on Section 95(2) of the Motor Vehicles Act, but also on the terms of the policy, it is

no doubt true that the policy in this case is a comprehensive one. However, the policy itself restricts the insurer's liability to Rs. 50,000/- in respect

of death or bodily injury to any person caused or arising out of the use of the motor vehicle. So, in respect of death or bodily injury to third parties,

the policy limits the liability of the insurer to Rs. 50,000/-. It cannot be doubted, even in a comprehensive policy it is open to the insurer to limit its

liability. If the insured wants a policy with an unlimited liability, then he should

have bargained for such a policy and paid the requisite premium for such an unlimited liability. But in this case, the parties have agreed that the limit of liability in respect of third party to be borne by the insurer should be Rs. 50,000/- and having paid premium on that basis, it is not open to the insured to ignore the terms of the insurance policy and claim to make the insurance company liable for more than Rs. 50,000/-. If the limit of Rs. 50,000/- has not been mentioned in the policy and it has merely restricted the liability of the insurer u/s 95(2), then it is possible to say that the liability of the insurer is unlimited, being a comprehensive policy. But as here the comprehensive policy has limited the liability of the insurer to Rs. 50,000/- it is not possible for us to make the insurer liable for an unlimited amount merely because the policy is a comprehensive one. We have to, therefore, hold that in this case even though the policy is a comprehensive one, the insurer's liability is not unlimited, as the so called comprehensive policy itself limits the liability to Rs. 50,000/-. Thus the legal submission put forward by the learned Counsel for the Appellant fails.

8. Coming to the question as to whether the accident was solely due to the rash and negligent driving of the Appellant's bus by his driver, we see no reason to differ from the view taken by the Tribunal. The Tribunal has dealt with the evidence in detail and has chosen to give a finding that the driver of the bus was responsible for the accident. Exhibit P-5 the sketch drawn by the police in the course of the investigation clearly shows that the driver of the bus should have been negligent in driving the bus. The sketch (Exhibit P-5) shows that the jeep was proceeding from west to east and there was a collision between the bus and jeep on the northern extremity of the road. At the place of the accident the tarred portion is about 325 cms. in width and the road has mud shoulders on both sides, measuring roughly about 240 cms. There are culverts just west of the scene of occurrence. The jeep was found more or less on the northern extremity of the mud shoulder formed on the northern side of the road and the bits was virtually on the mud portion of the north. The position of the vehicles at the time and after the impact clearly shows that it is the driver of the bus who should have been rash and negligent and not the jeep driver. A perusal of the sketch also shows that bus was completely on the wrong side. The bus driver has gone to the extreme north blocking the way for the jeep.

It is common ground that the accident was not due to any mechanical trouble in the bus. Exhibit R-4, the photograph of the two vehicles immediately after the accident indicates that the right front wheel of the bus and the left front wheel of the jeep are on the mud portion, that as a result of the collision, the jeep's front portion went below the right side front of the bus and that the front portion of the jeep was found smashed. Apart from these factors, the jeep driver has been examined as P.W.1 and he has deposed that he sighted a lorry coming fast in the opposite direction and the bus coming behind the lorry, that the bus driver with a view to overtake the lorry came straight to the middle of the road fearing that the bus might hit the jeep, he swerved the jeep to the mud portion, but in spite of his effort the bus driven rashly came and collided with the jeep. Apart from this, there is the evidence of P. Ws. 2 to 4, the other occupants of the jeep and their evidence also indicates that the accident was purely due to the rash and negligent driving of the bus by its driver. We have to therefore, agree with the Tribunal that the accident was due to the rash and negligent driving of the bus by its driver.

9. Coming to the question of the quantum of compensation, it is seen that the Tribunal has awarded Rs. 25,000 to the claimant in O.P. No. 204 of 1978, Rs. 8,810 to the claimant in O.P. No. 2065 of 1978, Rs. 1,155 to the claimant in O.P. No. 206 of 1978 and Rs. 22,750 to the claimant in O.P. No. 208 of 1978. Mr. Sengottian, the learned Counsel for the Appellants in all these cases has questioned the award of the Tribunal under various heads in the various O. Ps. Having regard to the nature of the claims made in the various claim petitions, we have to deal with the claim petitions separately.

10. In O.P. No. 204 of 1978 out of which C.M.A. No. 439 of 1979 arises, the claimant is the driver of the jeep, aged about 25 years at the time of the accident. He claimed in all Rs. 60,000 as compensation, under various heads such as Rs. 25,000 for loss of earning, Rs. 2,000 for partial loss of earning, Rs. 2,000 as transport charges to the hospital, Rs. 1,000 under the head "others", Rs. 25,000 for permanent disability and Rs. 5,000 for mental shock and loss of future expectation of life. The Tribunal has awarded a sum of Rs. 7,500 under the head "loss of earning" and Rs. 500/- under the head "others", Rs. 13,000 under the head "permanent

disability" and Rs. 2,500 for "pain and suffering" as also towards "loss of future expectation of life". The claimant has sustained a fracture of lower third of right femur upper thigh apart from lacerated wounds. He was unconscious for a period of four days since the date of accident and recovered consciousness only on 18th June, 1978. Even after treatment it is found that the bones have not fused and he was in bed firstly for two months and thereafter, he was advised operation. Even after operation, it is found that he is unable to use his right leg which is very important for carrying on his work as driver. Apart from this, it is seen that the claimant has also sustained injury in his eye and he has lost vision of his right eye. P.W. 5 who is an Eye Doctor has deposed that for driving, the claimant required binocular vision and with the monocular vision he is unfit to be a driver. He has given a disability certificate stating that the permanent disability of 4 (sic) per cent and it is partial. P.W. 6, another doctor working in Orthopaedic section of the Erskine Hospital has deposed that he conducted an operation on the claimant and he inserted a steel rod and screw for the purpose of holding the leg in position and that even after the treatment P.W. 1 cannot use his leg, that he is unfit to drive a vehicle and even after fusion he will not be in a fit condition to drive a vehicle. The claimant was getting a salary of Rs. 335/- p.m. as driver of the jeep. Now that he is found unfit for the job for which he was engaged, he should be taken to have lost his earning capacity as a result of the permanent disability. His right eye has been lost for ever and he has to be helped by someone for his movements. Taking into consideration all these factors, the Tribunal has awarded a sum of Rs. 7,500/- towards "loss of earnings" and Rs. 1,500/- as cost of transport to hospital and Rs. 500/- under other heads and Rs. 13,000/- as permanent disability and Rs. 2,500/- for pain and suffering. Though the learned Counsel for the Appellant contends that the compensation awarded under each of the heads is excessive, we are not in a position to interfere with the award, except under two heads. The Tribunal having found that the claimant had been retained as a driver and he is being paid the same salary by the employer, the award of Rs. 7,500/- towards "loss of earning" cannot be sustained in toto. Though we cannot accept the contention of the learned Counsel to the full extent since the claimant has not suffered any loss in earnings, the award of Rs.

7,500/- towards "loss of future earnings" appears to be somewhat excessive. Even though there is no actual loss of earning, the fact that the claimant has sustained "loss of earning capacity" as a result of the permanent disability, cannot be disputed. Therefore, towards "loss of earning capacity" we are inclined to award a sum of Rs. 5,000, in the place of Rs. 7,500 awarded by the Tribunal under the head "Loss of future earnings". The Tribunal has awarded a sum of Rs. 500/- under the head "others". We do not see how the Tribunal can award any amount as compensation without specifying the head under which it is awarded. Under the enumerated heads, the various amounts have been awarded and in addition, the Tribunal has awarded another sum of Rs. 500 without specifying any head. We have, therefore, to set aside that portion of the award granting a sum of Rs. 500/- under the head "others". Thus we allow CM.A No. 439 of 1979 in part and reduce the compensation to Rs. 22,000/-

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11. Coming to O.P. No. 250 of 1978 out of which C.M.A. No. 44 of 1979, arises, the claimant had claimed in all Rs. 27,000 and the Tribunal has awarded a sum of Rs. 8,810. The claimant is the Special Officer of Theni Allinagaram Municipality and he is aged 40 years. As a result of the accident, the claimant sustained a lacerated wound on the right parietal region of the head, a cut in the centre of the nose and an incised wound over the chin and a lacerated wound at the right leg. He was admitted in the hospital where he was an in-patient for a period of 16 days. According to the claimant, even after the prolonged treatment, he is unable to climb the steps leading to the first floor of the office and therefore he has to shift the office to the ground floor. He also complains as P.W. 3 that he is unable to sit and ease himself and he has to sit on a stool for that purpose. According to him, he has suffered a permanent disability and therefore, he has to be compensated suitably. The disability certificate which has been marked as Exhibit P-58 shows that he has suffered 10 per cent loss in the movement of the knee. The claim of Rs. 27,000/- consists of Rs. 1,540/- towards "loss of leave credit", Rs. 200 towards cost to transport to the hospital. Rs. 10 as damage to the clothing, Rs. 150 towards damage to watch, Rs. 100/- towards medical expenses, Rs. 10,000/- towards pain and suffering and Rs. 15,000 towards permanent disability.

The Tribunal awarded in all a sum of Rs. 8,810/-. Not satisfied with the award of the Tribunal, the claimant has filed memorandum of cross-

objections claiming a higher compensation. In respect of various claims the Tribunal disallowed the amounts claimed under the head "loss of leave

credit" and also "cost of watch, etc. The substantial amounts granted by the Tribunal consisted of two heads "Pain and Suffering" and "Permanent

Disability". Though according to the Appellant, the Tribunal is in error in awarding such a high amount of Rs. 7,500/- under the head "Permanent

Disability" the counsel for the claimant would submit that the amount awarded both under the head "Pain and Suffering" and "Permanent Disability"

is too meagre. Having regard to the nature of the injury sustained which has left a permanent mark on the person of the claimant and the difficulty

felt by the claimant in the movement of his leg as well as his difficulty in getting up the stairs and in the face of the disability certificate showing 10

percent loss in the movement of the knee, the claimant can be awarded at least a sum of Rs. 9,500 under the head "Permanent Disability" and a

sum of Rs. 2,000/- under the head "Pain and Suffering" having regard to the prolonged period of treatment. Thus, in all we award a sum of Rs.

11,810 to the claimant in this case, as against Rs. 8,810 awarded by the Tribunal. The award of the Tribunal in O.P. No. 205 of 1978 is, therefore

enhanced to Rs. 11,810 from Rs. 8,810 C.M.A. No. 440 of 1979 is therefore, dismissed. The memo of cross-objections is allowed to the extent

indicated above.

The enhanced amount awarded by us will carry the same interest and from the same date as directed by the Tribunal.

12. In O.P. No. 208 of 1978 out of which C.M.A. No. 441 of 1979 arises the claimant is the Municipal Engineer and he was 39 years old at the

time of the accident. He has claimed a sum of Rs. 50,000/- as compensation against which the Tribunal has awarded a sum of Rs. 22,750/- under

various heads. The learned Counsel for the Appellant contends that the award of Rs. 2,500/- under the head "Shortened Expectation of Life" is

not justified, especially when the Tribunal has awarded compensation of Rs. 15,000 under the head "Permanent Disability". We are inclined to

agree with the learned Counsel for the Appellant that once the compensation is awarded under the head "Permanent Disability", no separate

amount could be awarded under the head "Shortened Expectation of Life". We have to therefore set aside the award given by the Tribunal under

the head "Shortened Expectation of Life". We have to, therefore, reduce the award of the Tribunal from Rs. 22,750 to Rs. 20,250/-. C.M.A. No.

441 of 1979 is partly allowed to the extent indicated above.

13. The claimant in O.P. No. 206 of 1978 out of which C.R.P. No. 2413 of 1979 arises, had claimed a sum of Rs. 6,675 and the Tribunal has

awarded only Rs. 1,155 as compensation. Though the learned Counsel seeks to question the award, we are of the view that the award does not

call for any interference. It has awarded only very minor amounts under other heads and a sum of Rs. 1,000 for "pain and suffering". Having

regard to the nature of the injuries and the treatment which the claimant had, the award of Rs. 1,155 cannot be said to be excessive at all. C.R.P.

No. 2413 of 1979 is, therefore, dismissed. There will be no order as to costs in either of the C.M.As. or in the C.R.Ps. or in the cross-objections.