
(1999) 08 MAD CK 0112
In the Madras High Court

Sivashanmugham

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 27-08-1999

Acts Referred:

Citation : (2000) 1 ACC 406

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Judgement

M. Karpagavinayagam, J.—Being aggrieved by the order impugned, dismissing the claim petition seeking for the compensation of Rs. 35,000/- for the injuries sustained by the claimant due to the rash and negligent driving of the driver of the jeep belonged to the respondent/the Superintendent of Police/North Arcot, Ambedkar District, the appellant/claimant has filed this appeal seeking to set aside the same and to award the compensation claimed by him.

2. The facts are these:

Sivashanmugam, the claimant, was working as an Assistant in I.T.I. On 13.1.1989 at about 4.00 p.m., he was proceeding from Vellore by riding on his cycle. When he was nearing Super Market at Sathuvachari, the jeep bearing registration No. TNM 4275 P.C R. Unit, Vellore, came from behind in the same direction at a high speed even without sounding the horn. Suddenly, the jeep came to the wrong side, since the driver lost control over the jeep and hit against the claimant, as a result of which, he was thrown off. Due to the impact, he sustained bleeding grievous injuries on his head, right hand, right elbow, right foot, lumbarregion, left knee and all over the body. His cycle was also completely damaged. He was immediately taken to the Government Hospital at Vellore. He was taking treatment as in-patient from 13.1.1989 till 26.1.1989 and thereafter, he took treatment privately for his head injury.

3. On these factual details, he filed a claim petition seeking for compensation of Rs. 35,000/- for the injuries sustained by him.

4. This claim was resisted by the respondent/owner of the jeep by stating that the accident took place unavoidably, since the steering of the jeep became inoperative due to sudden disconnection of Drag Link from the steering arm and hence, the jeep went out of control and consequently, the impact had taken place and that, therefore, the respondent/owner of the vehicle cannot be fastened with the liability to pay any compensation, as no negligence could be attributed to the driver of the jeep.

5. During enquiry, the claimant examined himself as P.W. 1 through whom Ex. A1 F.I.R. and Ex. A2 Wound Certificate were marked. On behalf of the respondent, R.W. 1, the driver of the jeep and R.W. 2 one Thangamani, Police Officer, were examined.

6. The Tribunal, after analysis of the evidence, concluded, accepting the case of the driver of the jeep, that the accident took place, since the driver lost his control due to the fact that steering of the jeep became inoperative and the ball joint was broken and that, therefore, there could be no negligence attributed to the jeep driver and that, therefore, the claimant would not be entitled to any compensation. Hence, this appeal by the claimant.

7. I heard the Counsel for the parties.

8. On going through the records and the judgment impugned, I am of the opinion that the Tribunal has committed a serious error by concluding that the claimant would not be entitled to any compensation, despite the materials available on record which would show that the driver of the jeep was negligent and thereby he caused the impact.

9. According to P.W. 1/claimant, when he was riding on his cycle on the left side of the mud road, the jeep came from behind at a high speed without blowing the horn and hit against him and caused injuries on him.

10. According to R.W. 1, the driver of the jeep, he lost his control, since there was repair in the steering which resulted in the accident.

11. However, in order to prove the said plea made in the counter as well as in the deposition, on the side of the respondent, no steps have been taken to examine the Motor Vehicle Inspector or to produce the Motor Vehicles Inspector's report to show that the accident took place only due to the mechanical failure.

12. R.W. 2, the Inspector of Police was examined to show that the F.I.R., which was registered in this case was referred to as a "mistake of fact" on the basis of the Motor Vehicles Inspector's report stating that there was a mechanical failure. This may not be sufficient to hold that the accident took place only due to the mechanical defect. The respondent ought to have examined the Motor Vehicles Inspector or at least produced the Motor Vehicles Inspector's report. This was not done.

13. Moreover, Ex. A1 F.I.R. had been given by the person, who is the Inspector of Police, who was travelling in the said jeep. During the course of investigation of the said F.I.R., no statement had been obtained from the claimant, the victim in this case, as well as from the driver of the jeep. Under these circumstances, no importance could be attached to the contents of the F.I.R., which was given by the Inspector of Police on behalf of the jeep driver and the deposition of R. W. 2, who is the Investigating Officer.

14. Furthermore, it is for the respondent to establish that the jeep was maintained in a good condition prior to the accident and the breaking of the steering connection was so sudden and was unexpected.

15. It is also clear from the evidence of R.W. 1 that there was no brake failure. This would show that if the driver of the jeep was more careful and cautious enough to apply the brake in time, this accident could have been averted. It is also clear from the evidence of R.W. 2 that there was no skid mark or tyre mark at the place of accident.

16. It is settled law that in order to succeed in a defence that the accident was due to a mechanical defect, the owners of the vehicle have to prove that they had taken all necessary precautions to keep the vehicle in a road-worthy condition and that the defect occurred in spite of reasonable care and caution taken by the owners. The burden of proving that the accident was due to a mechanical defect is on the owners and it is their duty to show that they had taken all reasonable care and that despite such care, the defect remained hidden.

17. These principles have been laid down in the decisions in *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, ; *Lakshmiammal and Others Vs. State of Tamil Nadu*, ; and *Smt. Mewa Devi and Others Vs. Ram Parkash Rajinder Paul and Another*, . Admittedly, in the instant case, as indicated above, the owner of the vehicle, namely, the respondent miserably failed to discharge burden to show that the accident had taken place only due to mechanical failure and that before the accident they had taken all necessary precautions to keep the jeep in a road-worthy condition. In other words, in the present case, there is absolutely no evidence as to whether the respondent took any care, much less, reasonable care to avoid the mechanical failure and in spite of such care, the said failure happened.

19. In such a situation, it could be safely held that there are materials to show that the driver of the jeep was negligent and so, the respondent would be liable to pay the compensation.

20. In the claim petition, the claimant requested for Rs. 35,000/- as compensation for the injuries sustained by him. Ex. A2 Wound Certificate would show that the claimants sustained 7 injuries and also a fracture in the pelvis. The Doctor had given a certificate stating that one of the injuries was grievous. The claimant/injured was admitted in the hospital on 13.1.1989 and discharged on 26.1.1989. It is the evidence of P.W. 1 that even after discharge, he had taken

treatment privately for the head injury.

21. Under these circumstances, it would be proper to hold that the claimant would be entitled to the entire amount of Rs. 35,000/- as claimed by him.

22. Therefore, the respondent is directed to pay the said amount alongwith interest at the rate of 12 per cent per annum from the date of petition till the date of payment.

23. In the result, the appeal is allowed. No costs.