

**(1981) 06 MAD CK 0003**  
**In the Madras High Court**  
**Case No : A.A.O. No. 433 of 1979**

Southern Motors, Madurai

APPELLANT

Vs

C. Sivajothiammal and Others

RESPONDENT

**Date of Decision :** 17-06-1981

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110, 116, 95(2)

**Citation :** (1982) ACJ 85 : AIR 1982 Mad 219 : (1982) 95 LW 232 : (1982) 1 MLJ 440

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

**Bench :** Division Bench

**Advocate :** K. Sengottiah, S. Mohan Ralu and S. Nandakumar, for the Appellant; Rai and Raj, S. Sampath Kumar and Kasturi Rangan, for the Respondent

## **Judgement**

Ramanujam, J.—This appeal arises out of an award passed by the Motor Accidents Claims Tribunal in M. A. C. O. P. No. 84 of 1976,

granting a sum of Rs. 23,000 as compensation to the claimants in the said O. P. in respect of a fatal accident that took place at Bathalagundu at

about 8:30 a.m. on 10-4-1976, in which one Gurusami died.

2. On 10-4-1976 at about 8:30 a.m. a bus belonging to Messrs. Southern Roadways, the appellant herein, was leaving Kalamman Koil bus stop

on its way to Palani. At that point of time, the deceased Guruswami in his attempt to get into the bus is said to have fallen down from the moving

bus. As a result of the fall from the moving bus, he sustained leg injuries to which he succumbed later. On the basis that the said accident was due

to the rash and negligent conduct of the conductor and the driver of the bus, the wife, the three children of the deceased and his mother filed a

claim petition u/s. 110A , Motor Vehicles Act. claiming a total compensation of

Rs. 25,000.

3. In the said claim petition, M/s. Southern Roadways alleged to be the owner of the bus and the insurance company with which the bus has been

insured, the conductor of the bus and the driver of the bus have respectively been cited as respondents 1 to 4. Respondents 3 and 4, the driver

and the conductor of the bus which was involved in the accident remained ex parte and the claim petition was contested mainly by the owner of the

bus and the insurance company. Their main defence was that the deceased Gurusami did not travel at all in the bus in question, that in any event, as

the deceased had attempted to get into the bus after the bus had started to move from the bus Stop, he should be taken to be exclusively

responsible for the accident in question, and that there was no question of any rash and negligent driving of the bus by the driver, nor the conductor

was rash and negligent in giving the whistle for the bus to move. They also contended that, in any event the compensation claimed was excessive.

The insurer, respondent 2 before the Tribunal in the claim petition, also took up a further plea that, in any event, its liability should be restricted to

Rs, 5000, as the deceased was a passenger in the bus.

4. On these rival contentions, the following two points were taken up for consideration by the Tribunal-

1. Whether the death of the deceased Gurusami took place on account of the rash and negligent conduct of the driver and the conductor of the

bus? and

2. If so, whether the petitioners are entitled to compensation and to what extent?

After analysing the evidence in detail, the Tribunal on the first question held that the rashness and negligence on the part of the driver and the

conductor of the bus had been established and, therefore. the owner and the insurer of the vehicle cannot escape their liability for the accident in

question. On the question of quantum of compensation the Tribunal held that a sum of Rs. 23000 is payable as compensation, out of which the

liability of the insurer is to be restricted to Rs. 5000, in accordance with the provisions of Sec. 95(2)(b) M. V. Act.

5. Aggrieved against the award of the Tribunal, Messrs. Southern Motors, the owner of the bus, which was involved in the accident, has filed this

appeal challenging the finding of the Tribunal that the driver and the conductor of

the bus were rash and negligent and it is that rashness and negligence which was responsible for the accident.

6. According to the learned counsel for the appellant, the Tribunal is in error in holding that the conductor of the bus prevented the deceased,

Gurusami, from entering into the bus and alleged by the the fact that in report given by the pushed him down as claimants, overlooking the first

information report given by the elder brother of the deceased, who was examined as P. W. 2, no reference has been made to the conduct of the

conductor pushing down the deceased Guruswami while he was entering the bus at the bus stop. It is seen that the Tribunal accepting the evidence

given by P. W. 2, to the effect that the conductor not only gave a whistle for the starting of the bus from the bus stop, before Guruswami got into

the bus, but also pushed him down when he was actually getting into the bus, gave a finding that the driver of the bus was negligent in starting the

bus before all the passengers got into the bus, and the conductor in pushing down the deceased Guruswami. who was getting into the bus and that

this showed that both the driver and the conductor of the bus had been negligent in driving the vehicle. The learned counsel for the appellant

attacks the said finding of the Tribunal on the ground that the evidence of P. W. 2, at the enquiry is a development on the case which has originally

been put forward in the first information report which he gave to the police immediately after the accident, that in the first information report he has

merely stated that the deceased fell down from a moving bus and sustained injuries and that the first information report does not say that the driver

and the conductor of the bus were in any way rash and negligent and that, therefore, the first information report being the earliest record relating to

the cause and the nature of the accident should have been given more weight than the case as deposed by P. W. 2 at a later point of time at the

stage of the enquiry. We have compared the statements made in the first information report Ex. p. 2, given by P. W. 2, before the Tribunal at the

stage of the enquiry. We see there is a considerable variation in the case as put forward in the first information report and in the deposition given by

P. W. 2, before the Tribunal. In the first information report no allegation has been made either against the driver of the bus or the conductor of the

bus. It is only in the deposition at the stage of the enquiry on a claim petition

filed by the claimants P. W. 2 has deposed that even when the deceased was entering the bus, the driver started the bus and the conductor prevented his entry into the bus and pushed him down as a result of which the deceased fell down and sustained injuries. There cannot be any dispute that Ex. P. 2 the first information report came into existence immediately after the accident. while the deposition was given presumably after a considerable deliberation at the stage of the enquiry on the claim petition. The theory of conductor pushing down the deceased on barring his entry into the bus has been introduced for the first time in the claim petition and later at the stage of the evidence. However, it is seen that in the criminal proceedings initiated against the driver of the bus in C. C. No.

313 of 1976, on the file of the Sub-Divisional judicial Magistrate, Dindigul, whose judgment has been marked as Ex. P. 5, the following

observation is made by the Criminal Court:: -

The fact that the deceased sustained injuries due to the fall from the bus and succumbed to the injuries sustained by him is not disputed ...

Thus, the criminal Court did not accept the theory that the conductor pushed down the deceased. The only case accepted by the criminal Court

was that the conductor prevented the deceased Gurusami from entering the bus. Though it was alleged that the conductor of the bus pushed down

the deceased from the bus, that was not accepted by the criminal Court. In these circumstances, we are of the view that the Tribunal is in error in

holding without any material to support the same that the conductor of the bus pushed down the deceased from the bus at the time when he

attempted to enter the bus. Though we are of the view that the conductor would not have pushed down passenger, who has already got into the

bus or attempted to get into the bus, as alleged by P. W. 2, still we are not in a position to say that the conductor and the driver of the bus were

not negligent. Having stopped the bus at a bus stop and called upon some of the passengers including the deceased to get down from the bus so as

to give way to the passengers, who were getting down at the bus stop he should have waited till all the persons got into the bus before the bus

actually moved away from the bus stop. As already stated, it is not in dispute that the deceased fell down from a moving bus while he was in the

process of attempting to get into the bus. Even if the conductor has not pushed

down the deceased when he attempted to get into the bus, the fact that the bus was not stopped for allowing the passenger, to get into the bus would show that the driver and the conductor of the bus are guilty of negligence to that extent Though we differ from the finding of the Tribunal that the conductor actually pushed down the deceased from the bus while he attempted to get into it. We hold that the driver and the conductor of the bus were none the less negligent in driving the vehicle, in that the bus was moved from the bus stop before all those persons who got down from the bus at the bus stop got into the bus. We, therefore, agree with the ultimate finding of the Tribunal that the driver and the conductor of the bus were negligent in their conduct in running the bus.

7. Coming to the quantum of compensation it is seen that the Tribunal has given a sum of Rs. 5000 for pain and suffering and Rs. 3000 to the widow for loss of consortium and Rs. 15000 for loss of pecuniary benefit and also loss of expectation of life. Though the learned counsel for the appellant contends that the compensation awarded is excessive. on the materials on record, we are not in a position to say that the sum of Rs. 23000. awarded as compensation is in any way excessive. We are not therefore inclined to interfere with the quantum of the compensation fixed by the Tribunal.

8. However, there remains another question as to the apportionment of liability. The Tribunal has held that the insurer of the bus is liable only to the extent of Rs. 5000, as the deceased was a passenger in the bus and the balance of compensation has to be paid by the owner of the bus to the claimants. The learned counsel for the appellant vehemently contends that the Tribunal is in error in restricting the liability of the insurer to the sum of Rs. 5000 on the ground that the deceased was a passenger in the bus, while in fact the deceased cannot be taken to be a passenger in the bus as he fell down from the bus while he attempted to get into the bus. And that the person who attempts to get into the bus and fails to get an entry into the bus and falls down cannot be said to be a passenger at all. As against this submission, the learned counsel for the insurer contends that admittedly the deceased had travelled in the same bus as a passenger between Usilampatti and Bathalagundu and the fact that the deceased got down from the bus at the bus stop will not make him any the less a passenger of

the bus, It is true that the deceased Gurusami travelled in the bus from Usilampatti along with others like P. W. 2 to P. W. 4. But it is not in dispute that at the Kalaimman Koil bus stop at Bathalagundu the deceased got down from the bus so as to give way to persons getting down from the bus at the bus stop. The evidence in the case is clear that thereafter the bus began to move before the deceased got into the bus and after seeing the bus moving, the deceased ran after the bus and attempted to get into the moving bus. It is at this stage he fell down from the bus and sustained the injuries. These facts are spoken to by P. W. 3, the son of the deceased, who was already inside the bus. P. W. 3 has specifically stated that before his father could get into the bus, the bus moved and his father (the deceased) was following the bus trying to get into the bus when it was on the move. The sketch of the scene of the occurrence, which forms part of the judgment of the criminal court and which has been marked before the criminal court as Ex. P. 5, indicates that the deceased fell down from the bus at some distance from the bus stop, which indicates that the deceased should have followed the moving bus and attempted to get into the bus. but fell from the bus and his legs were run over by the left rear wheel of the bus. In those circumstances the question is whether the deceased could be said to be a passenger in the bus at the time of the accident. No doubt. he was a passenger in the bus when the bus was between Usilampatti and Bathalagundu. But at the second stage when the bus left Bathalagundu for Palani, the deceased was not a passenger and he is only a person who attempted to get into the bus, but failed to get into the bus. Though the learned counsel for the insurer contends that all persons who are authorised to travel in the bus by the issue of tickets should be taken to be passengers of the bus, we are not in a position to accept such a wide proposition. As a matter of fact in a judgment of this court, Natarajan J. in the Madras Motor and General Insurance Co. Ltd, Tirunelveli v. Perumal Konar C. M. A. Nos. 7 and 25 of 1972, held that a person travelling on the footboard without actually entering the bus cannot be taken to be a passenger and that if death or injury is caused to such a passenger, there cannot be any limit on the insurer's liability. However, it is unnecessary for us to go to the extent of saying that a person travelling on the footboard is not a passenger, as in

this case we are not concerned with a person travelling on the footboard but a person who did not actually get into the bus fell down and sustained injuries by a fall from the moving bus in his attempt to get an entry into the bus while it was moving. As already stated, the fact that the deceased was a passenger at an earlier stage when the bus travelled from Usilampatti to Bathalagundu is not quite determinate. Admittedly the deceased got down from the bus stop and he had not secured entry into the bus for a further journey from Bathalagundu to Palani. A person who did not get entry into the bus and failed in his attempt to get into the bus cannot be said to be in any sense a passenger in the bus at the second stage of the journey between Bathalagundu and Palani. We are, therefore, of the view that the deceased was not a passenger at the time of the accident and therefore the liability of the insurer cannot be restricted to Rs. 5000 as contemplated by Sec. 95(2)(b) of the Act. The Tribunal is in error in restricting the liability of the insurer to Rs. 5000 treating the deceased as the passenger. We have, therefore, to set aside that finding of the tribunal and hold that the insurer is liable to pay the entire compensation.

9. It is said that the insurer has already paid a sum of Rs. 5000. Therefore, the insurer is directed to pay the further sum of Rs. 18000, to the claimants, subject to the liability of interest as provided by the tribunal. It is represented that on the interim direction given by this court, the appellant had deposited some amounts towards the award before the tribunal. Now that the insurer has been made liable for the entire amount of compensation, the amount deposited by the appellant should be returned. If the amount deposited by the appellant has not been withdrawn by the claimants, the same will be Paid out to the appellant. If the claimants have already withdrawn the amount deposited by the appellant. then the appellant can withdraw the same as and when the insurer deposits the amounts as per the award passed by this court.

10. The appeal is therefore allowed to the extent indicated above. However, there will be no order as to costs.

11. Appeal partly allowed.