
(1981) 08 MAD CK 0030
In the Madras High Court
Case No : A.A.O. No. 20 of 1980

State of Tamil Nadu and Another	Vs	APPELLANT
P.K. Anandan		RESPONDENT

Date of Decision : 11-08-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : AIR 1982 Mad 136

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

Bench : Division Bench

Advocate : M. Krishnaswami, for the Appellant; G. Venkateswara Rao, for the Respondent

Judgement

Ramanujam, J.—This appeal has been filed by the State of Tamil Nadu against the award of the Motor Accidents Claims Tribunal in M. A.

C. T. O P. No. 272 of 1975 on the file of the Motor Accidents Claims Tribunal, Madras, awarding a sum of Rs. 8,000, as compensation to the respondent-claimant.

2. On 20-7-1970, the State Transport bus MRS 1727 was proceeding along Ennore High Road, at about 10 a.m. The said bus collided with the lorry ADB 2797 at the intersection of the Manall Express road and the Ennore High Road. As a result of this impact, the bus capsized and many

of the passengers in the bus were injured. The injured passengers of whom the respondent is one, filed claim petition. The petitioner claims a sum

of Rs. 50,000 as compensation in respect of, the injuries sustained by him.

3.The said claim was directed against the State of Tamil Nadu and the Pallavan Transport Corporation which owned the bus. No claim was

however made as against the driver of the lorry or the owner of the lorry. The

said claim petition was opposed by the State Transport, which ultimately became Pallavan Transport Corporation, that the lorry suddenly emerged from the left side of the road and at a high speed and dashed against the bus, that the lorry driver was not rash and negligent, and therefore it is the driver and the owner of the lorry who are responsible for the accident and compensation has to be claimed as against them. They also contended that the claim petition is bad for nonjoinder of the owner of the lorry. They also contended that the compensation claimed is in any event excessive.

4. The Tribunal, after considering the evidence adduced by the parties, held that the accident was due to the composite negligence of both the driver of the bus as well as the driver of the lorry but that the claim petition cannot be dismissed on the ground of nonjoinder of the owner of the lorry and that therefore, the claim petition cannot be defeated on that ground. The Tribunal then quantified the compensation at Rs. 8000.

5. In this appeal, the learned counsel for the appellants contends that the Tribunal having given a finding that the accident was due to the composite negligence of both the driver of the bus as well as the driver of the lorry, that the driver and owner of the lorry should have been impleaded as parties to the claim petition and that non-joinder is fatal to the maintainability of the claim petition. It is also pointed out by the learned counsel that even in the claim petition the claimant had stated that he is proposing to implead the owner of the lorry as party respondent as and when he gets the particulars regarding the owner of the " vehicle, but, he has not chosen to make the owner of the lorry a party before the Tribunal gave its award.

One other submission made by the learned counsel is that if the owner had been made a party, the tribunal would have been in a position to apportion the liability as between the owner of the, lorry and the owner of the bus and such apportionment is not possible in the absence of the owner of the lorry as a, party to this proceeding. It has also been pointed out that if the owner of the lorry has been made a party, it would have been possible for the appellant either to claim apportionment of damages or contribution and such an opportunity is lost, because the claimant has not made, the owner of the lorry a party. It is well established that if an accident has been caused by the contributory negligence of two joint tort-

feasors and as a result of the accident it is open to the third party to claim compensation against any or all the joint tort-feasors, and even if a

judgment is rendered against all the joint tort-feasors, he can proceed against one for recovery of the entire compensation. In a recent judgment of

this Court in *Southern Roadways Ltd. Madurai v. P.O, Poullose, C.M.A. 173 of 1979* batch it has been pointed out: -

If a number of persons jointly participate in the commission of a tort, each is responsible jointly with each and all of the others and also severally

for the whole amount of the damage caused by the tort irrespective of the extent of his participation. Therefore a person injured may sue any one

of them separately for the full amount of the loss or he may sue all of them jointly in the same action and even in this later case the judgment so

obtained against them all of them may be executed in full against any one of them".

6. In support of the above legal proposition, reference has been made in that case to the decision in *Wimpey (George) and Co. Ltd. v. British*

Overseas Airways Corporation, 1955 AC 169, *The Palghat Coimbatore Transport Co. Ltd. Vs. Narayanan and Others, and K. Gopalakrishnan*

Vs. Sankara Narayanan and Others, on the question as to whether all the joint tort-feasors are necessarily to be made parties in a claim petition.

Relying on an earlier decision of Venkatadri, J. in *M.S. Ramachandram Pillai Vs. K.R.M.K.M. Kumarappa Chettiar and Another*, it has been held

in CMA No. 173 of 1979 batch, that the non-impleading of one of the joint tort-feasors is not fatal to the maintainability of the claim as against the

other tort-feasors. In *M/s. Premraj Gobindram. v. Promode Kumar, AIR 1964 Assam .85*, it has been held that a joint tort-feasor is only a proper

party in a claim made by a third party against the other tort-feasor but not a necessary party and therefore non-impleading of such a party is not

fatal to the claim. Following the decision in CMA 173 of 1979 batch, it must be held that in this case that non-impleading of the lorry owner cannot

be held to be fatal to the maintainability of the claim by the claimant herein.

7. Then we come to the question of quantum of compensation. The Tribunal in this case has awarded a sum of Rupees 5,000 for pain and suffering

Rs. 1000 for extra nourishment and Rs. 2000/- for transport charges. He was serving in. Vellore. The award is as against the aggregate claim of

Rupees 50,000/-/ which consisted of Rs. 30,000 for the pain and suffering Rs. 10,000 for permanent disability Rs. 5000/- for loss of earning

power and a sum of Rupees 5000/- towards extra nourishment and transport to the hospital. Having regard to the facts established, we are not in a

position to say that the sum of Rupees 8000/- awarded as compensation is excessive. Though the learned counsel for the appellant contends that a

sum of Rs. 5000/- awarded for pain and I suffering by the Tribunal is excessive, having regard to the nature of the injuries and the prolonged

treatment which went on for a period of seven months and the treatment being continued even after the filing of the claim petition the amount of Rs.

5000/- cannot be said to be excessive. The learned counsel for the appellant contends that a sum of Rs. 2000/- awarded as transport charges

cannot be sustained unless there is positive evidence that the claimant expended that amount. But, having regard to the fact that the claimant had to

come from Vellore to attend the Stanley Hospital in the out patient department off and on during the period of seven months, a sum of Rs. 2000/-

awarded as transport charges cannot be said to be on the high side. Similarly, the award of Rs. 1000/- for extra nourishment and medical

treatment cannot be said too much. Thus, the sum of 8000/- awarded as compensation is to be fair and reasonable. The result is the appeal fails

and is dismissed. No costs.

8. Having regard to the finding rendered in this case that the accident was due to the composite negligence of both the driver of the bus as well as

the driver of the lorry and as the owner of the lorry alone had been made liable, it is open to the appellant to work out his rights, as against I the

owner of the lorry in separate proceedings for contribution if so advised.

9. Appeal dismissed.