

(2007) 11 MAD CK 0281

In the Madras High Court

Case No : C.M.A. (M.D.) No. 128 of 2006, C.M.P. (M.D.) No. 825 of 2006 and
M.P. (M.D.) No. 1 of 2007

Tamil Nadu State Trans. Corpn.

APPELLANT

Vs

R. Vanaja and Others

RESPONDENT

Date of Decision : 07-11-2007

Acts Referred:

Citation : (2009) ACJ 1898

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : Rajnish Pathiyil, for the Appellant; V. Nagendran, for the Respondent

Judgement

G. Rajasuria, J.—This appeal is filed against the judgment and decree dated 2.3.2005 passed in M.C.O.P. No. 3255 of 2002 by learned Motor Accidents Claims Tribunal-cum-Third Additional District and Sessions Judge (PCR), Madurai.

2. Heard both sides.

3. A resume of facts absolutely necessary and germane for the disposal of the civil miscellaneous appeal would run thus:

The Claims Tribunal vide judgment dated 2.3.2005 has awarded compensation to a tune of Rs. 3,49,500 (rupees three lakh forty-nine thousand five hundred) on the following sub-heads:

For love and affection Rs. 15,000 For funeral expenses Rs. 2,000 For loss to estate Rs. 2,500 For loss of marital life Rs. 10,000 For loss of income Rs. 3,20,000 ----- Total Rs. 3,49,500 -----

4. The quintessence of the grounds of appeal would run thus:

The Tribunal after giving a finding to the effect that the deceased was travelling at the footboard and fell down and met with the accident, has not chosen to fix any amount of negligence on the part of the deceased. The Tribunal wrongly

fixed 100 per cent responsibility on the driver of the bus. The Tribunal also awarded excess compensation.

5. The points for consideration are:

- (i) Whether the deceased was negligent to any extent in causing the accident?
- (ii) Whether the quantum arrived at by the Tribunal is just and proper?

Point (i):

6. The learned Counsel for the appellant transport Corporation by placing reliance on the very judgment of the Tribunal would develop his arguments to the effect that even though the case of Tamil Nadu State Transport Corporation is that when the bus was negotiating a turn near the latrine of the bus stand, the deceased attempted to board the running bus and in that process he fell down and invited the accident; yet the Tribunal held that he was a traveller on the footboard of the bus and from that he fell down because of the sudden brake applied by the driver of the bus.

7. Perused the judgment of the Tribunal. In para 5, the Tribunal clearly and categorically gave a finding to the effect that on 14.12.2001 at 8.15 hours, when the bus was started from the bus stand and coming out of it negotiating a turn near the bus stand latrine, the deceased fell down from the footboard and the back wheel of the bus ran over him. The Tribunal placed reliance on the evidence of a co-passenger who also travelled similarly and who lost his balance by the sudden brake applied by the driver of the bus and Tribunal analysed the PW2's evidence and ultimately arrived at the conclusion as under:

(Omitted as in vernacular)

8. The Tribunal also referred to the evidence of the driver, RW 1 and weighed the evidence of PW 2 as well as the driver and discarded the version of the driver on the main ground that it was an interested testimony, whereas PW 2 had no axe to grind in the matter and his testimony was free from doubt. This is a finding of fact given by Tribunal after personally hearing the witnesses and analysing their evidence. The Tribunal's reasoning is quite convincing. The Tribunal despite giving the finding that the accident occurred because of the sudden brake applied by the driver of the bus due to his rash and negligent driving and that at the relevant time of the accident the deceased was at the footboard and he fell down because of such sudden brake applied by the driver, yet no liability was fixed on the deceased. Even though in the first information report it is written carefully as though at the relevant time of the accident the deceased was standing inside the bus, just adjacent to the steps, yet during inquiry, the truth had come out that PW 2 as well as PW 1 were actually travelling on the footboard. In fact, the de facto complainant in the first information report, viz., Vanaja, wife of the deceased, was not an eyewitness to the occurrence. In such a case, the factual finding cannot be found fault with, but the Tribunal's conclusion in fixing 100 per cent responsibility only on the driver requires modification.

9. It is common knowledge that despite all warning, people especially youngsters are travelling on the footboard and it cannot be taken as an accepted practice of youngsters to travel. If the court holds that they had no role at all in the accident, which occurred because of travelling on the footboard , then that would amount to giving impliedly licence to travel on the footboard.

10. The legal position is that the conductor of the bus, when he comes across any person travelling on the footboard he should ask that traveller to move inside the bus fully and for that purpose he should stop the bus itself till there is compliance. If there is no positive response from the erring passenger, he should hand him over to police. The deceased having chosen to travel on the footboard should be made to bear some responsibility and in this case near the bus stand itself the accident occurred. In all probabilities, the driver of the bus was not expected to drive the bus in such a rash and negligent manner, even though the deceased was at fault to some extent in travelling on the footboard. As such the driver of the bus should take the major responsibility for the accident and only 20 per cent responsibility can be fixed on the deceased. Accordingly, this point is decided.

Point (ii):

11. Learned Counsel for the appellant would argue that the Tribunal was not justified in choosing the multiplier 16 as the deceased was 40 years old. The learned Counsel for the respondents-claimants by placing reliance on the Second Schedule appended to the Motor Vehicles Act, would argue that up to 40 years, multiplier 16 would be the appropriate one. Here, the claimants are the young wife and minor children of the deceased and in such a case choosing of multiplier 16 cannot be found fault with and it can be left as such. Under other sub-heads, the Tribunal has awarded compensation properly.

12. In the result, the Tribunal's order is modified to the extent that the Tamil Nadu State Transport Corporation is liable to pay only 80 per cent of compensation awarded by the Tribunal. In other aspects the Tribunal's award shall hold good.

13. With the above modification, this civil miscellaneous appeal is disposed of. No costs. Consequently connected miscellaneous petitions are closed.