

(2007) 02 MAD CK 0197

In the Madras High Court

Case No : C.M.A. (MD) . No. 135 of 2007

Tamil Nadu State Transport Corporation

APPELLANT

Vs

M. Ramesh

RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 128

Citation : (2007) 02 MAD CK 0197

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : D. Sivaraman, for the Appellant;

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Aggrieved by the finding of the Tribunal with regard to negligence, the Transport Corporation has filed this appeal.

2. The brief facts leading to the appeal are as follows:

On 03.02.2003 about 2.15p.m., when the respondent was travelling in a Hero Honda Motor Cycle in Madurai-Thirumangalam Road, from West to East direction the bus owned by the Transport Corporation came in the opposite direction and dashed against the respondent. The respondent was thrown out of the motor cycle and he sustained injuries all over the body. He was treated in Government Rajaji Hospital, Madurai and made a claim for compensation of Rs. 2,00,000/-.

3. The Appellant Transport Corporation resisted the claim petition and submitted that on 03.02.2003, near Thirumangalam Main Road, three persons travelled in a Motor Cycle, which came in the opposite direction, dashed against the rear side of the bus and all the three persons fell down and sustained injuries. The appellant further contended that the motor cyclist had violated the provisions of the Motor Vehicles Act by carrying more number of persons than permitted under the Motor Vehicles Act and therefore the accident had occurred only due to his negligence. He further submitted that, since there is violation of the provisions of

the Motor Vehicles Act and negligence on the part of the rider of motor cycle, the Transport Corporation is not liable to pay compensation. All the three injured persons made separate claim petitions. Since common evidence was let in, all the three petitions were tried together.

4. Before the Tribunal, the respondent examined himself as P.W.1. P.W.2 and P.W.3 are the pillion riders, who travelled in the Motor Cycle. P.W.4 and P.W.5 are doctors, who examined the injured persons. Ex. P1 FIR; Ex.P2 O.P. Sheet; Ex.P.3 Discharge summary; Ex.P.4 Hospital bill; Ex.P.5 Driving Licence; Ex.P.6 City Hospital book; Ex.P.7 City Hospital bill; Ex.P.8 Disability certificate; Ex.P.9 Case sheet; Ex.P.10, X-ray; Ex.P.11, wound certificate; Ex.P.12, Case sheet; Ex.P.13, X-ray; Ex.P.14, Disability certificate; Ex.P.15, Case sheet; Ex.P.16, another X-ray were marked on behalf of the claimants. The driver of the bus examined himself as R.W.1 and no document was produced on behalf of the appellant/Transport Corporation.

5. The Tribunal, on evaluation of pleadings and evidence, found that the driver of the bus was responsible for the accident, and awarded compensation of Rs. 77,000/- with interest at the rate of 7.5% per annum from the date of claim petition.

6. Heard the learned Counsel for the Appellant and perused the materials available on record.

7. Learned Counsel for the appellant submitted that the Tribunal has erred in relying on Ex. P.1, FIR without examining author of the document. He further submitted that three persons travelled in the motor cycle in a negligent manner and because of that, the rider of the vehicle could not control vehicle, which resulted in the accident. The motor cyclist has contributed to the accident and therefore, the Tribunal ought to have fixed contributory negligence on the part of the motor cyclist and exonerated the insurance company from its liability to pay compensation. In support of his contention, reliance was placed on the decisions in *Managing Director, Tamil Nadu State Transport Corporation Ltd. v. Abdul Salam and Ors.* reported in 2003 (1) MLJ 489 and *P.S. Somaiah and Another Vs. The Director, Bangalore Diary and Others*, and *Ravikumar v. Manager, Indian Textile Cor-operative Ltd.* reported in 2005 ACJ 1560.

8. In *Managing Director v. Abdul Salam and Ors.* reported in 2003 (1) M.L.J. 489, this Court considered the aspect of negligence, where three persons travelled in a Motor Cycle and collided with a vehicle, which came in the opposite direction resulting in the death of the one pillion rider. The Tribunal awarded compensation to the legal representatives of the deceased. On appeal by the State Transport Corporation, this Court in paragraph-2 of the judgment held as follows:

Apart from that, when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to loose his control over the vehicle. Even though such travelling of three persons in a motor cycle is contrary to the statute, still the enforcement

wing do not care to take note of the same and failed to take action against their illegal action. Virtually because of the failure on the part of the enforcement wing, such travelling of three persons in two wheelers have become a regular sight. Even though the highway patrolling is available but it is rare sight to see a highway patrolling vehicle. The travelling of three persons has become rampant in the mofussils and in the city; especially among the youngsters like the college students. When that be the case, the enforcing authority, is expected to enforce the statute with some strictness to avoid any untoward incident. There is no purpose in conducting the Road Safety Week without infusing the road sense in compliance of the Rules and Regulations of the statute in the minds of those who are using the vehicles.

9. In *Ravikumar v. Manager, Indian Textiles Co-oprative Ltd.* reported in 2005 ACJ 1560, the Court considered as to whether double riding of a bicycle by itself would amount to negligence. In paragraph 8 of the judgment, it is held that,

when there was two people on the bicycle, even though there is no evidence to indicate precisely how and under what circumstances the accident took place. The Court drew the inference from the fact of double riding that cycle would have been to be rather unstable and if that is the case it is obvious that the cycle could not have been moving in a safe manner. In that context, the Court held that when the cycle is over loading by two persons riding on it, that it would certainly be oscillating in a zig zag manner which would have been the obvious reasons for the collision.

10. In yet another decision *P.S. Somaiah and Another Vs. The Director, Bangalore Diary and Others*, , the Karnataka High Court considered a case where four persons travelled in a motor cycle, excepting the rider of the motor cycle, the other three pillion riders were children. In the accident, two children succumbed to injuries. While elaborately examining the aspect of negligence, with reference to the Section 128 of the Motor Vehicles Act, the Court observed that, when more than one person on the pillion or number of children loaded on two wheeler whether in front or in the arms, amounts to breach of provision and total callousness on the part of the motorcyclist. The Court in the absence of cross appeal by the respondent, was constrained to confirm the finding of the Tribunal, fixing contributory negligence on the motor cyclist and the owner of lorry. The copy of the judgment was directed to be forwarded to the Government for strict compliance of the directions.

11. In a case where two persons rode a bi-cycle (Double riding) and whether they had contributed to the accident came up for consideration before the Supreme Court in *Fazilka Dabwali Transport Corporation P. Ltd. v. Madan Lal* reported in 1977 ACJ 403, where the Apex Court held that merely because two persons rode the bicycle, that by itself cannot lead to an inference that they have contributed to the accident. On facts, contributory negligence was not proved.

12. In *Narpal and Anr. v. Kanta Devi and Ors.* reported in (11) 1992 ACC 261,

the Punjab and Haryana High Court held that the deceased could not be held to be solely responsible for causing accident as he was carrying three pillion riders along with empty drums of milk in a motor cycle.

13. The Rajasthan High Court in *National Insurance Company Limited and Ors. v. Kastoori and Ors.* reported in 1988 ACJ 8,, considered a case as to whether more_ travelling of four persons in the motor cyclist by itself amounts to contributory negligence. The Court held that merely because more persons travelled in a motor cycle, contributory negligence cannot be admitted, unless there is evidence to show that they contributed to the accident.

14. In *Mohindeer Singh Sohal and Anr. v. Ramesh Kumar and Ors.* reported in 1981 ACJ 326, the Bombay High Court " has held contributory negligence cannot be held for carrying more persons than permitted by law. On facts, the Court went on to hold that when the driver of the motor vehicle was driving with due care and caution, it cannot be held that there is contributory negligence.

15. In *United India Fire and General Insurance Company Limited and Anr. v. Mrs. Sayar Kanwar and Ors.* reported in 1976 ACJ 426, the Division Bench of the Karnataka Court, held that merely because three persons travelled in the motor cycle, it does not amount to contributory negligence.

16. The decision reported, in 2003 (1) MLJ 499 (cited supra) of this Court was considered elaborately by a Division Bench of this Court, with reference to the statutory provision, in *Kattaboraman Transport Corporation Limited, rep. by its Managing Director, Vannarpettai, Tirunelveli v. Vellai Duraichi and Ors.* reported in 2004(1) TNMAC 180 and held that three persons travelling in a motor cycle does not by itself amounts to contributory negligence. The Court held that in the absence of any evidence to prove that the rider or the pillion rider-contributed to the accident, no contributory negligence can be attributed to the motorcyclist.

17. In the instant case, the respondent claimant has let in evidence that the bus was driven rashly and negligently by the driver and it dashed against the motor cycle. It is also evident from Ex.P1 FIR, a case has been registered against the driver of the bus. If the motor cyclist was negligent in driving the vehicle, the driver of the bus could have lodged a complaint against him. No independent witness has been examined to prove that the Motor Cyclists was responsible for the accident. In the absence of any strong evidence against the motorcyclist, the oral testimony of the claimants corroborated by FIR, has to be given due consideration.

18. The decisions of the Supreme Court as well as this Court clearly lay down the law that unless there is positive evidence to prove that the motor cyclists contributed to the accident, presumption cannot be the proof. On consideration of the evidence on record, I am of the considered view, that the finding of the Tribunal cannot-be termed as perverse and it does not warrant any reversal. There is no challenge with regard to quantum.

19. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.