

(2003) 08 MAD CK 0037

In the Madras High Court

Case No : C.M.A. No. 1907 of 2003 and C.M.P. No. 11734 of 2003

Tamil Nadu State Transport Corporation

APPELLANT

Vs

Rajathi Thangamani and Others

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2003) 08 MAD CK 0037

Hon'ble Judges : S.K. Krishnan, J;E. Padmanabhan, J

Bench : Division Bench

Advocate : G. Muniratnam, for R. Thirunavukharasu, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Krishnan, J.—The Appellant herein is the Managing Director of the Tamil Nadu State Transport Corporation, Division-I,

Kumbakonam Town.

2. This appeal has been preferred against the award and decree passed in M.A.C.T.O.P. No. 257 of 2002 on the file of the Motor Accidents

Claims Tribunal, (Principal District Judge), Nagapattinam.

3. The first and second petitioners/claimants are wife and daughter of the deceased Chelladurai, respectively.

The third and fourth petitioners/claimants are parents of the deceased Chelladurai. The claimants 1 to 4 jointly preferred a claim petition before the

Motor Accidents Claims Tribunal, Nagapattinam against the respondents claiming a compensation of Rs. 10, 00, 000/- for the death of the

deceased Chelladurai caused on 3.9.2001 around 3.30 a.m. near Agarakadambanur, by the rash and negligent driving of the appellant's bus by its

driver.

4. It is stated that the first petitioner/claimant and her husband Chelladurai and others were travelling by bus bearing registration No. TN-49-N-

08785 from Vellankanni to Trichy. When the said bus was nearing Agarakadambanur around 3.30 a.m., a van bearing registration No. PY-02-A-

3303 coming from the opposite direction driven in a rash and negligent manner, dashed against the bus and in the accident, the head of Chelludurai

was crushed. The driver of the van did not stop the van and fled away. Thereafter, one Siluvaimuthu, a co-passenger, lodged a complaint in the

Keevalur Police Station.

5. It is claimed that the deceased, who was working as a mason, earned Rs. 6000/- per month. The deceased was aged thirty years at the time of

the accident and therefore, the claimants 1 to 4 claimed a total compensation of Rs. 10, 00, 000/- under various heads.

6. A detailed counter was filed by the respondents. According to the first respondent, since the deceased kept his head outside the windscreen and

slept, in the accident his head was crushed. It is further stated that the said accident was caused by the rash and negligent driving of the driver of

the bus.

7. According to the second respondent, the van driver alone was responsible for causing such an accident. It is contended that the passenger was

responsible as he had invited the accident by keeping his head outside the windscreen. If the deceased had not kept his head outside the

windscreen the accident would have been averted.

8. According to the third respondent, the passenger was sitting near the windscreen and slept. Eventhough the driver of the respondent

Corporation drove the vehicle in a proper manner following the road rules, the driver of the van which was coming from the opposite direction did

not follow the traffic rules and drove the vehicle in a rash and negligent manner and dashed against the bus. Since the passenger kept his head

outside the windscreen, his head was crushed. It is contended that the accident was caused by the rash and negligent driving of the driver of the

van and not that of the bus.

9. The Tribunal below framed the following points for consideration.

(a) Which vehicle was driven rashly and caused the accident ?

(b) Whether the claimants/petitioners are entitled to claim compensation ? If so, how much ?

(c) Who is liable to pay the compensation to the claimants ?

10. On the side of the claimants, the wife of the deceased has examined herself as P.W. 1. One of the co-passengers who travelled along with the deceased and with the first petitioner by the same bus was examined as P.W. 2, who lodged a complaint before the Keevalur Police Station. The said P.W. 2 is an independent eye witness.

11. As seen from the complaint the driver of the van, who drove the van in a rash and negligent manner, dashed against the bus in which they travelled on that fateful day. The conductor of the bus was examined as R.W. 1. According to the said witness, the driver of the first respondent van, which was coming from the opposite direction, drove the van in a rash and negligent manner and dashed against the bus and caused the said accident. According to the driver of the van, (R.W. 2), the accident was caused due to contributory negligence on his part as well as the driver of the bus.

12. The Tribunal below, weighing the evidence let in by both sides, concluded that the said accident was caused due to the rash and negligent driving of the bus and the van and it is a contributory negligence. Both the vehicles are liable to pay compensation at the ratio of 1:2.

13. With regard to the quantum of compensation the Tribunal below, considered the evidence of P.W. 1 awarded a total compensation of Rs. 3, 33, 064/- to the claimants under various heads. Aggrieved by the award passed by the Tribunal below, the appellant-Transport Corporation alone has come forward with this appeal challenging the award.

14. The points that arise for consideration in this appeal are :-

i) Which vehicle caused the accident? Whether the accident was caused by contributory negligence on the part of the bus and van? If so who is liable to pay compensation and what is the ratio ?

ii) Whether the compensation awarded by the Tribunal below is excessive or disproportionate ?

15. When this appeal is taken up for hearing before this Court the learned

counsel appearing for the appellant would vehemently contend that while fixing the quantum of compensation the Tribunal below, awarded compensation disproportionately and arbitrarily. Further it was pointed out that for proving the income of the deceased P.W. 1 has not produced any documentary evidence and on the basis of oral evidence adduced the monthly income of the deceased was fixed by the Tribunal below, which is on the higher side and hence, the compensation has to be reduced considerably.

16. With regard to the negligence, the learned counsel contended that the driver of the van is solely responsible for causing the accident, and hence, the Tribunal below ought to have fixed the negligence only on the part of the driver of the van owned by the first respondent. The appellant relied upon the complaint lodged by P.W. 2, a passenger travelling in the same bus along with the deceased and claimants.

17. The learned counsel contended that even in the first information report lodged by the said passenger the factum of negligence committed by the first respondent van driver, was narrated and the bus driver was not implicated. Since the learned counsel very much relied upon the report to show the factum of negligence on the part of the van in his arguments, it is just and necessary for this Court to extract the very contents of the First

Information Report, which reads thus :-

3/9/01k; njjp mjpgfhiy 2 kzipf;F ntsh";fz;zpapy; , Ue;J jpUr;rp bry;Yk; muR ngUe;J o/vd;/49-vd; 0785y; ehDk; v";f Ciur; nrh;;e;j Rkhh; 30 ngh;fs;

Vwpndhk;/ oiutUf;F gpd;dhy; K:d;W ngh; cl;fhUk; rPl;oy; 4 tJ rPl;oy; ehDk; vd;Dld; v";f Ciur;nrh;;e;j me;njhzprhkp kfd; bry;yJiu vd;gtUk;

brg!;jpahd; kfd; epf;rDk; cl;fhh;;e;J te;njkh;/ Xu;j;jpy; bry;yJiu cl;fhh;;e;J te;jhh;/ mjpgfhiy Rkhh; 3/00 kzp mstpy; muR ngUe;J mfuf;flk;gD}h; cnrd;

vd;gth; tPl;Lf;F mUfpy; nkw;F neh;fp ngha;f;bfhz;oUe;jnghJ jpUthU:h; gf;fkpUe;J ehfg;gl;odk; neh;fp mjpntfkhft[k; Kul;Lj;jdkhft[k; te;j 407 nyhL

ntd; v";f ngUe;jpd; gho kPJ curpa[k;. bry;yj;Jiu vd;gth; jiyapy; nkhjpaJ/ nkhjpa ntff;jpy; bry;yj;Jiuapd; jiy eR";fp K:is rpjwp ngUe;jpnyna ,

we;Jtpl;lhh;/ nkhjpa ntd; epw;fhky; ntfkhf brd;Wtpl;IJ/

18. Placing reliance on the said report it is contended that it is the van driver who was negligent and hence the Tribunal below ought to have held

that the van driver alone was negligent and the entire liability should have been

fastened on the owner and insurer of the van and the appellant ought to have been exonerated. This Court has to interfere with the award by holding that the driver of the van alone is solely responsible for negligent driving and causing the accident.

19. However, we find that the Tribunal below rightly fixed two-third negligence on the part of the van driver and one-third negligence on the part of the driver of the 2nd respondent. This conclusion is fair as had the bus driver been careful, he would have averted the accident easily as the road was wide and there was sufficient space.

20. R.W. 1, when he was examined has deposed that when the two vehicles were crossing each other at the time of accident, the right side of the respective vehicles, which were crossing each other as they were approaching from the opposite direction, the two vehicles dashed on side and a big sound was heard. Immediately he stopped the vehicle and noticed that the passenger in the bus was hit on his head, and the van flew away.

21. R.W. 2, the driver of the van, when examined also deposed that the two vehicles approaching each other from the opposite direction at the point of impact, physically roughed and dashed against each other on their respective right side body and he has also admitted that he did not stop the van. It is also elicited during the examination the two vehicles when approaching each other were driven at a high speed, while negotiating a curve. It is clear that the bus driver also drove the vehicle at high speed resulting in the two vehicles physically roughing and dashed against each other side way and this has resulted in causing head injury to the deceased, who died at the spot.

22. The Tribunal below, after considering the evidence of R.W. s 1 and 2 as well as P.W. 1, rightly recorded a finding that the accident has been caused by the contributory negligence on the part of the drivers of the two vehicles, namely, the bus and the van, which resulted in crushing of head to the passenger.

23. The bus was proceeding in the early hours and it is rather extra-ordinary to suggest that the passengers were warned not to keep their heads near the windscreen. The evidence that the deceased was keeping his head outside the windscreen is rather artificial. But for the two vehicles driven at high speed, rashly and negligently while negotiating a curve and drove

their vehicle so closely and dashing against each other on their side, the deceased would not have sustained crushing head injury and he would not have died.

24. On a consideration of the evidence let in by either side, we are of the considered view that the accident has been caused by the rash and negligent driving of both the vehicles and it is a clear case of contributory negligence of both the vehicles. The Tribunal has fixed the negligence on the part of the van at two-third, while that of the bus at one-third. It is rather difficult to hold exactly the quantum of contributory negligence, but it could only be estimated as assessed by the court below and we are not persuaded to interfere with the percentage of contributory negligence.

Therefore, it is clear that it is a case of composite negligence on the part of the two drivers and we are not persuaded to take a different view. We affirm the finding of the tribunal below. Hence, the first point is answered accordingly.

25. As regards the quantum of compensation, the deceased was aged 30 years as deposed by P.W. 1. The postmortem certificate also would disclose that the deceased was aged 30 years and the Tribunal rightly accepted the same. It is the evidence of P.W. 1 that the deceased was employed as a centering labourer, a Mazdoor, engaged in bending steel rods for RCC concrete slabs. The evidence of P.W. 1 was that he was making Rs. 200/= a day and Rs. 6000/= per month. But the Tribunal has fixed the daily earnings at Rs. 100/= and also arrived at the monthly earning at Rs. 2500/= on the reasoning that the deceased would have worked only for 25 days in a month. As deposed by P.W. s 1 and 2, the deceased has not only maintained himself, but also four adult members. The assessment of income of Rs. 100/- is too low as in the trade the earning of a Mazdoor was good.

26. As per the schedule, taking into consideration of the age, income, the Tribunal assessed the annual loss of contribution at Rs. 20, 004/= after deducting personal expenditure. The Tribunal adopted a multiplier of 16 and awarded in all Rs. 3, 20, 064/= towards loss of income. This award of Rs. 3, 20, 064/= by adopting the schedule cannot be held to be arbitrary or excessive. In fact, on the facts of the case, taking into consideration of the age and that the deceased belonged to working class, the Tribunal could

have adopted 17 as the multiplier, but adopted only 16 and this is advantageous to the appellant.

27. The Tribunal awarded Rs. 2000/= towards funeral expenses, which figure is only a bare minimum. The Tribunal has awarded Rs. 5, 000/=

only towards loss of consortium for the first claimant and another Rs. 6000/= for the loss of love and affection to claimants 2 to 4. This again is a

bare minimum and the Tribunal could have very well awarded in fairness a sum of Rs. 10, 000/= each for the loss of consortium to the first

claimant. The Tribunal has not awarded any amount towards transportation of the body from the place of accident to the native town of the

claimants. In fact, the compensation awarded under the heading loss of consortium or other conventional damages is only a minimum and in fact no

compensation has been awarded towards transportation. Therefore, by all standards the award of Rs. 3, 33, 064/= cannot be held to be

excessive. Had an appeal or cross objection been preferred by the claimants, there is scope for enhancement of compensation.

28. As regards the liability, the Tribunal fixed the liability of the appellant-Corporation at one-third, while that of the owner and insurer of the van at

two-third of the total compensation. This also is in order and we are not persuaded to differ.

29. On a consideration of oral and documentary evidence, we hold that no interference is called for even with respect to the quantum of

compensation or that matter with respect to the composite negligence on the part of the two vehicles resulting in the deceased sustaining head

injury and dying on the spot.

30. In the result, this civil miscellaneous appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed. No costs.