

(2011) 03 MAD CK 0271
In the Madras High Court
Case No : C.M.A. No. 1649 of 2006

The Managing Director, Metropolitan Transport Corporation
Ltd.

APPELLANT

Vs

Seetha and Kasiammal

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (2011) 03 MAD CK 0271

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : A. Babu, for the Appellant; R. Parthasarathy, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Appellant/Transport Corporation has projected the instant Civil Miscellaneous Appeal as against the Award dated

11.04.2003 in Motor Accident Claims Tribunal Original Petition No. 359 of 1999, on the file of Tribunal/ IVth Court of Small Causes, Chennai.

2. The tribunal on an appreciation of oral and documentary evidence available on record has passed an Award in Motor Accident Claims Tribunal

Original Petition No. 359 of 1999, dated 11.04.2003, observing among other things that "the Respondents/Petitioners are entitled to receive a

total compensation of Rs. 1,90,500/- (inclusive of the interim Award) together with 9% interest per annum from the date of filing of the main

MCOP petition till date of payment. Further, eight weeks time has been granted for payment of the aforesaid amount by the Appellant/Transport

Corporation. The Lawyer's Fees has been fixed at Rs. 6,810/-.

3. Being dissatisfied with the Award and Decree dated 11.04.2003 in MACTOP

No. 359 of 1999 passed by the Tribunal namely learned IVth

Judge, Court of Small Causes, Chennai, the Appellant/Transport Corporation has filed the present Appeal before this Court, as an aggrieved

person.

4. The Learned Counsel for the Appellant/Transport Corporation urges before this Court that the Award dated 11.04.2003 in MACTOP No.

359 of 1999 passed by the learned 4th Judge, Court of Small Causes, Chennai, is against the evidence and probabilities of the case. The learned

Counsel for the Appellant/Transport Corporation submits that the Tribunal has committed an error in placing reliance on the evidence of PW2,

who has not lodged the First Information Report.

5. The learned Counsel for the Appellant/Transport Corporation submits that the Tribunal should have fixed the entire or at least contributory

negligence on the part of the deceased. Also, the learned Counsel for the Appellant/Transport Corporation submits that the Tribunal is not correct

in adopting multiplier of 11 in the absence of proof of age of the mother of the deceased. Furthermore, the Tribunal has erred in determining the

monthly income of the deceased at Rs. 2,000/-.

6. The contention of the Learned Counsel for the Appellant is that the tribunal has not appreciated or adverted to the material factual and legal

aspects of the matter in a proper perspective, which has resulted in serious miscarriage of justice.

7. Lastly, it is submitted by the learned Counsel for the Appellant/Transport Corporation that no documentary evidence has been produced before

this Court especially his occupation and income of the deceased and all the more, the Tribunal has wrongly relied upon the evidence of

PW1/Claimant as regards the age, occupation and income of the deceased.

8. In the claim petition, the Respondents/Petitioners have averred that on 27.04.1998 at about 20.40 hours, the deceased Pattani Kumar @

Govindasamy was walking along Bells Road, Triplicane, Chennai, opposite to Hotel Sona, from North to South and at the time, the

Appellant/Transport Corporation bus bearing Registration No. TN-02-B-0111 was driven by its driver in a rash and negligent manner came at a

dangerous speed from the same direction and hit behind the deceased and as a result of the accident, the deceased sustained fatal injuries and died

on the spot. Therefore, the accident had taken place only due to the fault of the driver. The Respondents/Claimants had claimed a restricted sum of

Rs. 2,00,000/- as compensation for the death of the deceased. The first Respondent/claimant is the mother of the deceased. The second

Respondent/Claimant is the sister of the deceased.

9. In the claim petition, the monthly income of the deceased Pattani Kumar Govindasamy has been mentioned as Rs. 4,500/-. The deceased

Pattani Kumar @ Govindasamy at the time of the accident has been aged 25 years and has been doing the Missionary Job.

10. Before the Tribunal, on behalf of the Respondents/claimants two witnesses PW1 and PW2 have been examined and Ex.P.1 to Ex.P. 4 have

been marked. On the side of the Appellant/Transport Corporation, no one has been examined as witness and no document has been marked.

11. PW2 has deposed before the Tribunal that the accident has taken place when the deceased has attempted to get into the bus. Even in the

Ex.P.2 First Information Report, the manner of accident is described as per the evidence of PW2. But in the counter filed by the

Appellant/Transport Corporation, it is mentioned that the bus has stopped in a bus stop dropping the passengers and at the time, the passengers

have got into the bus when the Conductor blew the whistle and also when the bus has moved slowly at the point of time, the deceased has come

running and made an endeavour to get into the bus, thus the accident has taken place.

12. This Court worthwhile recalls the decision *Ishwar Devi Malik and Others Vs. Union of India and Others*, wherein it is held thus:

The deceased boarded a stationary bus which was standing at a bus stop on a twenty feet wide road about 5 or 6 feet behind another bus. When

the deceased was on the foot-board when most part of his body was outside the bus, the conductor of the bus who was standing near the second

seat from the door gave the signal bell to the driver to start the bus and the bus moved passing by the side of the front bus so closely that the

deceased got squeezed or sandwiched between the two buses and sustained internal injuries like fracture of ribs and displacement of heart

ultimately resulting in his death.

A claim for compensation by the heirs of the deceased was made u/s 110-A

Motor Vehicles Act.

Held that the accident was caused by the rash driving and negligence of the driver and the conductor. The safety of the public who travel by public

conveyances like the bus in question is the primary concern of the conductor and the driver who are in charge of and control of public

conveyances. When the conductor saw that the deceased was boarding the bus and was yet on the foot-board, he should not have given the bell

for the starting of the bus, but should have waited till he got inside the bus. To have given he bell and thus signaled the driver to start the bus, is

nothing bus rashness and negligence on the part of the conductor. The conduct of the driver also was rash and negligent, in that he drove the

offending bus so closely near to the stationary bus that there was no sufficient clearance between the two buses and the deceased got squeezed or

sandwiched between the two buses. (1966) ACC.110 Rel. on

13. Further, this Court aptly points out the decision Municipal Corporation of Delhi and Ors. v. Shanti Devi Dutt and Anr. 1975 A.C.J. 508, it is

held hereunder:

6. The first point for determination is whether the injuries sustained by Shanti devi and the death of Kundan Lal were due to the rashness and

negligence on the part of the conductor and driver of the bus No. DLP 182 and the driver of the bus No. DLP 344 or whether the accident

occurred only due to the negligence of Shanti Devi Pratibha Dutt and Kundan Lal. The two petitions filed by Shanti Devi and Pratibha Dutt were

disposed of together by the learned Tribunal and the evidence was recorded in Petition No. 256/64 and this evidence was treated as evidence in

the other petition N.257/64, also PW.11 is Shanti Devi and PW.13 is Pratibha Dutt. Both of them testified to the manner in which the accident

occurred. According to them, they as well as the deceased Kundan Lal had actually boarded the bus No. DLP 182 and that before they could

settle themselves in the bus and while they were standing on the platform of the bus and the deceased was standing on the top step of the bus, the

conductor of the bus signaled to the driver to start the bus immediately and the driver started the bus with a jerk as a result of which all the three of

them fell down on the road. They further stated that immediately thereafter another bus DLP 344 came behind and ran over Shanti Devi and

Kundan Lal. Shanti Devi sustained injuries on her left leg and other part of the body and the head and chest of Kundan Lal deceased were crushed and he died immediately on the spot. The statement of Pratibha Dutt is corroborated by her statement recorded by the police immediately after the accident. The evidence of PW's 11 and 13 is further corroborated by the evidence of two independent witnesses, namely, PW6 Abdul Ghafoor and PW10 Panna Lal. Both of them stated that while they were standing at the bus stop near Delhi Gate, they saw PW1 11 and 13 and the deceased Kundan Lal getting into the bus No. DLP 182, that the bus started immediately with a jerk and all the three of them fell down on the road and Shanti Devi and Dundan Lal were run over by another bus DLP 344 which was coming immediately behind the other bus. The evidence of these witnesses is also corroborated by the medical evidence in this case which clearly proves that the injuries sustained by Shanti Devi as well as the deceased were caused as a result of being run over by the bus. The medical evidence disproves the case of the Respondents that Shanti Devi and the deceased sustained their injuries as a result of jumping down from a running bus. In support of the case, the Respondents examined 4 witnesses. RW1 Pawan Kumar, is the conductor of the bus DLP 344, RW2, Attre, is the driver of the Bus No. DLP 182 and RW4 Ram Prasad is the driver of the Bus N9.DLP 344. All these witnesses are interested witnesses and their evidence apart from being contradicted by the medical evidence and the other independent evidence led by the Appellants, is not corroborated by any independent evidence, RW3, Vir Singh who was examined as an independent witness, has admitted that he was not examined by the police during investigation or in the criminal case that was filed against the drivers of the two buses and the conductor of Bus No. DLP 182. The conductor of Bus No. DLP 344 was not examined as a witness. Therefore, we agree with the finding of the learned Tribunal that the conductor and the driver of the Bus No. DLP 182 and the driver of the bus No. DLP 344 were guilty of rashness and negligence and that the injuries sustained by Shanti Devi and Kundan Lal's death were the direct result of their rashness and negligence.

14. Really, the accident has taken place only when the deceased has made an attempt to get into the bus, as deposed by PW2 in his evidence

before the Tribunal. In this connection, it is not out of place for this Court to point out that it is the primordial duty of the Conductor of the bus to

blow the whistle after seeing and arriving as to whether all the passengers have got down from the bus and further, the passengers have boarded

the bus in that stop where it has stopped. Only after blowing the whistle by the Conductor, the driver of the bus, who is in charge of the bus, has to

move the bus from the stop. Therefore, it is candidly evident that the bus driver and the Conductor of a bus are primarily and equally responsible in

verifying or checking and seeing as to whether all the passengers have boarded the bus in a stop or alighted from the bus stop. They cannot wriggle

out of this kind of responsibility, as opined by this Court.

15. In the instant case on hand, there is no evidence to establish that the deceased person has made an endeavour to get into the bus after himself

running and also only thereafter, the bus is proceeded either the driver of the bus or the Conductor of the bus has not been examined before the

Tribunal. In the absence of any rebuttal evidence produced by the Appellant/ Transport Corporation, the evidence of PW2 assumes significance

and the same remains unchallenged. Moving the bus without verifying all the passengers alighted from the bus or get into the bus is not a proper

act. Before all the passengers have entered into the bus or alighted from the bus, it is not open to the Conductor of the bus to blow the whistle. In

the present case, there is a categorical evidence of PW2 that only when the deceased has attempted to get into the bus the accident has taken

place. In these circumstances, the evidence of PW2 is pin pointedly to the effect that when the deceased has attempted to get into the bus bearing

registration No. TN-02-B-0111 at the time the bus driver has moved/taken the vehicle in a high speed, as a result of which the said passenger has

fallen down and by sustaining injuries died on the spot. Therefore, this Court comes to an inevitable conclusion that the driver of the bus bearing

No. TN-02-B-0111 is squarely responsible for the happening of the accident. Further that the accident has taken place because of the rash and

negligent act of the Appellant/ Transport Corporation driver and the point is answered accordingly in favour of the Respondents/claimants.

16. The tribunal has observed that the deceased Pattani Kumar @ Govindasamy at the time of his death has remained as unmarried person. The

first Respondent/first claimant's age has been mentioned as 45 in the claim petition. However, the tribunal after seeing the photograph of the first

Respondent/first claimant in the claim petition has determined the age in between as 50 to 55. It has adopted a multiplier of 11. It has taken into

account the monthly income of the deceased Pattani Kumar @ Govindasamy as Mason at Rs. 2,000/- per month. Accordingly, it calculated the

income per year at Rs. 24,000/-. After deducting 1/3 towards personal expenses it has arrived at a dependency of Rs. 16,000/- per month(which

amount the deceased would have contributed to his family). Therefore, it has arrived at a sum of Rs. 16,000/- X 11 = Rs. 1,76,000/- as

compensation payable to the Respondents for the death of Pattani Kumar @ Govindasamy. Towards funeral expenses, the Tribunal has awarded

a sum of Rs. 2,000/-, towards pain and suffering, it has awarded a sum of Rs. 5,000/-, towards loss of estate it has awarded a sum of Rs. 2,500/-.

However, it has awarded a sum of Rs. 5,000/- towards Loss of prospects. Thus, the Tribunal has awarded a sum of Rs. 1,90,500/- as

compensation payable to the Respondents/claimants for the death of Pattani Kumar @ Govindasamy _ being the son of the first Respondent/first

claimant and the brother of the second Respondent/second claimant. The Tribunal has also granted 9% interest per annum for the aforesaid sum of

Rs. 1,90,500/-. It has granted eight weeks time to the Appellant/Transport Corporation to pay the same. The Tribunal has fixed the Lawyer's fee

at Rs. 6,810/-.

17. At this stage, the learned Counsel for the Appellant/Transport Corporation submits that the claim amount awarded by the Tribunal as

compensation payable to the Respondents/claimants have been deposited by the Appellant/Transport Corporation before the executing Court in

execution proceedings.

18. On a careful consideration of the contentions advanced on behalf of the Appellant/Transport Corporation, this Court is of the considered view

that the contentions advanced on the side of the Appellant are devoid of merits and that the tribunal has taken into account all the relevant attendant

facts and circumstances of the case. In short, it has also appreciated, scrutinised and analysed the evidence of PW1 and PW2 and also looked into

the Ex.P.1 to Ex.P.4 documents. As such, this Court holds that the award passed

by the Tribunal namely, I Vth Judge, Court of Small Causes,
Chennai, in MACTOP No. 359 of 1999, dated 11.04.2003, does not suffer from
any material irregularity or patent illegality. Consequently, the
Civil Miscellaneous Appeal fails.

In the result, the Civil Miscellaneous Appeal is dismissed, leaving the parties to
bear their own costs. Consequently, the Award and Decree of the
Tribunal in MACTOP No. 359 of 1999, dated 11.04.2003, is affirmed by this Court
for the reasons assigned in the Civil Miscellaneous Appeal.