

(2004) 08 MAD CK 0121
In the Madras High Court
Case No : C.M.A. No. 1564 of 1998

The Managing Director, Pallavan Transport Corporation	APPELLANT
Vs	
Y. Ganesan and Another	RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2006) ACJ 2134 : (2005) 1 CTC 762

Hon'ble Judges : N. Kannadasan, J; K. Govindarajan, J

Bench : Division Bench

Advocate : A. Babu, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajan, J.—None appears for the respondents. The Transport Corporation has filed the above appeal questioning the correctness of the award passed by the tribunal.

2. The deceased, according to the claimants, was standing in the bus stand and the bus which was driven by the Corporation driver in a rash and negligent manner, dashed against the deceased and thereby he died. According to the appellant, the deceased along with others tried to step up in the bus even before it is stopped and thereby he fell down. So, the negligence cannot be fixed on the part of the driver of the Transport Corporation bus.

3. From Exs. P2 and P3, namely, FIR and the sketch, it is clear that the accident took place even in the bus stand itself. Even according to the claimants, there was a crowd in the bus stand. The tribunal has not rejected the case of the appellant that the deceased when he tried to step up in the running bus, fell down. The responsibility was fixed only on the ground that the conductor should have taken diligent steps to avoid such accidents and the driver should have driven the vehicle with all caution. Though such responsibility can be fixed on the driver and the conductor, we also have to appreciate the passengers"

responsibility. They should not try to get down in the running bus. The evidence of the claimants that when the deceased was standing in the bus stand, the bus dashed against the deceased as the said bus was driven in a rash and negligent manner, cannot be accepted, in view of the admission made by the claimants that there were much crowd in the bus stand. If there were much crowd, the question of driving the vehicle rashly in the bus stand was not possible. The Tribunal also found that the accident took place only when the passengers tried to get into the running bus. The negligence is fixed on the driver only on the ground that the driver and conductor did not take care to avoid the accident.

4. In view of the above facts, it cannot be said that the accident took place only due to the negligence on the part of the driver alone. It has to be taken that the deceased also contributed some negligence as he had tried to enter into the running bus. So, we are inclined to fix such negligence on the part of the deceased at 30%.

5. The tribunal has fixed the quantum of compensation at Rs. 80,000. The tribunal has arrived at the monthly contribution to the family at Rs. 500. Taking into consideration of the age of the deceased, the tribunal adopted 12 years" multiplier. The tribunal has also awarded Rs. 3,000 towards loss of love and affection, Rs. 3,000 towards shock and mental agony and another Rs. 2,000 towards funeral expenses. The said amounts cannot be said as unreasonable, but it is just and reasonable amount,

6. In view of the above, the claimants are entitled to only 70% of the amount by the tribunal. To that extent, the appeal is allowed. No costs.