

(1938) 10 MAD CK 0007
In the Madras High Court

The Palghat Coimbatore Transport Co. Ltd.

APPELLANT

Vs

Narayanan and Others

RESPONDENT

Date of Decision : 05-10-1938

Acts Referred:

Citation : AIR 1939 Mad 261 : (1939) ILR (Mad) 306 : (1938) 48 LW 865 : (1939) 1 MLJ 143

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This appeal arises out of a suit instituted under the Fatal Accidents Act by the representatives of one Venkatarama Aiyar

who died in February, 1930, as the result of a collision between two motor buses in one of which the deceased was travelling. The owners of the

two buses have been impleaded as defendants 1 and 2 and they may be referred to as the U.M.S. Motor Service and the I.M.S. Motor Service

respectively. It is in one of the buses run by the U.M.S. Service that the deceased was travelling at the time of the accident. The I.M.S. Service

bus was coming in the opposite direction, and at a point where the road is found to have measured 26 feet in breadth, there was a collision

between the two buses almost in the middle of the road. The lower Court gave the plaintiffs a joint decree against both the defendants for sums

aggregating to Rs. 10,000. Against that decree, the first defendant has preferred this appeal.

2. The first point urged in support of the appeal is that the driver of the U.M.S. bus was not negligent or reckless and that the appellant should not

therefore be held liable. There has been some controversy as to the exact part of the road where the collision took place. The witnesses examined

on behalf of the first defendant, U.M.S. Service, suggest that at the time of the accident the U.M.S. bus was very near the extreme left edge of the road which will be its proper side and was within one or two feet of a ditch which adjoined the road on that side. The evidence of some of the lay witnesses does not appear to us quite reliable; assuming they were in the bus, it is doubtful if they took note of such matters. It is the driver of the bus who puts the distance between the bus and the ditch at 2 feet while the lay witnesses would swear that it was one foot. The Police Officer who was on the spot very soon after the incident expressed his opinion that the collision must have taken place in the middle of the road. He was no doubt not present at the spot at the time when the accident occurred; but we think that the lower Court was right in accepting his inference as correct because he stated that the brain matter of one of the passengers who was killed in the accident was found right in the middle of the road when he went to the spot and it was hardly likely that this matter could have changed its position from the spot where it actually fell at the time of the accident. It appears from the evidence that only 12 feet of the road width about the middle is metalled and there is a margin of 8 feet on the one side and 6 feet on the other unmetalled. We see no reason to differ from the conclusion of the learned Trial Judge that the unfortunate accident must have happened as a result of the drivers of the two buses persisting in driving on the metalled portion each declining to make room for the other to pass by. In this view both the defendants must be held liable. *Mills v. Armstrong* (1888) 13 A.C. 1.

3. As regards the quantum of damages, Mr. Rajah Aiyar, the learned Counsel for the appellant-first defendant, complained that the amount of Rs.

10,000 awarded by the lower Court was excessive and not warranted by the financial position of the deceased. It must be said in justification of

this argument that the evidence bearing on the quantum of damages is somewhat vague and the plaintiffs could have produced more satisfactory

evidence. But, such as it is, the evidence has been accepted by the learned Subordinate Judge as substantially reliable. Assessment of damages in a

case of this kind must necessarily be only rough and approximate and we are not prepared to say that the amount awarded by the lower Court is

so excessive that it can be described as arbitrary or whimsical. Nor are we in a position to say that a lower figure will necessarily be the correct

figure. The evidence shows that the deceased was aged only 40 at the time of his death, that he had a family of 7 members to support and that he was managing to maintain that family in a certain decent standard of living; It is true that in a case of this kind the assessment of damages should not be made merely with reference to the plaintiff's requirements, but as the evidence establishes that the plaintiff's requirements were being fairly met by the deceased, the learned Judge was in our opinion justified in proceeding to assess damages on that basis.

4. The third contention urged by Mr. Rajah Aiyar relates to the propriety of awarding a joint decree against both the defendants. He Urged that the present case is not one of ""joint tort"" and that it was open to the Court to assess separately the damages payable by each, of the two defendants.

See Ramratan Kapali v. Aswini Kumar Dutta I.L.R.(1910) 37 Cal. 559. We are prepared to assume that the present is not an instance of a joint tort. Set The Kursk (1924) P. 140. But it will not necessarily follow therefrom the damages should or could be assessed separately as against

each of the defendants. The case will fall in the category of what is described by Sir Frederick Pollock as injury arising from ""composite

negligence"". (See Pollock on Torts, 13th Edition, page 485.) After referring to the authorities bearing upon instances of this kind, the learned

author observes that in such a case, the plaintiff is not bound to a strict analysis of the proximate or immediate cause of the event to find out whom

he can sue. Subject to the rules as to remoteness of damage, the plaintiff is entitled to sue all or any of the negligent persons and it is no concern of

his whether there is any duty of contribution or indemnity as between those persons though in any case he cannot recover in the whole more than

his whole damage. This principle was applied by the majority of the Court of appeal in Ireland in Mckenna v. Stephens and Hull (1923) 2 Irish

Reports 112. (See also Beven on Negligence, p. 79.) The case in Piper v. Winnifrith and Leppard (1917) 34 T.L.R. 108 to which Mr. Rajah

Aiyar drew our attention in this connection, is clearly distinguishable. What happened in that case was that two dogs belonging to two different

owners who did not act in concert had injured the plaintiff's animal and he sued the owners of the dog for damages. This was certainly not a case

either of joint tort or of a composite act in the sense that the act of or omission of the one without the act or omission of the other would not have

caused the injury. Croston v. Vaughan (1938) 1 K.B. 540 does not help the appellant either. The Court in that case no doubt fixed the amount respectively payable by the two wrongdoers, but was done in the exercise of the power expressly conferred on the Court by the recent statute of 1925. It must also be noted that that was a decision only between the defendants inter se and did not affect the right of the plaintiff to recover the full amount from either of, the defendants. It was pointed out that the plaintiff was not even a party to the appeal and his rights accordingly remained unaffected. Whether, in this country Courts will in the absence of a corresponding statutory provision have the power to fix contribution as between tort-feasors it is not necessary for the purpose of this case to consider. We are not prepared to do anything which will affect the plaintiff's right to recover the full amount of damages from either of the defendants. The appeal fails and is dismissed with costs of the plaintiffs-respondents. The liquidator appellant will not be personally liable for the costs.