

(1987) 11 MAD CK 0031
In the Madras High Court

T.P.T.S. and Company

APPELLANT

Vs

Sudali Ammal and Another

RESPONDENT

Date of Decision : 19-11-1987

Acts Referred:

Citation : (1988) 2 ACC 20

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Judgement

Swamikkannu, J.—Both the Appeals arised out of Claim Petition No. 89 of 1981 on the file of the Motor Accidents Claims Tribunal (II Addl. Subordinate Judge), Tirunelveli. The occurrence in this case took place due to an accident in which the bus belonging to the uppellant in A.A.O. No. 693 of 1982, got involved. The deceased victim in this case, was one Boothapandi Thevar, whose wife as his legal representative, has claimed compensation in this case. The case of the appellant in A.A.O. No. 693 of 1982, viz. the owner of the bus in question, is that the first information report in the criminal case, C.C. No. 272/81, launched against the driver of the bus (marked as Exhibit A-1 in this case), given by the deceased victim himself while alive, would disclose that he was having a reeling sensation and that he fell down. When such an admission was available on the part of the victim himself in the first information report given by him to the police, the Tribunal went wrong in holding that it was only due to the rash and negligent driving of the bus by the driver that the accident took place. According to learned Counsel for the appellant in 693/1982, Mr. K. Ranganathan, the Tribunal had not taken into consideration that even if there was proof of rash and negligent driving on the part of the driver of the bus, there was also contributory negligence on the part of the deceased victim. He has taken me through the evidence in the case as well as the Award passed by the Tribunal and laid emphasis on the contents of the first information report (Exhibit A-1), given by the deceased, victim, in proof of his contention. Mr. K.S. Narasimhan, learned Counsel for the Insurance Company, who is the appellant in A.A.O. No. 792 of 1982, submits that so far as the Insurance Company is concerned, its liability is

only to the tune of Rs. 10,000/- as held by this Court in earlier appeals as well as the Supreme Court in M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, wherein in the Supreme Court has held as follows:

Where a passenger bus run as a stage carriage is involved in an accident and only one passenger dies, the liability of the insurer is limited to the amount of only Rs. 5,000/- as provided in Sub-clause (4) of Section 95(2Xb)(ii) of the Motor Vehicles Act.

In that case, the Supreme Court has further observed thus:

Section 95(2)(b), as it existed before its amendment in 1982 dealt with the limits of the liability of an insurer in the case of motor vehicles in which passengers were carried for hire or reward or by reason of or in pursuance of a contract of employment. Sub-clause (i) of Section 95(2)(b) provided that in respect of death or of injury to persons other than passengers carried for hire on reward, a limit of Rs. 50,000/- in all was the limit of the liability of the insurer. Sub-clause (ii) dealt with the liability in respect of death or of injury to passengers. Under that Sub-clause there were two specific limits on the liability of the insurer in the case of motor vehicles carrying passengers. The first limit related to the aggregate liability of the insurer in any one accident. It was fixed at Rs. 50,000/- in all where the vehicle was registered to carry not more than thirty passengers, at Rs. 75,000/- in all where the vehicle was registered to carry more than thirty passengers, but not more than sixty passengers, and at Rs. 1,00,000/- in all Where the vehicle was registered to carry more than sixty passengers. The said sub-clause proceeded to lay down the other limit in respect of each passenger by providing that subject to the limits aforesaid as regards the aggregate liability, the liability extended upto Rs. 10,000/- for each individual passenger where the vehicle was a motor cab and Rs. 5,000/- for each individual passenger in any other case. Neither of the two limits can be ignored. In the instant case, the vehicle in question being a bus carrying passengers for hire or reward registered to carry more than thirty but not more than sixty passengers, the limit of the aggregate liability of the insurer in any one accident was Rs. 75,000/- and subject to the said limit the liability in respect of each individual passenger was Rs. 5000/-. It cannot be held that the limit prescribed in Section 95(2)b(ii)(4) was only the minimum liability prescribed by law. The amount mentioned in that provision provides the maximum amount payable by an insurer in respect of each passenger who has suffered on account of the accident.

2. It is the case of the claimant that the occurrence took place on 12-3-1981 at 5.45 P.M. while the deceased was travelling in the bus of the appellant in A.A.O. No. 693 of 1982, bearing registration number- TNT-6786. The deceased was seated near the doorway. The driver of the bus was rash and negligent in driving the bus. On account such rash and negligent driving of the vehicle, he was thrown out. He was admitted in the hospital wherein he succumbed to the injuries seven days later. The claimant who is the widow of the deceased has given evidence as PW 1. According to her, the deceased was the only bread-

winner of the family. As per the custom of the community to which the claimant belongs, she could not go out of the house. She is therefore, confined to the house. Further, she was completely shocked because of the untimely death of her husband. Her husband was earning Rs. 10/- at the minimum as a coolie. He was aged thirty years at death. But for the untimely death due to the accident, he would have lived upto 60 years of age. The annual income of the deceased would be Rs. 3,600/-. For thirty years the claimant is entitled to Rs. 1,08,000/-. She had, however, restricted her claim to Rs. 35,000/-.

3. The claim was resisted by the owner of the bus on the ground that the accident was due to the drunkenness of the deceased. In the first information report given by him to the police the deceased had stated that he felt a reeling sensation when the vehicle was running and that he fell down. The reeling sensation was due to the state of intoxication. The medical officer noted the symptoms of drunkenness found on the deceased. There was no rashness or negligence on the part of the driver of the bus. The damages claimed are excessive. The Insurance Company, viz. the appellant in A.A.O. No. 792 of 1982 took the stand that the deceased did not enter the bus, but was standing on the foot board while travelling and hence when he fell down from the bus and was run over by the rear wheel of the bus, the accident was purely due to his own negligence and the claimant is not entitled to any compensation whatever.

4. The claimant examined herself as PW 1 and another witness as PW 2 and filed Exhibits A-1 to A-5, viz., copies of the first information report, post-mortem certificate, the wound certificate, report of the Radio logist and the report of the Motor Vehicles Inspector. The owner of the bus examined three witnesses on his side, including the driver of the bus in question as RW 1. The documentary evidence on his sides was Exhibit B-1, the copy of the accident register entry, while the only document filed by the Insurance Company was the Insurance Policy in respect of the vehicle.

5. On a consideration of the above evidence both oral and documentary, the Tribunal came to the conclusion that the deceased died on account of the rash and negligent driving of the bus by its driver. The Tribunal also held that a sum of Rs. 20,400/- has to be awarded as compensation to the claimant. The Tribunal also held that the Insurance Company is solely liable for payment of the above amount of compensation. However, by way of abundant caution, the Tribunal said both the respondents could be made liable to pay the compensation amount, but however subject to the direction that the first respondent, viz. the owner of the bus (the appellant in A.A.O. No. 693 of 1982) shall be proceeded against after exhausting the remedies against the second respondent, the Insurance company (the appellant in A.A.O. No. 792 of 1982). Aggrieved by the said Award of the Tribunal, the owner of the bus as well as the Insurance Company have preferred separate appeals as earlier stated.

6. Now the points that arise for determination in these appeals are:

(1) Whether there was any contributory negligence attributable to the deceased or whether the death of the deceased was entirely due to his own act as alleged by the appellant in A.A.O. No. 693 of 1982? And

(2) What is (the liability of the Insurance company, the appellant in A.A.O. No 792 of 1982?

7. This Court has gone through the oral evidence as well as the documentary evidence adduced on either side. With respect to the entries in the accident register (Exhibit B. 1), the Tribunal would observe in paragraph-6 of its Award that the entry regarding the "dilation and fixing of pupils" is an insertion in the accident register. What is marked in evidence is a copy of the entries in the accident register, and the original is not available.

8. Even admitting that the deceased was in a drunken state, it is open to the driver of the bus to plead that there was no negligence on his part, but it was only due to the drunkenness of the deceased he had fallen down from the bus ? Exhibit A-1, the first information report given by the deceased to the Police within half an hour after the occurrence does not mention that it was only due to his own voluntary act of negligence that he was having a reeling sensation and that at that time, he was standing near the exit gate of the bus and he fell down from the bus and got himself injured. On the other hand, it only mentions that he was having a reeling sensation and he was sitting. It is not as if any evidence is available to the effect that the deceased was standing near the outer doorway at the time of the accident and he fell down, due to his own negligence as at that time he was having a reeling sensation and he took the risk of standing near the gate. Under these circumstances, the only conclusion that can be arrived at on the evidence as well as on the contents of Exhibit A-1 is that the deceased fell down from the bus only due to the rash and negligent driving of the bus by its driver. Either it must have been due to the sudden stopping of the bus and the jerk experienced by the deceased, or because of the swerving of the vehicle in such a high speed that the deceased had been possibly thrown away from the bus due to such negotiation of the bus. The fact, however, remains that it was only due to the rash and negligent driving of the bus by the driver that the accident occurred, in which the deceased sustained injuries. Of course, he was an in-patient in the hospital for seven days and died subsequently, but the death is attributable only to the accident and not any other cause, because Exhibit A-2, the post-mortem certificate and Exhibit A-5, the copy of the wound certificate, clearly show that the death was only due to the injuries sustained, by the deceased at the time of the accident. Exhibit A-4, the motor vehicles inspectors' report, discloses that there was no mechanical defect in the vehicle at the time of the occurrence.

9. Whether a person was intoxicated or he was smelling of arrack or due to some latent disease or a sudden attack of ailment he was suffering at the time he was travelling in a bus as a passenger, the liability on the crew is fastened on them and that liability prolongs itself to such an extent that the vehicle in which such

person suffering from bodily ailments are travelling, is not further involved in any accident by rash or negligent driving by the driver. In the instant case, how do find that the deceased had been seated during the time of the occurrence and he was virtually thrown out of the bus due to the rash and negligent driving by the driver. After having accepted as passenger a person who was ailing at the time he entered the bus, or a person who after entering into the bus suddenly developed an ailment while travelling in the bus, it is the responsibility of the driver or the crew of the bus to see to it that by a rash or negligent driving of the bus, such ailments of those persons or their mental condition are not aggravated further. The conductor of the bus is duty bound to see to it that no inconvenience is caused to a passenger who travels in the bus after paying therefor. As passenger, he is entitled to all the reasonable comforts that are expected to be afforded by the bus owners. These are days when separate seats are being allotted to women passengers as well as infirm persons. These are all certainly measures taken by the authorities concerned to guard the safety as well as the comforts that can reasonably be expected of. In the instant case, we do not find that the falling of the deceased from the bus was not due to any reeling sensation or any voluntary act on the part, of the deceased, but was only due to the rash and negligent driving of the bus by its driver. Under these circumstances, the conclusion arrived at by the Tribunal that the accident was only due to the rash and negligent driving of the bus, is correct and is hereby confirmed.

10. So far as the quantum of compensation payable by the Insurance Company is concerned, as already stated, Mr. K.S. Narasimhan, learned Counsel, brought to my notice the decision of the Supreme Court which has been referred to earlier in this judgment. Following that decision, this Court holds that the Insurance Company is liable only to the tune of Rs. 10,000/- the balance of Rs. 10,400/- necessarily to be paid by the owner of the bus, viz. the appellant in A.A.O. No. 693 of 1982. Having carefully applied its mind to the question of quantum of compensation this Court finds that the quantum of compensation fixed by the Tribunal is correct and adequate. Under the circumstances, A.A.O. No. 693 of 1982 is dismissed, while A.A.O. No. 792 of 1982 is allowed. There will be no order as to costs in either of the appeals.