

(1997) 01 MAD CK 0009

In the Madras High Court

Case No : C.M.A. No's. 1139 of 1986, 1188 of 1986, 64 of 1987 and 65 of 1987

United India Insurance Co. Ltd.

APPELLANT

Vs

S.A. Zylophthin and 2 others

RESPONDENT

Date of Decision : 27-01-1997

Acts Referred:

Citation : (1997) 01 MAD CK 0009

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Advocate : M.B. Gopalan, for the Appellant; T. Dhanyakumar, M. Krishnamoorthy and K. Veeraraghavan, for the Respondent

Judgement

Govardhan, J.—C.M.A. No. 1188/1986 and C.M.A. No. 64/1987 are against the order passed by the Motor Accidents Claims Tribunal,

Salem dated 5-9-1986 M.C.O.P. No. 566/1984. O.M.A. No. 1139/1986 and C.M.A. No. 65/1987 are against the order passed by the Motor

Accidents Claims Tribunal, Salem dated 5-9-1986 in M.C.O.P. No. 3/1985.

2. The petitioners in M.C.O.P. No. 566/1984 and M.C.O.P. No. 3/1985 were traveling in the bus belonging to the first respondent and insured

with the second respondent plying between Karur and Salem. They have contended that the driver of the said bus TDL 6449 was driving the same

in a rash and negligent manner at a high speed and hit at the lorry coming in the opposite direction. Both the petitioners sustained injuries on their

right hand. The right arm of the petitioner in M.C.O.P. No. 566/1984 was amputated in the hospital, 4 inches below the right shoulder. The right

arm below the wrist of the petitioner in M.C.O.P. No. 3/1985 was amputated in hospital. The petitioners have contended that the accident was

due to the rash and negligent driving of the bus by its driver. The petitioner in M.C.O.P. No. 566/1984 has claimed a sum of Rs. 1,73,000 as

compensation under various heads and restricted the same for Rs. one lakh. The petitioner in M.C.O.P. No. 3/1985 has made a claim for Rs.

2,65,400/- under various heads and restricted the claim to Rupees One lakh.

3. The first respondent who is the owner of the bus contends in his counter in both the petitions as follows: The driver was driving the bus at the

permitted speed. One lorry which came in the opposite direction, driven by its driver in a rash and negligent manner, hit at the bus and some of the

passengers sustained injuries. The petitioner in M.C.O.P. No. 566/1984 and petitioner in M.C.O.P. No. 3/1985 were keeping their right hand

outside the window of the bus and the injuries sustained by them was only on account of their negligence and therefore; the first respondent is not

bound to pay any compensation. The first respondent has also contended that the petitioners have to prove the age and income of the petitioners.

4. The second respondent who is the insurance company has contented in the counter filed by them in both the petitions disputing the claim of the

petitioners that they have suffered permanent disability and prayed for the dismissal of the petitions. The second respondent also has contended

that as per the policy of insurance, the liability of the insurance company is only Rs. 30,000/-.

5. On the above pleadings, a common enquiry was held before the Motor Accidents Claims Tribunal, Salem and the Tribunal has held that the

accident was due to the rash and negligent driving of the bus belonging to the first respondent and awarded a compensation of Rs. 85,000/- to the

petitioner in M.C.O.P. No. 566/1984 and apportioned the liability of the insurance company at Rs. 75,000/-. The Tribunal has awarded a

compensation of Rs. 75,000/- to the petitioner in M.C.O.P. No. 3/1985 and directed the insurance company to pay the same to the petitioner.

6. Aggrieved over the liability fixed on it, the second respondent in both the petitions viz., the insurance Company has come forward with C.M.A.

Nos. 1188/1986 and 1139/1986 respectively. Aggrieved over the quantum fixed by the Tribunal, the first respondent viz., owner of the bus has

come forward with C.M.A. Nos. 64/1987 and 65/1987 respectively.

7. The appellant in all the four appeals, has not questioned the finding of the

Tribunal that the accident was due to the rash and negligent driving of the bus of the first respondent by its driver. For completion sake, I only wish to refer to the evidence of P.W. 1 and P.W. 3 who are the petitioners in their respective petitions to the effect that the bus was driven by the driver of the first respondent at high speed in the middle of the road and after seeing the oncoming lorry, swerved the bus to the left hand side and the lorry had hit at the right side of the bus. Both the petitioners were seated near the window, the right arm of the petitioner in M.C.O.P. 566/1984 viz., P.W. 1 was cut off and fell outside the bus and the petitioner in M.C.O.P. No. 3/1985 sustained injury on the right hand. From the evidence of these two witnesses, we can gather that on account of the swerving of the vehicle to the left hand side, a head on collision was averted by the driver, but the lorry had hit at the right side of the bus causing, injuries to P.Ws. 1 and 3. It has been held in the decision reported in Delhi Transport Undertaking and Another Vs. Krishna Wanti and Another, that it is the duty of the drivers of the public buses to take all steps which a person of ordinary prudence would take to ensure the safety of the passengers, the drivers of the buses could not be said to be unaware of the fact that the passengers were in the habit of putting their hands outside the bus and they should therefore leave sufficient space between the obstruction and their vehicles while overtaking and passengers keeping their elbows on the window of the vehicle cannot be said to be negligent. The above ruling has held that the driver of the bus who had not left sufficient space, while overtaking was negligent. The same principle applies to the case on hand and the Tribunal has rightly held that the driver of the bus was rash and negligent in driving the vehicle without leaving sufficient space on the right side for the lorry to proceed, by driving the bus in the middle of the road.

8. The appellant in C.M.A. Nos. 64/1987 and 65/1987 would contend that the owner is questioning the quantum and there is no evidence for the earning of the injured persons and there is also no evidence for the permanent disability suffered by the petitioners in both the petitions and the quantum has to be reduced. As regards the petitioner in M.C.O.P. No. 566/1984, he was a sportsman who has applied for the post of Sub Inspector and he could not get selected on account of the injury sustained by him. He has also stated that on account of the amputation, nobody is

prepared to celebrate his marriage and he would have earned a sum of Rs. 1,000/- per month, if he was not injured. P.W. 1 was a graduate. He

was also a sportsman. On account of the amputation, he had lost an opportunity of being appointed as the Sub Inspector of Police and his future

has also been affected. P.W. 1 being an young man of 24 years his claim for payment of compensation of Rs. One lakh cannot be said to be on the

high side since he has claimed Rs. 20,000/- towards pain and suffering, Rs. 15,000/- towards permanent disability, transport charges of Rs. 500/-

and loss of income of Rs. One lakh. None of the above claims can be said to be on the high side. The petitioner who has claimed that he is entitled

to a sum of Rs. 1,73,000/-, has restricted his claim for Rupees One Lakh. Considering the age, the percentage of disability suffered by him, the

expenses incurred by him for treatment, nourishment food and pain and suffering, a sum of Rupees One lakh cannot be said to be on the high side.

The Tribunal has awarded only Rs. 85, 000/- as against the claim of the petitioner for Rs. One lakh by holding that he is entitled for Rs. 10,000/-

for pain and suffering and the affecting on his future marriage life and permanent disability as Rs. 75,000/-. I am of opinion that the claim of the

appellant that there is no evidence for earning and therefore the claim should be reduced is without merits.

9. As regards the claim of the petitioner in M.C.O.P. No. 3/1985, the appellant in C.M.A. No. 65/1987 viz., the owner of the vehicle would

contend that there is no evidence for his earning. P.W. 3 has stated that in his tobacco business he used to get Rs. 2,000/- per month and the

Tribunal has observed that he would have definitely earned Rs. 500/- per month. Taking the pain and suffering undergone by him, the permanent

disability suffered by him and also the age as well as the income which he might have earned, the Tribunal has awarded a sum of Rs. 75,000/- only

as against the claim for Rs. One lakh. It is to be noted that the claim of the petitioner that he has spent Rs. 17,000/- towards treatment has been

totally rejected by the Tribunal. The percentage of disability being 80%, payment of Rs. 75,000/- to P.W. 3 cannot be interfered with as the

appellant in C.M.A. No. 65/1987 has restricted his claim and therefore, C.M.A. Nos. 64 and 65/1987 are dismissed as no merits.

10. The appellant in C.M.A. No. 1188/1986 and C.M.A. No. 1139/1986 would contend that the Tribunal has committed a mistake in following

the decision reported in Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others,), in order to hold that the liability of the insurance company is Rs. 75,000/- as per Section 95(2)(ii)(b). According to the learned counsel appearing for the appellant, the above decision was rendered by their Lordships of the Supreme Court while considering clause (a) of Section 95(2) and it was a case in which, the liability u/s 95(2)(a) was considered in the case of a goods vehicle and their Lordships have themselves observed that they are concerned only with clause (a) of Section 95(2) and that too as it existed on February 1st, 1966 when the collision between a car and the truck took place. It cannot be made applicable to a case where the policy of insurance restricts the liability to Rs. 30,000/- in respect of a passenger as in the present case. The Supreme Court in the decision reported in Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, relied by the learned Tribunal, had only considered third party risk and limits of the liability of the insurance company and has observed that in matters involving third party risk, it is the subjective considerations which must prevail and the occurrence has to be looked into from the point of view of these who are immediately affected by it, since the purpose of law is to alleviate, not augment the sufferings of the people. It was not a case where the liability of a passenger which is specified in the policy came up for consideration before the Supreme Court. Section 95 (2)(ii) deals with the liability of the Insurance Company in respect of passengers and it was the subject matter for consideration by their Lordships in the above decision. Therefore, fixing the quantum of the liability of the insurance company at Rs. 75,000/- in both the M.C.O.Ps. on the ground that the bus involved in the accident and registered to carry more than 30 but not more than 60 passengers by the Motor Accidents Claims Tribunal cannot be said to be correct.

11. The learned counsel appearing for the appellant in C.M.A. Nos. 1188/1986 and 1139/1986 has referred to the decision reported in M.K.

Kunhimohammed Vs. P.A. Ahmedkutty and Others, in which, the Supreme Court had occasion to consider the limit of the liability of the insurance

company, in respect of a bus met with an accident due to the negligence of its driver resulting in the death of a passenger and the Supreme Court

held that the liability of the insurer of the bus is limited to Rs. 5,000/-. Their Lordships have observed that the limits of liability of the insurance company distinguishing between public service vehicles and other Motor vehicles may be abolished. But, they have held that the liability is fixed at Rs. 15,000/- in respect of death of any passenger or any injury caused to him as the law stands on the date of the said judgment. They have also observed that this limit of Rs. 15,000/- in the case of each passenger appears to be meagre and expressed their hope that Parliament while enacting the Bill into Law would take steps to increase the insurer's liability keeping in view the need for providing for adequate compensation as a measure of social security. The Supreme Court has held that the amount mentioned in Section 95(2)(b)(ii) is the maximum amount payable by the insurer in respect of each passenger who has suffered on account of the accident. The liability now fixed in the policy issued to the vehicle under Ex. P-5 is Rs. 30,000/-. Therefore, the claim of the appellant in C.M.A. Nos. 1139/1986 and 1188/1986. that the liability of the insurance Company is only Rs. 30,000/- has to be accepted. In that view, I am of opinion that the appeal in C.M.A. No. 1139/1986 and C.M.A. No. 1188/1986 are to be allowed fixing the liability of the insurance Company viz., the appellant in both the appeals at Rs. 30,000/- as against Rs. 75,000 fixed by the Tribunal. The appeals are to be ordered accordingly. In the result, the appeals in C.M.A. Nos. 1139/1986 and 1188/1986 are allowed fixing the compensation payable to the claimant in M.C.O.P. No. 566/1984 as Rs. 85,000/- but restricting the liability of the second respondent viz., insurance company at Rs. 30,000/-, and fixing the compensation payable to the claimant in M.C.O.P. No. 3/1985 at Rs. 75,000/- and restricting the liability of the insurance company at Rs. 30,000/-. C.M.A. Nos. 64 and 65/1987 are dismissed. No costs.