

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-10-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2284 OF 2015

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram Division) Limited,
Villupuram - 605 602.Appellant/Respondent

-vs-

1.Tmt.Gunavathy
2.Minor Suwetha
3.Minor Vinotha
4.N.Pavadaisamy
5.Kamala

Respondents 2 and 3 are minors,
represented by their mother and
natural guardian Tmt.Gunavathy,
first respondent.
.....Respondents/Claimants

Appeal is filed against the judgment and decree, dated
11.02.2015, made in M.C.O.P.No.1866 of 2012, on the file of
Motor Accident Claims Tribunal, (Principal Sub-Court),
Cuddalore.

For appellant : Mr.S.Sairaman

J U D G M E N T
(Judgment of the Court was delivered by S.Manikumar,J.)

Not satisfied with the finding, fixing negligence on
the driver of the Tamil Nadu State Transport Corporation,
bearing registration No.TN-32-N-3197, involved in the
accident, and the quantum of compensation of Rs.23,54,000/-,
with interest, at the rate of 7.5% per annum, from the date of
claim, till deposit, awarded to the legal representatives of
the deceased P.Velu, in M.C.O.P.No.1866 of 2012, on the file
of Motor Accident Claims Tribunal, (Principal Sub-Court),
Cuddalore, dated 11.02.2015, the appellant-Corporation has
preferred this appeal.

2. It is the case of the legal representatives of the deceased/respondents, viz., wife, aged about 31 years, minor daughters, aged about 15 and 14 years, parents, aged 65 and 60 years, at the time of making claim, that on 31.05.2012, about 12.20 hours, when their bread winner P.Velu was riding his Bajaj Pulsar Motorcycle, bearing registration No.TN-03-C-4145, from north to south, keeping it on the left side of the road, opposite to Narayana Traders, on Cuddalore to Chidambaram Main Road, Cuddalore Old Town, a Transport Corporation bus, bearing registration No.TN-32-N-3197, which came in the opposite direction, driven in a rash and negligent manner, by its driver, dashed against the Motorcycle, resulting in the instantaneous death of the motorcyclist. In this regard, a case in Crime No.369 of 2012 under Sections 279 and 304-A of IPC has been registered against the driver of the bus, on the file of Cuddalore OT Police Station.

3. Claiming that the deceased was aged about 35 years and as a Fisherman, by avocation, working in a AL Othashan Abdullah Hakkim Co., Saudi Arabia, prior to the date of accident, and earned Rs.50,000/- per month, respondents/legal representatives of the deceased had preferred M.C.O.P.No.1866 of 2012, on the file of Motor Accident Claims Tribunal, (Principal Sub-Court), Cuddalore, claiming a compensation of Rs.75,00,000/-.

4. Before the Claims Tribunal, the appellant-Corporation, in its counter affidavit, has denied negligence on the part of the driver of the bus. According to the Corporation, when the motorcyclist was overtaking a car, the handle bar of the motorcycle dashed against the bus, and as a result of which, he fell down and sustained injuries. Thus, they disputed the manner of accident, negligence attributed against the bus driver. Without prejudice to the above, they disputed the age, avocation, income, and the quantum of compensation, claimed under various heads.

5. Before the Tribunal, wife of the deceased, examined herself as P.W.1, and reiterated the averments made in the claim petition. P.W.2 is stated to have witnessed the accident. Ex.P-1-FIR; Ex.P-2-MVI Report of the motorcycle; Ex.P-3-R.C.Book of the bus; Ex.P-4-MVI Report of the deceased vehicle; Ex.P-5-Postmortem Certificate; Ex.P-6-Death Certificate; Ex.P-7-Legal Heir Certificate; Ex.P-8-I.D.Card of the deceased; Ex.P-9-R.C.Book with licence for the Boat; Ex.P-10-Indian Passport of the deceased; Ex.P-11-New Passport of the deceased; Ex.P-12-Saudi Arabia Entry Visa; Ex.P-13-Salary Certificate of the deceased; and Ex.P-14-Driving Licence of the deceased, have been marked on the side of the claimants. No oral or documentary evidence has been adduced on behalf of the appellant-corporation.

6. Evaluating the oral and documentary evidence, the Claims Tribunal held that the driver of the appellant-

corporation bus alone was negligent in causing the accident. Based on the above evidence, the Tribunal has fixed the monthly income of the deceased as Rs.16,000/-. Applying '16' multiplier, and after deducting 1/4th towards personal and living expenses of the deceased, the Claims Tribunal has computed the loss of dependency as Rs.23,04,000/-. In addition to the above, the Claims Tribunal has awarded Rs.10,000/- towards funeral expenses; Rs.20,000/- towards loss of consortium to the first respondent/wife; and Rs.20,000/- for loss of love and affection to the legal heirs, namely, minor children and parents. Altogether, the Claims Tribunal awarded Rs.23,54,000/- as compensation, with interest, at the rate of 7.5% per annum, from the date of claim till deposit.

7. Though Mr.S.Sairaman, learned counsel for the appellant-corporation assailed the finding of the Tribunal, fixing negligence on the part of the driver of the appellant-corporation bus, on the grounds that the Tribunal has erred in relying on the interested testimony of the claimants 1 and 2, and that no police officer has been examined to prove negligence on the part of the bus driver, the same cannot be countenanced, for the reason, that though P.W.1 did not witness the accident, her oral testimony is duly corroborated by P.W.1-FIR, and also supported by the version of P.W.2. Though before the Tribunal the appellant herein has contended that it was the motorcyclist, while attempting to overtake a car proceeding ahead of him, dashed against the bus, and thus invited the accident, no evidence has been adduced, supporting the said contention. Admittedly, driver of the bus has not been examined. Needless to state, that mere pleadings do not amount to proof. On the non-examination of the driver, adverse inference can be drawn. Useful reference can be made to few decisions :

(i) In New India Assurance Co. Ltd., v. Debajani Sahu reported in I (2002) ACC 103 (Ori.), the Orissa High Court held that,

"8. In the present case, the Claims Tribunal found about the negligence of the bus driver on the basis of the evidence of the P.Ws. It is contended that P.W. 2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable. There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W. 2 is not accepted, still then the doctrine of *res ipsa loquitur* is applicable. In such a situation, the owner of the bus should have examined the driver of the bus to explain the circumstances under which the accident occurred, as the other person involved in the accident having died cannot speak from the grave to explain the circumstances under which the accident took place. Of course, the bus owner has

remained ex-parte, but no attempt was made by the Insurance Company which was contesting the case even on merit (whether justifiably or not is immaterial), has not chosen to adduce any evidence to rebut the evidence of P.W. 2, not has bothered to summon the bus driver to explain the circumstances under which the accident took place. In such a case, an adverse inference can be drawn against the owner/Insurance Company for not examining the bus driver who would have been the best witness to explain the circumstance under which the accident occurred. In such view of the matter, the finding of the Tribunal on the question of negligence cannot be assailed and the contention in this regard raised by the Counsel for the appellant cannot be accepted."

(ii) In *Sitabai v. Ishak Hussain* reported in I (2001) ACC 761 (DB), the Madhya Pradesh High Court, at Paragraph 5, held as follows:

"5. In this case, the claimants could not examine any eyewitness of the accident. It was difficult for the claimants to search an eyewitness as the claimants were not present on the spot at the time of accident. This difficulty is avoided by applying the maxim *res ipsa loquitur*. Their Lordships of the Supreme Court in case of *Puspabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, reported in 1977 ACJ 343 (SC), observed:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident 'speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Where

the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care."

In this case, the respondent No. 1 was driving the vehicle which left the road and dashed against a tree. In view of this maxim, the burden shifts on the respondent No. 1 to prove that he was not negligent. It was in the special knowledge of respondent No. 1 as to how the vehicle left the road and came down and struck against a tree. The respondent No. 1 did not examine himself. Under such circumstances, adverse inference that he drove the vehicle in a rash and negligent manner as a result of which this accident occurred, shall be drawn against him. The learned Tribunal committed error in not applying this maxim. We hold that the accident occurred due to rash and negligent driving of the vehicle by respondent No. 1."

(iii) In *Beni Bai & others v. A. Salim & another* reported in II (1999) ACC 408 (DB) (M.P.), the Madhya Pradesh High Court, held as follows:

In the circumstances, for non-examination of the material witnesses particularly the driver and the conductor, who had the first hand knowledge of the manner in which the accident occurred, necessarily an adverse inference has to be drawn against the respondents. For want of evidence on behalf of the respondents, the plea raised in defence cannot be said to be established. On the other hand, the appellants have examined Atmaram, A.W.1. who was at the spot, who stated that at the bus stop when the passengers were getting down from the bus, the driver without seeing that the passengers have got down or not, started the bus and there one boy came under the wheel of the bus. From the circumstances, it cannot be inferred that the deceased might have jumped from the running bus. Hence it was the duty of the driver and conductor to have taken care to see whether passengers have got down from the bus or not, then only the driver could have started the bus. As the driver and conductor

have failed in their duties to take care, we hold that the accident occurred due to negligence of the driver of the city bus. This Court in similar circumstances where the same type of defence was taken, has observed that it is the driver of the passenger bus who has to take care that the passengers who wish to get down from the bus have got down and then to start the bus. But that care was not taken. Therefore, it was held that the accident was caused because of the negligence of the driver and conductor.

8. In this context, a reference can also be made to a few decisions, as regards preponderance of probability.

9. In a decision in *Union of India v. Saraswathi Debnath* reported in 1995 ACJ 980, High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

10. In *Bimla Devi & Ors. Vs. Himachal RTC* reported in 2009 (13) SCC 530, the Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

11. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, the finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

12. In the light of the above discussion and the decisions stated supra, this Court is of the view, that the findings of the Claims Tribunal, fixing negligence on the driver of the appellant-corporation bus cannot be said to be perverse or is it the case of no evidence, warranting reversal. There is no rebuttal. Hence, finding of the tribunal, fixing negligence, is confirmed.

13. On the quantum of compensation, it is the case of the legal representatives of the deceased/claimants, that at the time of accident, the deceased was employed as a Fisherman in AL Othashan Abdullah Hakkim Co., Saudi Arabia, and earned Rs.50,000/- per month. Upon perusal of Ex.P-8-ID Card of the deceased, the Claims Tribunal has noticed that the same has been issued by the Fisheries Department. Ex.P-9 is the Licence and RC Book, issued by the Tamil Nadu Fisheries Department, to prove the ownership of a Boat of the deceased. Ex.P-10 and P-11 respectively are the Old and New Passports of the deceased. Ex.P-12 is Visa and Ex.P-13 is Pay Certificate, issued by AL Othashan Abdullah Hakkim Co., Saudi Arabia.

14. Having regard to the oral testimony of P.W.1 that at the time of accident, the deceased was a Fisherman and that the same is duly corroborated by the abovesaid documents, the Claims Tribunal has fixed the monthly income of the deceased as Rs.16,000/-, for the purpose of computing the loss of contribution to the family. The deceased was aged about 35 years. The Claims Tribunal has failed to consider addition of future prospects. Apart from that, the quantum of compensation of Rs.10,000/-, awarded under the head 'cremation expenses'; Rs.20,000/- for loss of consortium to the wife; and Rs.20,000/- for loss of love and affection to the minor children, aged about 15 years and 14 years respectively and to the parents, aged about 65 years and 60 years respectively, is very meagre and do not satisfy the principles of just compensation. There is no material irregularity or illegality in the impugned judgment, fixing negligence on the driver of the bus, and the quantum of compensation, which is apparently less. There are no merits in the appeal. Civil Miscellaneous Appeal is dismissed.

15. Consequent to the dismissal of the appeal, the appellant-corporation is directed to deposit the entire award amount with proportionate interest and costs to the credit of M.C.O.P.No.1866 of 2012 on the file of Motor Accodent Claims Tribunal (Principal Sub-Court), Cuddalore, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the shares, apportioned to wife and parents, are permitted to be withdrawn, on making necessary application before the Tribunal. Minor Suwetha/respondent 2, was aged 15 years, at the time of filing of claim petition in the year 2012. If she has attained majority on the date of this judgment, it is open to the mother/first respondent, to seek discharge of her guardianship, and, consequently, if any

application is filed by Suwetha/second respondent, for withdrawal of her share, the Tribunal shall consider and dispose of the same, in accordance with law. Otherwise, the shares apportioned to the minors, with proportionate interest, are directed to be deposited in a Fixed Deposit in a Nationalised Bank, proximate to the residence of the mother/first respondent, initially for a period of one year, and, thereafter, renewable periodically. Mother/first respondent is permitted to withdraw the interest accrued on the shares of minors, once in three months. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
(Principal Sub-Court),
Cuddalore.

+ 1 cc to Mr.S. Sairaman, Advocate Sr.54516

C.M.A.No.2284 OF 2015

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