

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7/9/2016

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Civil Miscellaneous Appeal No.1902 of 2016

The Managing Director
Metropolitan Transport
Corporation Ltd
Pallavan House
Anna Salai
Chennai 2.

....Appellant/Respondent

Vs

1. Padmavathy
2. Babu
3. Ramesh
4. Ragamma

....Respondents/Petitioner

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.1188 of 2011 dated 9/9/2014 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai 1.

For appellant ... Mr.S.Sivakumar

For respondents... Mr.K.Suryanarayanan

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

Challenge in this Appeal, is to the judgment and decree made in M.C.O.P.No.1188 of 2011, dated 9/9/2014, on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai 1, by which the Tribunal, after holding that the driver of the appellant Corporation was negligent in causing the accident, which resulted in the death of one Krishnamoorthy, awarded compensation of Rs.13,21,600/- with interest, at the rate of 7.5% p.a., from the date of claim.

2. Short facts leading to the appeal are that on 3/12/2010, at 2.45 p.m., when Krishnamoorthy, was travelling as a passenger in a bus owned by the Metropolitan Transport Corporation Limited, bearing Registration No.TN01N-5333, from Perambur Barracks Road to Strahans Road, proceeding from South to North

direction, opposite to Kohinoor hotel, the driver of the bus, drove the same in a rash and negligent manner and when he suddenly turned towards West, Krishnamoorthy, who was standing inside the bus, near the front exit, was thrown out from the bus, fell on the road and the back wheel of the bus ran over on him. Four days later, he died on 7/12/2010 in the hospital. A case in crime No.665/P3/10 has been registered against the driver of the bus, on the file of the Inspector of Police, Kilpauk Traffic Investigation, Chennai.

3. Wife, two sons and mother filed M.C.O.P.No.1188 of 2011, claiming compensation of Rs.15 lakhs.

4. Metropolitan Transport Corporation, represented by its Managing Director, opposed the claim petition, contending inter alia that at the time of accident, bus was plying along Perambur Barracks Road and when it reached Strahans road, the driver of the bus reduced the speed and turned the bus towards Strahans road. It is further submitted that few passengers were travelling on the foot board and the crew had advised them to come inside the bus. Despite advice, the passengers travelled on the foot board. Taking advantage of the slow movement of the bus, one of the passengers, jumped out of the moving bus, fell down and sustained injuries. According to the Corporation, though the accident occurred due to the gross negligent act of the passenger, who travelled in the foot board, the crew admitted him in Government Stanley Hospital. According to the Corporation, had the advice been taken, the accident would not have occurred. Thus, they denied negligence on the part of the driver and consequently, liability to pay compensation. Without prejudice to the above, the Transport Corporation also disputed the age, avocation, income and the dependency of the deceased.

5. Before the Tribunal, wife of the deceased, examined herself as P.W.1. P.W.2 is stated to be the eye witness. Ex.P.1 Post Mortem certificate, Ex.P.2 Legal heirs certificate, Ex.P.3 copy of the transfer certificate of the second claimant, Ex.P.4 copy of the transfer certificate of the third claimant and Ex.P.5 copy of the FIR in Crime No.665/2010, registered on the file of G-3 Kilpauk Traffic Investigation have been produced on the side of the claimants/respondents.

6. Conductor of the Transport Corporation bus has been examined as R.W.1 and no document has been marked on the side of the Corporation.

7. Considering the oral and documentary evidence, the Tribunal, vide judgment and decree dated 9/9/2014, made in M.C.O.P.No.1188 of 2011 held that the driver of the bus bearing Registration No.TN01N-5333 was negligent, in causing the accident and quantified the compensation at Rs.13,21,600/- with

interest, at the rate of 7.5% p.a., from the date of claim. The Tribunal apportioned the compensation of Rs.6,96,600/- to the wife of the deceased, Rs.3,00,000/- each to the children, and just Rs.25,000/- to the mother of the deceased.

8. Aggrieved by the judgment and decree, Transport Corporation has filed the instant appeal.

9. Mr.S.Sivakumar, learned counsel for the Transport Corporation contended that the deceased, travelled on the foot board of the bus and taking advantage of the slow movement, jumped out of the bus, fell down and contributed to the accident and when R.W.1, conductor of the bus has adduced evidence to that effect, the Tribunal erred in fixing negligence on the driver of the bus. According to him, the Tribunal ought to have fixed contributory negligence on the part of the deceased also. Quantum of compensation awarded by the Tribunal is not seriously objected.

10. Heard the learned counsel for the appellant Corporation and perused the materials available on record.

11. The case of the claimants/respondents is that when Mr.Krishnamoorthy, was travelling as a passenger in the transport Corporation bus, bearing Registration No.TN01N-5333 from Perambur Barracks Road to Strahans road, opposite to Kohinoor hotel, the bus was driven in a rash and negligent manner and when it turned suddenly towards west, the deceased, who was standing inside the bus near front exit, was thrown out from the bus, fell on the road and the back wheel of the bus ran over on him and died.

12. Ex.P.5 is the copy of the F.I.R given by Mr.R.Nedunzhezhiyan, driver of the above said bus. As per the contents of the F.I.R, when other passengers raised an alarm that somebody had fallen down, the driver stopped the bus. Both the conductor and the driver got down from the bus and found that a passenger had fallen from the front foot board and was injured. Though Mr.R.Nedunchezhiyan, driver of the Transport Corporation has lodged a complaint with the Police, he has not been examined.

13. Non-examination of the driver of the bus, would lead to adverse inference. 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 had taken 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.

14. From the version in the First Information Report, it is clear that the complainant/driver had not seen the passenger travelling in the foot board. Only after hearing an alarm by the passengers, he had stopped the vehicle. He had not seen the passenger falling down from the vehicle.

15. P.W.1 wife of the deceased has not seen the accident. However, P.W.2 eye witness has deposed that the bus suddenly turned at high speed and the passenger, who was travelling near the front footboard, thrown out from the bus. R.W.1 conductor of the bus alone has adduced evidence on behalf of Corporation.

16. Going through the material evidence on record, the

Tribunal has observed that there is no evidence to show that the deceased was advised by the crew, to get inside the bus. The Tribunal has also observed that there is no evidence to show the deceased jumped out from the running bus through the front foot board.

17. Though Mr.S.Sivakumar, learned counsel for the appellant submitted that the Tribunal ought to have fixed 50% contributory negligence on the part of the deceased, we are not inclined to accept the said contentions for the reason that we do not find any error in the appreciation of the evidence adduced by both parties.

18. Testing the findings of negligence, on the principles of preponderance of probability, there are no grounds for reversal. Hence, the finding with regard to negligence is confirmed. Thus, while concurring with the finding of the Tribunal of negligence and quantum, C.M.A is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

19. Mr.S.Sivakumar, learned counsel for the Corporation submitted that the entire award amount with proportionate interest and costs has already been deposited to the credit of M.C.O.P.No.1188 of 2011, on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai. Submission made by the learned counsel for the appellant is placed on record.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Motor Accidents Claims Tribunal
(II Court of Small Causes), Chennai 1.
2. The Managing Director
Metropolitan Transport Corporation Ltd
Pallavan House Anna Salai, Chennai 2.

+1cc to Mr.Ss. Sivakumar, Advocate, S.R.No.50624

+1cc to Mr.K. Suryanarayanan, Advocate, S.R.No.50666

EV(CO)

EU(07/11/2016)

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