

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2016

CORAM:

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

C.M.A.No.1958 of 2016
C.M.P.No.14231 of 2016

The Branch Manager,
Tamil Nadu State Transport Corporation,
Villupuram District. ... Appellant / 2nd Respondent

versus

1. Abirami Fathima Marie
2. Alfred Justin Vijai
3. Angeline Asha Aneetha
4. Sophia Silvia Amala Latha ... Respondents 2 to 4/ Claimants
5. Dhanarajan ... 5th Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the award and decree, dated 02.07.2015 made in M.C.O.P.No.145 of 2014, on the file of the Motor Accidents Claims Tribunal, (District Court), Karaikal.

For Appellant : Mr.P.Paramasiva Doss

J U D G M E N T

(Judgement of this Court was made by S.MANIKUMAR, J.)

Appeal is directed against the judgment and decree, dated 02.07.2015 made in M.C.O.P.No.145 of 2014, on the file of the Motor Accidents Claims Tribunal, (District Court), Karaikal, by which, the Tribunal, after fixing negligence on the driver of the bus, bearing Registration No.TN 32 N 3269, owned by the appellant-Transport Corporation, awarded compensation of Rs.14,50,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

2. Short facts leading to the appeal are as follows:

On 26.08.2012, about 2.30 Hours, when Mr.Souce Joseph Antoine Jean Anatole, was on his way to Airport, along with his family, in Hyundai I-10 Car, bearing Registration No.TN 07 BD 3210, driven by its driver, Mr.Faizur Rahman of Karaikal, in

South-North direction on NH 45 Main Road, on the extreme left side, between Tindivanam and Chennai, a Transport Corporation bus, bearing Registration No.TN 33 N 3269, driven by its driver, 5th respondent herein, in a rash and negligent manner, in the opposite direction, dashed against the car, near college bypass junction near Salavathi Village and due to the heavy impact, both the car, as well as the bus started burning. The car driver and some passengers from the bus jumped out of the vehicles. However, Mr.Souce Joseph Antoine Jean Anatole, was charred to death, as he was sitting in the front seat of the car. His charred body was transported to Tindivanam Government General Hospital. His wife, 1st respondent herein, also sustained several fractures on her right hand, left leg and unfortunately, lost her left eye vision. In this regard, a case in Cr.No.483 of 2012, has been registered, with Roshanai Police Station, against the 5th respondent, who was negligent in causing the accident.

3. The 1st respondent herein, wife of the deceased, along with her son and daughters, filed a claim petition in M.C.O.P.No.145 of 2014, claiming compensation of Rs.50,00,000/- and submitted that at the time of death, the deceased Souce Joseph Antoine Jean Anatole, was aged about 67 years, pensioner, receiving monthly pension of 1782-04 Euros. According to her, but for the accident, he would have lived for another 15 years and supported the family.

4. Opposing the plea of negligence and quantum of compensation claimed under various heads, the appellant-Transport Corporation contended that the accident occurred, due to the negligence of the driver of the car, who did not follow the Traffic rules and therefore, the concerned Insurance Company of the car, is alone is liable to pay any compensation to the claimants. The Transport Corporation has further contended that at the time of accident, the driver of the car did not have a valid driving licence. A further contention has also been made that since the car was a petrol vehicle, due to the impact of the vehicles, the petrol tank busted and both the car and bus went into flames. According to the Corporation, it is an act of God and there was no negligence on the part of the driver of the bus. Without prejudice to the above, they questioned the quantum of compensation, claimed under various heads.

5. Before the Claims Tribunal, the appellant-Transport Corporation has further contended that the deceased was not an employee, at the time of the accident and that he was only a pensioner, residing at France. Therefore, the appellant-Transport Corporation is not liable to pay any compensation.

6. Before the Tribunal, wife of the deceased examined herself as PW.1 and nine documents have been marked on the side of the respondents/claimants. On the side of the appellant-Transport Corporation, no oral or documentary evidence has been adduced. Considering the oral and documentary evidence, adduced by the appellants/claimants and in the absence of any rebuttal evidence, the Tribunal held that the driver of the appellant-Transport Corporation bus was negligent in causing the accident. Having regard to the age of the deceased and loss of contribution to the family, the Claims Tribunal awarded Rs.14,50,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation, as hereunder:

For loss of income - by applying the multiplier as 5 and after deducting 1/3rd		: Rs.12,00,000/- (Rs.20,000/- x 12 x 15)
Funeral Expenses	:	Rs. 30,000/-
Loss of Love and Affection	:	Rs. 2,00,000/-
Loss of Consortium	:	Rs. 20,000/-
Total		: Rs.14,50,000/-

7. Assailing the correctness of the award, Mr.P.Paramasiva Doss, learned counsel for the appellant-Transport Corporation submitted that the Tribunal has failed to see that there is no proof for fixing negligence on the driver of the bus. He also submitted that the owner and insurer of the car, ought to have been impleaded as party respondents and for non-joinder of necessary parties, the claim ought to have been dismissed.

8. On the quantum of compensation, learned counsel for the appellant-Transport Corporation submitted that the claims Tribunal has failed to consider that no documents have been filed to prove that the deceased was a pensioner. According to him, documents, Exs.P2 to P5, have been allegedly issued by the Government of France and they are not public documents and hence, the Tribunal ought to have discarded them.

9. Learned counsel for the appellant-Transport Corporation further submitted that the Tribunal has erred in computing the loss of income at Rs.20,000/- per month, to the family, out of the pension drawn by the deceased, in the country of residence. Added further, he submitted that respondents 2 and 3 are not dependants on the family pension and hence, the compensation awarded towards loss of love and affection, has to be deducted.

Heard the learned counsel appearing for the parties and perused the materials available on record.

10. Before the Tribunal, wife of the deceased, travelled in the vehicle and suffered injuries, has adduced evidence. She is an eye-witness. She has also deposed that when they were proceeding near Salavathi Village, on NH 45 road, between Tindivanam and Chennai, a Transport Corporation bus, bearing Registration No.TN 33 N 3269, driven by its driver, the 5th respondent herein, in a rash and negligent manner, in the opposite direction, dashed against the car, near college bye-pass junction and thus, caused the accident. Ex.P1 - FIR has been registered on 26.08.2012.

11. Though Mr.P.Paramasiva Doss, learned counsel appearing for the appellant submitted that no independent witness has been examined to prove the rash and negligent driving of the driver of the appellant-Transport Corporation bus, this Court is not inclined to accept the same, for the simple reason that PW.1, a passenger in the car, involved in the accident, has witnessed the accident and that she has also filed a separate claim for compensation. Her oral testimony is duly corroborated by Ex.P1 - FIR.

12. Besides, perusal of the award shows that it could be deduced that nothing in favour of the Corporation, has been elicited in the cross-examination that the car driver had turned towards wrong direction at the junction and caused the accident. The Tribunal has categorically found that there is no material, to discredit the testimony of PW.1.

13. Though the learned counsel for the appellant-Transport Corporation has submitted that the Claims Tribunal has erred in fixing negligence, on the driver of the transport corporation bus, on the sole ground that Ex.P1 - FIR has been registered, this Court is not inclined to subscribe to the same, for the reason that no contra evidence has been let in to prove the same. Whereas, the evidence of PW.1, first respondent/claimant is corroborated by Ex.P1 - F.I.R. and Ex.P4 - Accident Inspection Report. 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.

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.

14. On the quantum of compensation, to prove the relationship, PW.1, 1st respondent/claimant has marked Ex.P2 - Copy of the family ration card and Ex.P7 - 'Liveret de famille' of the respondents/claimants. Upon perusal of Ex.P7, the Claims Tribunal has noticed that the deceased was a French National. Documents, Exs.P6 and P8 are postmortem certificate and death certificate, respectively and upon perusal of the same, the Claims Tribunal has fixed the age of the deceased as 68 years, at the time of accident.

15. PW.1, respondent/claimant, has deposed that her husband was a French National, getting a pension of 1782.04 Euros per month, from French Government. To substantiate the same, Pension order issued by the French Government, has been marked Ex.P9. Thus, holding that the deceased was a pensioner and taking note of the exchange rate of Euro, the Claims Tribunal determined the pension amount as Rs.1,15,833/-.

16. According to PW.1, 1st respondent-wife of the deceased, as French National, she would be getting half of the pension from French Government, which works out to Rs.57,916/- and had the deceased been alive, he would have spent atleast, one third of his pension i.e Rs.19,305/- towards his maintenance and contributed the remaining two third amounting to Rs.38,610/- per month towards maintenance of family. Therefore, the Tribunal has restricted the loss of income to Rs.20,000/- per month.

17. Since the deceased was aged 68 years, at the time of accident, the Claims Tribunal applied '5' multiplier and computed the loss of dependency at Rs.12,00,000/- (Rs.20,000/- x

12 x 5). That apart, the Tribunal has awarded Rs.30,000/- towards funeral expenses, Rs.2,00,000/- towards loss of love and affection and Rs.20,000/- for loss of consortium. Altogether, the Claims Tribunal has awarded Rs.14,50,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

18. Though the learned counsel appearing for the appellant-Transport Corporation has opposed the quantum of compensation, on the grounds, stated supra, considering the oral and documentary evidence adduced by the respondents/claimants, this Court is not inclined to interfere with the award passed by the Claims Tribunal. Genuineness of the documents, Ex.P2 - Copy of the family ration card and Ex.P7 - 'Liveret de famille' of the respondents/claimants, issued by the Government of France, filed in support of the contention that the deceased was a French National, has not been disputed. In the light of the above decisions and discussion, this Court is not inclined to interfere with the award.

19. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Transport Corporation is directed to deposit the entire award amount, with proportionate accrued interest and costs less the amount already deposited to the credit of M.C.O.P.No.145 of 2014, on the file of the Motor Accidents Claims Tribunal, (District Court), Karaikal, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw the same, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

skm

To

The Motor Accidents Claims Tribunal,
District Judge, Karaikal.

1 cc to Mr.P.Paramasiva doss, Advocate, Sr. 51249

C.M.A.No.1958 of 2016

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