

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.No.1769 of 2017
and
C.M.P.No.9515 of 2017

The Managing Director,
Tamilnadu State Transport Corporation,
Thandarampattu Road,
Tiruvannamalai Town and Taluk. ... Appellant

Versus

1.Suba
2.Minor Vijayanga
3.Bakkiyam
4.Sagadevan ... Respondents

[Minor/2nd respondent rep. by
her mother/1st respondent Mrs.Suba]

Prayer: Civil Miscellaneous Appeal is filed, against the
judgment and decree in M.C.O.P.No.129 of 2013, dated
02.02.2016, on the file of the Motor Accident Claims Tribunal,
[Special Court], Tiruvannamalai.

For Appellant : Mr.J.Lokesh

JUDGMENT

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

Challenge in this appeal is to the finding fixing
negligence in the ratio of 80:20 as against the driver of the
Tamilnadu State Transport Corporation bus bearing
Regn.No.TN32-N-1744 and Vasudevan, who had travelled in the
said bus. According to the legal representatives of the
deceased that on 18.10.2009 about 15.30 hours, when Vasudevan
was travelling in the abovesaid bus at Sathanur - Sathanur Dam
Main Road, the bus was driven in a rash and negligent manner.
The driver applied sudden brakes and due to the above, the
passenger, who travelled in the front seat was thrown out of
the bus, which ran over him. He sustained fatal injuries and
succumbed to the same. In this regard, a case in Cr.No.136 of
2009 has been registered against the driver of the bus under

Sections 279, 304 (A) IPC on the file of Sathanur Dam Police Station. Contending inter alia that the deceased was aged 30 years and as a Glass Work Contractor, earned Rs.30,000/- per month, legal representatives have filed M.C.O.P.No.129 of 2013, on the file of the Motor Accident Claims Tribunal, [Special Court], Tiruvannamalai, claiming compensation of Rs.20,00,000/- under various heads.

2. Opposing the claim, the Managing Director, Tamilnadu State Transport Corporation submitted that while the bus was on Sathanur - Sathanur Dam Main road, three passengers, in drunken mode were standing near the foot-board and were quarelling. One passenger fell down and invited the accident. Thus, the transport Corporation denied negligence attributed to the driver of the bus. Without prejudice to the same, Tamilnadu State Transport Corporation has disputed the age, avocation, income and the quantum of compensation claimed under various heads.

3. Before the tribunal, wife of the deceased / 1st respondent examined herself as PW1 and reiterated the manner of accident. However, she is not an eye witness to the same. PW2, is stated to have witnessed the accident. Respondents/Claimants have marked Ex.P1, FIR, Ex.P2, Motor Vehicle Inspector's Report and Ex.P3, Post Mortem Report. On the side of the Tamilnadu State Transport Corporation, RW1, Engineer in the office of the Tiruvannamalai Transport Depot-II, has been examined. No document has been filed.

4. On evaluation of pleadings and evidence, the claims tribunal came to the conclusion that the deceased, would have travelled either in the foot-board or near to the same and thus, he was also negligent in not taking proper care and caution, while sudden brake was applied.

5. Testimony of RW1, Engineer in the office of Thiruvannmalai Government Transport Depot-II, is only hearsay and therefore, untenable. Investigation report cannot be given any credence, unless and until, the persons from whom they have obtained statements and materials, are in the trial.

6. Perusal of the award shows that, tribunal has rightly recorded that neither a passenger nor any independent witness has been examined to support the version of RW1, Engineer in Tiruvannamalai Government Transport Corporation Depot-II. It is well settled that preponderance of probability, is the test in Motor Vehicle Accident cases. Reference can be made to the following decisions.

(i) In N.K.V.Brother's Private Limited v. Kurmai reported in AIR 1980 SC 1354, while dealing with the scope of the enquiry in the Claims Tribunal, the Hon'ble Apex Court has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and

drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

(ii) In a decision in *Union of India v. Saraswathi Debnath* reported in 1995 ACJ 980, the High Court of Gauhati at Paragraph 6 held 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."

(iii) In *Bimla Devi & Ors. Vs. Himachal RTC* reported in 2009 (13) SCC 530, the Hon'ble 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."

Though, the transport corporation, has attributed negligence on the passenger, who ultimately died, conspicuously driver of the bus, has not been examined. Rash and negligent driving is a personal act. In the absence of examining the driver, adverse inference can also be drawn.

(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.

7. In the light of the decisions and the discussion, we are of the view that there is no perversity in the finding recorded by the tribunal. Hence, the finding of negligence is confirmed.

8. Further, the tribunal has awarded a sum of Rs.17,11,648/- with interest at the rate of 7.5% per annum from the date of claim, till deposit and costs and apportioned the same as hereunder.

Loss of contribution to the family	: Rs.14,91,648/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection	
to minor	: Rs. 1,00,000/-
to parents	: Rs. 20,000/-

Since, the quantum of compensation has not been challenged, the same is confirmed. The Civil Miscellaneous Appeal is dismissed. No Costs. Consequently the connected Miscellaneous Petition is closed.

9. Mr.Lokesh learned counsel appearing for the Managing Director, Tamilnadu State Transport Corporation, Tiruvannamalai, submitted that the entire award amount with proportionate interest and costs, would be deposited within six weeks from the date of receipt of a copy of this order. Submission is placed on record.

10. In view of the above, there shall be a direction to the Managing Director, Tamilnadu State Transport Corporation, Tiruvannamalai, the appellant herein, to deposit a sum of Rs.13,69,319/- with interest at the rate of 7.5% per annum

from the date of claim till deposit and costs, less the statutory deposit, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, except the minor, other respondents/claimants are permitted to withdraw their share in the award amount with proportionate interest and costs, by making necessary applications.

11. Share of the minor/2nd respondent is directed to be deposited in a fixed deposit in a nationalised bank, proximate to the residence of the respondents. Mother/1st respondent is permitted to withdraw the interest accrued from the share of the minor, once in three months.

12. Post the Civil Miscellaneous Appeal after six weeks, 'for reporting compliance'.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
[Special Court],
Tiruvannamalai.

+1cc to M/s.K.J.Sivakumar, Advocate, S.R.No.45576

C.M.A.No.1769 of 2017
and
C.M.P.No.9519 of 2017

SAI (CO)
CA(08/08/2017)

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