

Madras High Court

The General Manager vs Senthilkumar on 3 January, 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03/01/2008

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THE HONOURABLE MR.JUSTICE G.RAJASURIA

C.M.A.(MD)No.988 of 2007

and

M.P.(MD)No.1 of 2007

The General Manager,  
Tamil Nadu State  
Transport Corporation Limited,  
Pudukottai.

.. Appellant

Vs

1.Senthilkumar  
2.Sivakumari (insanity)  
(R2 represented through  
his brother R1)  
3.Gnanakumari

.. Respondent

Prayer

Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree dated 28.12.2006 passed in M.C.O.P.No.895 of 2004 by the learned Motor Accidents Claims Tribunal-cum-the Additional District Judge, Fast Track Court, Pudukottai.

!For Appellant

... Mr.M.Prakash

^For Respondents

... Mr.R.P.Rama Chanthiran

:JUDGMENT

This appeal is focussed as against the Judgement and Decree dated 28.12.2006 passed in M.C.O.P.No.895 of 2004 by the learned Motor Accidents Claims Tribunal-cum-the Additional District Judge, Fast Track Court, Pudukottai.

2. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents.

3. The Tribunal vide Judgement dated 28.12.2006 awarded compensation to a tune of Rs.3,31,783/- (Rupees three lakhs thirty four thousand seven hundred and eighty three only) under the following sub-heads:

For loss of income -Rs.2,70,000/-

For loss of love and affection -Rs. 15,000/-

For funeral expenses -Rs. 2,000/-

For medical expenses (Ex.P4) -Rs. 44,058/-

For medical expenses (Ex.P5)	-Rs.	400/-
For medical expenses (Ex.P6)	-Rs.	325/-
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Total	-Rs.	3,31,783/-
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4. The gist and kernel of the grounds of appeal as stood exposted from the memorandum of appeal could be set out thus:

The Tribunal without taking into consideration the contributory negligence on the part of the deceased/cyclist, simply fixed the entire responsibility on the bus driver. The bus driver's evidence as RW<sub>1</sub>, was not at all considered by the Tribunal, whereas it believed the version of PW<sub>1</sub>, the alleged eye witness to the occurrence. The compensation awarded is on the higher side.

5. The points for consideration are (i) whether the deceased/cyclist also contributed for the accident? and if so to what extent? and (ii) whether the compensation awarded by the Tribunal is 'just and proper'?

6. Point(i):

The learned counsel for the appellant Transport Corporation by placing reliance on the deposition of RW<sub>1</sub>, the driver of the bus would develop his arguments to the effect that in the facts and circumstances of the case, the driver of the bus was the appropriate witness to speak as to what happened at the time of the accident and that the Tribunal simply in an utopian manner expected the Transport Corporation to produce documents to prove its case.

7. The learned counsel for the appellant Transport Corporation would look askance at such a view taken by the Tribunal by arguing that there cannot be any document to prove that the driver of the

bus was not at fault. Perhaps the Tribunal in its own way simply remarked in such a manner exposing itself its criticism. Be that as it may, the passenger in the vehicle might have been a good witness to speak about the accident. But for reasons best known to the Transport Corporation, no passenger, who was travelling at that time in that bus, was examined. Furthermore, the very accident took place in a busy area, so to say just in front of the bus stand, where normally people throng the place. When on the side of the claimants PW2, the eye witness, who was standing nearby the place of the accident, was examined before the Tribunal, absolutely there was no reason for not examining any independent witness.

8. Now the appeal has been filed challenging the reasonings of the Tribunal purely based on the evidence given by its driver RW1. The best evidence which is available and which could have been produced before the Tribunal, when not produced, the appellant Transport Corporation cannot be heard to contend that the interested testimony of the driver alone should be relied on for modifying the award. The Tribunal by relying on the evidence of PW2 would give its findings to the effect that the deceased was proceeding on his cycle from west to east along the main road and at that time the bus which came out of the bus stand turned presumably towards west and when it was negotiating along the road towards Trichy direction, the accident occurred.

9. The learned counsel for the appellant Transport Corporation would stress upon the fact that virtually the bus driver was waiting for the signal and after getting signal he moved the bus from the bus stand and that too after crossing the bumper/ speed breaker and in such a case there could not have been any rash and negligent driving on the part of the driver. The very same set of facts would speak against the driver for the reason that despite all those safeguards taken by the State/the traffic Police concerned, this accident occurred. "Heavier the vehicle, heavier is the responsibility" is the well known proposition. Here, the bus driver in such a busy place, which is very near the bus stand should have been extra ordinarily careful in seeing that even unwary cyclists or passengers are not injured. It is common knowledge or trite proposition that in bus stand area there will be mixed traffic. In such circumstances, the driver of the passenger vehicle should have been careful; had he been a bit more careful the accident could have been averted. For the reasons adverted to above, absolutely there is no evidence on the side of the Transport Corporation to contend that the deceased was at fault or that he invited the accident. PW2, an independent witness was examined on the side of the claimants and in such a case, the Tribunal out of the two witnesses PW2 vis- a-vis RW1, it preferred the evidence of PW2, an independent witness and in such a case, I am having no reason to interfere with the view taken by the Tribunal. Accordingly, I am of the considered opinion that no interference is warranted relating to the finding of the Tribunal in fixing the full responsibility on the driver of the bus.

10. Point (ii):

The learned counsel for the appellant Transport Corporation would submit that here the claimants are only major sons and married daughter altogether three in number, who do not require compensation at all as they were expected to eke out their own livelihood without depending upon the income of the deceased, whereas the learned counsel for the respondents/ claimants by drawing the attention of this Court to the very cause title of the petition itself would argue that the second

petitioner is an insane person and certainly he requires considerable amount for his maintenance. The learned counsel for the appellant Transport Corporation would try to torpedo such an argument of the learned counsel for the respondents/claimants on the ground that absolutely there is no medical evidence in support of the contention of the second petitioner that he is an insane for which the learned counsel for the respondents/claimants would convincingly and correctly reply that when there was no challenge to the said fact, there was no necessity also for the claimants to adduce medical evidence. The perusal of the petition would show that the second petitioner was described as an insane person represented by his brother, the first petitioner and that fact was accepted by the Tribunal also and in such a case the Tribunal cannot be found fault with in awarding such a compensation.

11. The Tribunal also by placing reliance on the certificate issued by the Government authorities to the effect that the deceased was getting the pension of Rs.6732/- (Rupees six thousand seven hundred and thirty two only) per month, took up the said amount as the criterion for assessing the compensation after deducting 1/3 of it. Such a method adopted by the Tribunal cannot be found fault with because the Tribunal taking a cue from the Second Schedule appended to the Motor Vehicles Act, has chosen the multiplier 5 as the deceased was aged about 64 years old at the relevant time of the accident. Certainly but for his untimely death he would have lived for more than five years and got the pension amounts and provided adequate monetary assistance to the petitioners including the second petitioner. As such absolutely there is no reason to give any finding contrary to what the Tribunal adjudged in this matter.

12. Under other sub heads, based on documentary evidence the Tribunal awarded just compensation. Based on medical receipts a sum of Rs.45,000/- (Rupees forty five thousand only) was awarded which cannot be found fault with as after the accident, the deceased took treatment for about three weeks. It is a case of head injury and that head injury actually resulted in the death of the deceased after three weeks. Hence, considering all these facts, I am having no reason to interfere with the award. Consequently the award is confirmed.

13. I, therefore do not find any merit in this Appeal and accordingly it is dismissed. The award of the Tribunal is confirmed. No costs. Consequently, the connected M.P. is also dismissed.

smn To The Motor Accidents Claims Tribunal cum the the Additional District Judge, Fast Track Court, Pudukottai.