Metropolitan Transport Corpn., Chennai Vs D. Pappa Susaiammal

C.M.A. No. 1169 of 2010

Court: Madras High Court

Date of Decision: April 22, 2010

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 168

Citation: AIR 2011 Mad 184

Hon'ble Judges: S. Manikumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S. Manikumar, J.
In an accident, which occurred on 6-6-2001, the sole bread winner sustained fatal injuries. According to the

respondent/claimant, when her son was trying to get down from a bus bearing registration No. TN-01-N-1197, the driver of the bus, without

noticing whether all the passengers have got down or not, suddenly started the bus, in a rash and negligent manner. In the result, respondent"s son

fell down and sustained fatal injuries. She claimed compensation of Rs. 2,50,000/- Resisting the claim, the appellant transport corporation

submitted that on 6-6-2001, when the bus was on its trip from Nandambakkam, to Paris, from South to North and when the bus was proceeding

along Anna Salai, about 19 hours, the driver of the bus slowed it down to stop at Simpson bus stop. But the deceased, suddenly stepped down

from the moving bus and fell down and himself invited the accident. In this regard, an information was given to the police that the deceased fell

down from the moving bus, in spite of the warning given by the conductor and that therefore there was no rash and negligent driving on the part of

the driver. Without prejudice to the above, the appellant Transport Corporation, disputed the age, income, avocation of the deceased and also

disputed the compensation claimed under various heads. The mother of the deceased examined herself as RW. 1. One Mr. Raju, said to be an

eye-witness to the occurrence was examined as RW. 2. Ex. P1, postmortem certificate, Ex. P2 legal heir certificate, Ex. P3, copy of the FIR,

were marked on behalf of the respondent/claimant. R.W. 1, conductor of the bus was examined. No documents were marked on the side of the

appellant Transport Corporation.

2. The respondent reiterated the manner of accident. However, she is not an eye-witness. A case in Cr. No. 266 of 2001 was registered on the

file of the Anna Square Police Station. P.W. 2 stated to have witnessed the accident has deposed that when he was in the bus-stop, the offending

bus was started by its driver suddenly when the deceased was alighting from the bus and fell down. He sustained injuries. It is his further evidence

that immediately after the accident, the injured was taken to Government General Hospital, Chennai. Per contra, RW.1, conductor of the bus has

deposed that when the bus was proceeded to halt at Simpson bus stop, the deceased was attempting to alight from the moving bus and fell down

and sustained injuries. However, during the cross-examination, RW1, the witness has admitted that the employer transport corporation has taken

disciplinary action against the driver of the bus and that he was also dismissed from service. Placing reliance on a decision of this Court in

Ramachandran and Others Vs. Valliammal and Others, , where it is stated that the best person to deny the accident is the driver, the Tribunal

observed that on the principles of ""res ipsa loquitur"" it has to be presumed that in the absence of examination of the driver of the offending vehicle,

the driver of the bus bearing registration No. TN-01N-1197 was responsible for the accident, resulting in the death of the son of the respondent

and accordingly quantified the compensation. Rash and negligent driving is a personal act attributed to the cause of accident. When an allegation is

made against the driver of the vehicle, rebuttal evidence has to be let in by him and in the case on hand, admittedly the driver of the Transport

Corporation bus has not been examined.

3. Further the Tribunal has also observed that the appellant-Transport Corporation has not taken any steps to examine him. The evidence of the

conductor can at best lend support, had the driver of the bus been examined. Principles of ""res ipsa loquitur"" is applicable to the facts of the case.

Moreover, under the provisions of the Motor Vehicles Act, if there is a claim for compensation in relation to any bodily injury(s), death, the injured

or the legal representatives of the deceased as the case may be, have to be paid a just and reasonable compensation by the employer by applying

the doctrine of vicarious liability. Even as per the cross-examination of RW1, conductor of the Transport Corporation bus, the employer had

initiated disciplinary action against the driver for the negligence in causing accident and he was also dismissed from service. When the employer,

Transport Corporation had initiated disciplinary action for negligence under the Service Rules applicable to the employee, it is not open to the

appellant Transport Corporation to take a different stand before the Motor Accident Claims Tribunal contending inter alia that the driver was not

negligent in causing the accident. The principles of preponderance of probability is applicable to both departmental actions as well as in claim cases

arising out of the Motor Vehicles Act. In such view of the matter, the appellant Transport Corporation cannot approbate and reprobate.

Therefore, the contention of the appellant Transport Corporation is not tenable and hence is rejected. The findings of the Tribunal with regard to

negligence, cannot be said to be perverse and therefore, the same is sustained.

4. On the quantum of compensation, though the appellant Transport Corporation has submitted that the age of the claimant i.e. 60 years, ought to

have been taken into consideration for the purpose of applying proper multiplier, for computation of dependency compensation, this Court is not

inclined to accept the same for the reason that the deceased was the sole bread winner and supporting the claimant. At the time of accident, the

deceased was aged 42 years.

5. Perusal of the judgment shows that the monthly income of the deceased was taken at Rs. 2500/- per month, by applying ""10"" multiplier and

after deducting 1/3 towards personal and living expenditure of the deceased, the Tribunal has awarded a sum of Rs. 2,04,540/- as dependency

compensation. In addition to the above, the Tribunal has awarded a sum of Rs. 2000/- towards funeral expenses and Rs. 2500/- for loss of estate.

u/s 168 of the Motor Vehicles Act, the Tribunal/Court may make an award determining the amount of compensation, which appears to it to be just

and specifying the person or persons, to whom compensation shall be paid. In the case on, the sole dependent wife has lost her husband and is

now left with no support. Applying the principles of just compensation, as laid down by the Supreme Court this Court is of the considered view

that the application of ""10"" multiplier for the purpose of computing dependency compensation is not manifestly illegal. Perusal of the impugned

judgment shows that the Tribunal has failed to award a reasonable compensation for the loss of love and affection to the respondent. The quantum

of compensation awarded by the Tribunal cannot be said to be bonanza for the loss of life, which cannot be measured precisely. Hence the

quantum is confirmed. In view of the dismissal of the present appeal, the appellant Transport Corporation is directed to deposit the entire award

amount with proportionate accrued interest at the rate of 7.5% per an-j num and costs as ordered by the Tribunal within four weeks from the date

of the receipt of a copy of this order. No costs. Consequently connected M.P. No. 1 of 2010 is also dismissed.