

(2002) 12 MAD CK 0132

Madras High Court

Case No: None

State Express Transport
Corporation, Tamil Nadu Division
II

APPELLANT

Vs

Ponnusamy and Others

RESPONDENT

Date of Decision: Dec. 19, 2002

Citation: (2004) 1 ACC 43

Hon'ble Judges: P. Sathasivam, J; A.K. Rajan, J

Bench: Division Bench

Judgement

P. Sathasivam, J.

Since all the above Appeals arose from a common award of the Motor Accidents Claims Tribunal (II Small Causes Court), Chennai, they are being disposed of by the following common judgment. The State Express Transport Corporation, Tamil Nadu Division-2 (formerly known as J. Jayalalitha Transport Corporation), Chennai-5 has preferred C.M.A. Nos. 1884 of 2000, etc., questioning its liability, more particularly the method of apportioning the liability equally on the Transport Corporation bus and the tanker lorry.

2. New India Assurance Company has preferred C.M.A. Nos. 292 to 296 of 2001 challenging the quantum of compensation arrived by the Tribunal as excessive and unreasonable. The claimants have not challenged the award on any aspect.

3. Brief facts : On 12th March, 1995 at about 11.30 hours about 40 persons were travelling in tractor and trailer bearing Registration No. TCH 9169 and TCH 1685 from Keelpodavur Village to Sunkuvarchathiram along Grand West Trunk Road, west to east direction. The tractor was driven by one P. Venkatesan, who is none else than the son of the owner of the tractor. While the said tractor was proceeding near Senthamangalam Village, a tanker lorry M.H. 04-B-2555, owned by 4th respondent in M.A.C.T.O.P. No. 1051 of 1995 which was duly insured with 5th respondent-New India Assurance Company Limited, carrying highly inflammable materials came

from behind and attempted to overtake the tractor. At that time, a bus bearing Registration No. T.N. 07-N-9130 belonging to the Transport Corporation, proceeding from Madras to Bangalore, came from the opposite direction. Both the tanker lorry and the bus had an head-on collision. Both the vehicles heavily damaged and caught fire. The highly inflammable materials (Acid) that were carried in the lorry spilled and doused the tractor and the trailer which were adjacent to the tanker lorry and the tractor and trailer were also burnt. The passengers travelling in the tractor were burnt alive. Except few others who sustained severe burn injuries, most of the tractor passengers were burnt to death. The driver and cleaner of the lorry, and the driver and conductor of the bus were also burnt to death. Some of the passengers in the bus also died due to burns. Some of the bus passengers managed to escape by breaking open the rear glass panel. In all about 49 persons died in the accident and about 15 persons sustained severe burn injuries. All the three vehicles totally burnt.

4. The claimants filed cases before the Motor Accident Claims Tribunal, Chennai (II Small Causes Court) claiming compensation as against the owner and Insurance Company of the tanker lorry and also the Transport Corporation, contending both the vehicles are responsible for the accident. Injured eye-witnesses were examined. The Investigating Police Officer was also examined. The Motor Accident Claims Tribunal came to the conclusion that both the tanker lorry and the bus were equally responsible for the accident and apportioned the liability equally on them. The Insurance Company of the tanker lorry accepted the finding of the Tribunal and deposited their liability amount, except in five cases. In those five cases, the Insurance Company contended that the quantum of compensation fixed by the Tribunal is on the higher side and filed C.M.A. Nos. 292 to 296 of 2001. The Transport Corporation filed the appeals in all the cases contending that their bus was in no way responsible for the accident and the 50 per cent liability fastened on them is wrong and liable to be set aside.

5. Contentions by the Transport Corporation and the Insurance Company. Mr. Feroz Khan, learned Counsel appearing for the appellant Transport Corporation, after taking us through the common award of the Tribunal and other materials i.e., oral and documentary evidence, raised the only contention that in the light of the stand taken by the Corporation and the materials placed, the conclusion of the Tribunal holding both the Corporation bus and the tanker lorry equally responsible for the accident cannot be sustained. According to him, the tanker lorry alone was responsible for the accident; hence the Tribunal ought to have exonerated the Transport Corporation from its liability. On the other hand, the only contention of Mr. K.S. Narasimhan, learned Counsel for the appellant - New India Assurance Company in C.M.A. Nos. 292 to 296 of 2001 is that in respect of death of children at the age of 3 to 13, the Tribunal committed an error in awarding higher compensation to the extent of Rs. 1,90,000/-, etc. Except this contention regarding quantum of compensation arrived at in those five cases, he has no grievance in other aspects, including the finding regarding negligence. On the other hand,

Messrs. N.M. Muthurajan, G. Karthikeyan and M. Devendran, learned Counsel appearing for the claimants, would contend that based on the oral and documentary evidence, the Tribunal after correctly apportioning the liability equally between the Corporation bus and the tanker lorry passed an award which are just and reasonable and there is no ground for interference.

6. Finding on the negligence.--We have already referred to the fact that in the accident that has taken place on 12th March, 1995, three vehicles, namely, tractor and trailer, tanker lorry and Transport Corporation bus were involved, wherein 49 persons died and 15 persons sustained severe burn injuries. We have also referred to the fact that the driver and cleaner of the lorry, and the driver and conductor of the bus were also burnt to death. All the three vehicles were totally burnt. Though several persons have been examined, there is no dispute that P.W. 1, claimant in M.C.O.P. No. 1059 of 1995, P.W. 16 tractor driver, P.W. 26 claimant in M.C.O.P. No. 983 of 1997, who was one of the passengers of the Transport Corporation bus, R.W. 1 inspection Officer of the Transport Corporation bus and R.W. 3 - Inspector of Police, Sriperumbudur Police Station, who conducted the investigation in these cases, are the witnesses who explained the manner of the accident. Apart from the above oral evidence, we have to consider the First Information Report (Ex. R-4) given by P.W. 16, tractor driver, Sketch-Ex. R-3 prepared by P.W. 3 - the Investigating Officer and the reports of the Motor Vehicle Inspector - Exs. P-49 to P-51 relating to all the 3 vehicles.

7. P.W. 1 Swaminathan who sustained injuries in the accident filed M.C.O.P. No. 1059 of 1995. He deposed before the Tribunal that on 12th March, 1995 he was travelling in the tractor-trailer from Podavur to Molachur to go to his daughter's house. The tractor belongs to Ponnusamy Naicker and about 50 persons travelled in the trailer. According to him, himself and 7 others were seated on the rear door of the trailer, which was tied with iron chain. After passing Senthamangalam in the Highway, he noticed a tanker lorry which was coming fast behind the trailer by showing light signal. At that time, he also noticed J. Jayalalitha Transport Corporation bus coming fast from Madras towards Kancheepuram and in a fraction of a second, both the bus and the tanker lorry dashed against each other, thereby the upper lid of the tanker lorry opened, and the Acid in the tanker lorry spilled and doused the tractor-trailer, due to which there was a fire. He further deposed that all the persons travelling in the trailer were burnt to death, some of the passengers in the bus were also died due to burn injuries and all the three vehicles-tractor, tanker lorry and bus caught fire and totally burnt. He also deposed that immediately after seeing the head-on collision by the tanker lorry and the bus and the subsequent fire in all the vehicles, he jumped from the tractor and escaped with minor injuries. In the cross-examination at the instance of the lorry owner, he deposed that, (Verncular omitted)

He also reiterated the same version even in the cross-examination at the instance of the Transport Corporation bus.

8. The next witness who explained the accident is P.W. 16, who is none else than the driver of the tractor and also claimant in M.C.O.P. No. 1062 of 1995. In chief examination he has deposed that, [Vernacular omitted]

In the cross-examination at the instance of the lorry owner, he deposed that, [Vernacular omitted]

In the cross-examination at the instance of the J.J.T.C. bus, he reiterated the same stand. He further deposed that, [Vernacular omitted]

9. The other witness who deposed about the accident is P.W. 26. namely, the claimant in M.C.O.P. No. 983 of 1997. On the date of accident, he travelled in the Transport Corporation bus as one of the passengers. According to him, he was travelling in the J.J. Transport Corporation bus from Saidapet to Keeranur. In chief-examination he has deposed that, [omitted]

It is clear from the evidence of P.Ws. 1, 16 and 26 that at the time of the accident, in order to give way to the tanker lorry, the tractor was proceeding on the left side of the road, keeping its left side wheels at the mud portion and the right side wheels on the tar portion of the road. The tanker lorry after giving signal, attempted to overtake the tractor and in that process, both the tanker lorry and the Transport Corporation bus collided with each other. It is also revealed that there is enough space on the left side of the Transport Corporation bus and that if the bus driver was cautious, he could have averted the accident by taking his bus on the left side of the road.

10. Now let us consider the evidence of R.W. 1 M.P. Natrajan (examined in O.P. No. 265 of 1999), who inspected the place of impact on behalf of the Transport Corporation bus. In chief-examination he deposed that, [omitted]

In his cross-examination, he deposed that, [omitted]

Though R.W. 1 has stated that the accident was caused due to the negligence of the lorry driver, inasmuch as he visited the occurrence spot after the accident only for the purpose of investigation at the instance of the Transport Corporation, his evidence is interested and in the light of the categorical assertion by the injured persons, namely, R.Ws. 1, 16 and 26, we are unable to give credence to his statement.

11. The Inspector of Police, Sriperumbudur Police Station who took up investigation in these cases, was examined as R.W. 3. On getting information through V.H.F., he proceeded to the occurrence spot. During investigation, he prepared a Sketch which has been marked as Ex. R-3. In cross-examination he deposed that, [Omitted]

It is clear from the evidence of R.W. 3 that since the drivers of both the ill-fated tanker lorry and the bus were burnt to death, the First Information Report itself was registered only around 3.30 p.m. and hence the investigation of the case was not taken up immediately after the accident. We have already referred to the specific statement made by the injured persons, namely, RWs. 1, 16 and 26 regarding the cause and manner of the accident. In such a circumstance, the evidence of R.W. 3 cannot be accepted in toto.

12. Apart from the oral evidence referred above, we have verified the Rough Sketch-Ex. R-3. prepared by R.W. 3. It is seen from the evidence of R.W. 3, Inspector of Police, Sriperumbudur Police Station, that on receipt of a message through V.H.F., he proceeded to the accident spot and reached there at 12 noon. After verification and enquiring certain persons therein, he prepared a Sketch-Ex. R-3, wherein he noted the burnt J.J.T.C. bus as No. 1; the burnt tanker lorry as No. 2; and the burnt trailer as No. 3; and the burnt tractor as No. 4. He also noted therein the width of the road and the position of the vehicles stationed at the time of the impact. It is seen that R.W. 3 has mentioned the width of the tar road as 22 feet. It is also seen that apart from the tar road, there is a mud road to a width of 6 feet on either side of the tar road. It is seen from the Sketch, the left side wheels of the trailer were positioned on the mud road, while the right side wheels were on the tar road. It is also seen that the collision had taken place while the tanker lorry attempted to overtake the tractor and trailer. The sketch - Ex. R-3 also reveals that though the Corporation bus has enough space on its left side, it slightly turned towards the right side. It is also clear that absolutely there is no obstruction for the Transport Corporation bus to move on the left side of the road. P.W. 3 has also stated that all the three vehicles involved in the accident were completely burnt. The position of vehicles as noted in Ex. R-3 Sketch supports and coincides with the assertion made by RWs. 1, 16 and 26. Since all the vehicles involved were completely burnt, the report of the Motor Vehicle Inspector have no significance for deciding the issue in question. In the light of the categorical statement made by RWs. 1, 16 and 26, who are none else than the injured claimants, coupled with Ex. R-3, we are of the firm view that both the tanker lorry and the Corporation bus were equally responsible for the accident and the same has been rightly concluded by the Tribunal; accordingly we reject the contention raised by the learned Counsel for the Transport Corporation.

13. Compensation determined in C.M.A. Nos. 292 to 296 of 2001. Before considering the issue whether the amount arrived by the Tribunal in all these cases is reasonable and acceptable, it is our duty to mention that except in these 5 cases filed by the New India Assurance Company, no argument was advanced disputing the amount determined by the Tribunal in other cases.

14. C.M.A. No. 292 of 2001 is filed against the award passed in M.C.O.P. No. 1057 of 1995. The said claim petition was filed by the father, claiming compensation of Rs.

1,50,000/- for the death of 3 years old daughter by name Yasodha. Ex. P-24 is her death certificate. The Tribunal after holding that since the deceased was a 3 years old child at the time of the accident and an unearning member, by adopting the income provided in the 2nd Schedule to the Motor Vehicles Act, 1988 and after allowing 1/3 towards personal expenses, determined the pecuniary loss of compensation of Rs. 1,80,000/-. After adding Rs. 5,000 towards funeral expenses and a further amount of Rs. 5,000/- towards love and affection, passed an award for Rs. 1,90,000/-. The amount arrived by the Tribunal for the death of a 3 years old child is certainly on the higher side. C.M.A. No. 293 of 2001 is filed against M.C.O.R No. 1058 of 1995 wherein for the death of a 5 years old "child Sonia Gandhi, her father prayed for a compensation of Rs. 1,50,000/-. The death certificate has been marked as Ex. P-5 and the legal heirship certificate as Ex. P-6. Here again, the Tribunal by applying the same principle of unearned member, arrived a pecuniary loss of Rs. 1,80,000/- and after adding Rs. 5,000/- towards personal expenses and another Rs. 5,000/- towards loss of love and affection, passed an award for Rs. 1,90,000/-. Considering the fact that the deceased was a 5 years old child and the claimant is her father, the amount arrived by the Tribunal is excessive. C.M.A. No. 294 of 2001 is filed against M.C.O.P. No. 1063 of 1995 wherein for the death, of a 10 years old child Arun Prasad, his parents have claimed a compensation of Rs. 2,00,000/-. It is seen that at the time of the accident, the deceased was studying in 5th Standard. The death certificate has been marked as Ex. P-30 and the legal heirship certificate as Ex. P-29. Here again, applying the same principle, namely, unearned member and by applying multiplier 17 arrived Rs. 1,70,000/ as pecuniary loss. After adding Rs. 5,000/- towards funeral expenses and another Rs. 5,000/- as loss of love and affection, granted Rs. 1,80,000/- as compensation. Here again, considering the fact that the deceased was a 10 years old child and studying in 5th Standard, we are of the view that the amount is excessive. C.M.A. No. 295 of 2001 is filed against M.C.O.P. No. 1070 of 1995 wherein for the death of a 13 years old child Baskar alias Vijaybaskar studying in 8th Standard, his parents claimed a compensation of Rs. 2,00,000/-. His death certificate and legal heirship certificate have been marked as Exs. 24 and 23 respectively. Here again, the Tribunal, by applying the same principle passed an award for Rs. 1,80,000/-. For the same reasons, namely, the deceased being a 13-year old boy studying in 8th Standard and the claimants, we are of the view that the amount is on the higher side. C.M.A. No. 296 of 2001 is filed against M.C.O.P. No. 1068 of 1995 wherein for the death of a 6 years old child Lisia alias Jayalakshmi studying in 2nd Standard, her parents prayed for a compensation of Rs. 1,50,000/- Here again, the Tribunal, by applying the same principle, passed an award for Rs. 1,80,000/-. For the same reasons, namely, the deceased being a 6-year old child studying in 2nd Standard and the claimants, we are of the view that the amount awarded by the Tribunal is excessive. In all these cases, we have referred to the age of the deceased and the relationship of the claimants. Considering the fact that the parents have lost their children at the tender age, the learned Counsel appearing for the Insurance Company and the

Transport Corporation fairly state that the following amount would meet the ends of justice:

C.M.A. No.	M.C.O.P. No.	Amount awarded by the Tribunal (Rs.)	Award modified and reduced to (Rs.)
(1) 292 of 2001	1057 of 1995	1,90,000	1,00,000
(2) 293 of 2001	1058 of 1995	1,90,000	1,00,000
(3) 294 of 2001	1063 of 1995	1,80,000	1,50,000
(4) 295 of 2001	1070 of 1995	1,80,000	1,50,000
(5) 296 of 2001	1068 of 1995	1,80,000	1,00,000

It is made clear that the amount determined above cannot be cited as a precedent for other cases, since in these cases, as stated earlier, the learned Counsel for the Insurance Company and Transport Corporation bus fairly agreed to for the same. Accordingly, the compensation arrived by the Tribunal in these five cases is reduced to the extent mentioned above. Except the reduction in the amount, we are not interfering with the award of the Tribunal in any other aspect.

15. Under these circumstances, the appeals filed by the Transport Corporation are dismissed. The appeals filed by the New India Assurance Company, namely, C.M.A. Nos. 292 to 296 of 2001 are allowed in part to the extent mentioned above. In all other aspects, we confirm the award of the Tribunal. No costs.