

(2010) 07 MAD CK 0354

Madras High Court

Case No: C.M.A. No. 1692 of 2002

The Managing Director, Tamil
Nadu State Transport
Corporation (Division-II) Limited

APPELLANT

Vs

Amudha Sivaprakasam and
Others

RESPONDENT

Date of Decision: July 15, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 304A, 337, 338

Citation: (2012) ACJ 393 : (2010) 4 LW 379

Hon'ble Judges: R. Banumathi, J; B. Rajendran, J

Bench: Division Bench

Advocate: P. Jagadeeswaran, in C.M.A. Nos. 1692 and 1693 of 2002, R. 3 in CMA. No. 1231 of 2003 and R. 5 in CMA. 2024 of 2002 and N. Vijaya Raghavan, in C.M.A. Nos. 1231/03 and 2024 of 2002 and for Respondent No. 4 in C.M.A. Nos. 1692 and 1693 of 2002, for the appearing parties; V. Ramajagadeesan, for Respondents 1 and 2 in CMA. Nos. 1692 and 2024 of 2002 and 1231 of 2003 and K.V. Sajeew Kumar, for Respondents 5 and 6 in C.M.A. No. 1692 of 2002 and for R. 1 and 2 in C.M.A. Nos. 1693 and 2024 of 2002 and for R. 5 and 6 in C.M.A. No. 1231 of 2003, for the Respondent

Final Decision: Dismissed

Judgement

R. Banumathi, J.

Appellant-Tamil Nadu State Transport Corporation challenges the award of compensation in M.C.O.P. Nos. 128 of 2000 and 42 of 2000 dated 21.12.2001 on the file of Motor Accident Claims Tribunal (Sub-Court), Krishnagiri by filing C.M.A. Nos. 1691 and 1692 of 2002.

2. Appellant-Oriental Insurance Company Limited, Hosur challenges the very same award of compensation in M.C.O.P. Nos. 128 of 2000 and 42 of 2000 on the file of Motor Accident Claims Tribunal (Sub-Court), Krishnagiri by filing C.M.A. Nos.

1231/2003 and 2024 of 2002 whereby Tribunal has awarded compensation of Rs. 20,72,000/- to the wife and son [Claimants in MCOP. No. 128/2000] and a sum of Rs. 5,00,000/- to the parents [Claimants in MCOP. No. 42/2000] of deceased Dr. N. Sivaprakasam who died in a road traffic accident on 19.2.2000 and apportioning the negligence and liability at 50%: 50% between the two vehicles [lorry and bus]. Since, all the Appeals arise out common order and the points for consideration are one and the same, all the Appeals were taken up together and shall stands disposed of by this Common judgment.

3. M.C.O.P. No. 42 of 2000 was filed by the parents of the deceased Dr. N. Sivaprakasam claiming compensation of Rs. 5,00,000/-. M.C.O.P. No. 128 of 2000 was filed by the wife and son of the deceased Dr. Sivaprakasam claiming compensation of Rs. 40,00,000/- stating that the deceased was 47 years and was working as Associate Professor (Agri.), Entomology, Department of Sericulture in Tamil Nadu Agricultural University, Coimbatore and was drawing a salary of Rs. 21,829/- per month. Case of Claimants is that on 19.2.2000, when the deceased was traveling in the Tamil Nadu State Transport Corporation bus bearing Registration No. TN-29 N 1063 at about 7.45 P.M. in Krishnagiri to Salem NH7 Main road, near Mottur Road junction, while the bus trying to overtake the lorry bearing registration No. MDB 3007 belonging to one N. Babu and insured with the Oriental Insurance Company [Appellants in CMA No. 1231/2003 and CMA. No. 2024/2002] which was driven by its driver in a rash and negligent manner and he suddenly turned the lorry towards left to go to Mottur Road, carrying with eucalyptus timber, both lorry and bus dashed. Due to the impact of the eucalyptus timber in the lorry entered into left side of the Corporation bus through front door window of the bus, the deceased sustained fatal injuries on his vital organs. Immediately, after the accident, deceased was admitted in St. John's Hospital and inspite of treatment, he succumbed to the injuries on 8.3.2000 in the said Hospital. Regarding the accident, criminal case in Crime No. 326 of 2000 of Krishnagiri Town Police Station was registered against the bus driver. Alleging that the accident was due to rash and negligent driving of the lorry driver as well as the bus driver, Claimants have filed the Claim Petitions [MCOP. No. 42/2000 filed by parents and MC. OP. No. 128/2000 filed by wife, son] as stated above. In the Tribunal, joint trial was held in both the Claim Petitions.

4. Appellant-Insurance Company [insurer of lorry] filed counter contending that the driver of the lorry bearing registration No. MDB 3007 drove the vehicle slowly and cautiously observing all the rules of traffic. According to Appellant-Insurance Company, only the driver of the bus who drove the vehicle rashly and negligently without sound horn and without signal came from behind the lorry and rammed into the back side of the lorry and therefore, the eucalyptus timber protruding hit the bus and caused the accident. The Police also registered criminal case in Crime No. 326/2000 under Sections 279, 337, 338 and 304(A) IPC only against the driver of the bus and the fault is only on the part of the driver of the bus and there is no fault on the part of the driver of the lorry and therefore, the driver and owner of the lorry

are not liable to pay any compensation to the Claimants and Appellant-Insurance Company being the insurer of the lorry is not liable to indemnify the owner of the lorry.

5. Appellant-State Transport Corporation filed counter contending that the driver of the bus drove the bus slowly and cautiously observing the rules of the road. According to State Transport Corporation, only the lorry driver was driving the lorry in a rash and negligent manner and he suddenly turned the lorry left side to go to Mottur road carrying eucalyptus timber and dashed against the bus which caused the accident. According to State Transport Corporation, there was no rashness and negligence on the part of the driver of the bus and the accident was due to the fault of the driver of the lorry and Appellant-Transport Corporation is not liable to pay any compensation to the Claimants for the death of Dr. Sivaprakasam.

6. Before the Tribunal, mother of deceased [Vijaya-2nd Claimant in MCOP. No. 42/2000] was examined as P.W. 1. Wife of the deceased [Amudha Sivaprakasam-1st Claimant in MC. OP. No. 128/2000] was examined as P.W. 2. One Muthusamy, who was then working as Assistant Professor [Sericulture Department] in Tamil Nadu Agricultural University was examined as P.W. 3. One Sathasivam, who traveled in the bus and who witnessed the accident was examined as P.W. 4. Exs. P1 to P23 were marked. On the side of Respondents, one Babu, driver of the lorry was examined as R.W. 1. One Ratnavel, who was then working as Assistant in Oriental Insurance Company [2nd Respondent in MCOP. No. 42/2000] was examined as R.W. 2. Driver of the bus [Madhu] was examined as P.W. 3. Exs. R1 to R3 were marked.

7. Upon consideration of oral and documentary evidence, Tribunal held that eucalyptus timber was protruding from the lorry and there is no evidence other than the evidence of lorry driver that the lorry had red signal light. Tribunal further held that had the lorry driver slowed down the lorry and allowed the bus to pass, the lorry driver could have averted the accident. Pointing out that the driver of the bus who was driving the passenger bus had also not exercised due care and caution in stopping the bus on seeing the lorry turning towards left, Tribunal held that the accident was due to the negligence of both the lorry driver and the bus driver. While holding that the owner of the lorry and insurance company as well as Transport Corporation being jointly and severally liable to pay compensation, Tribunal has apportioned the negligence at 50%: 50% and ordered apportionment of liability in the same ratio.

8. In so far as the quantum, deceased was working as Professor in Tamil Nadu Agricultural University and he was getting salary of Rs. 21,829/-. Tribunal had taken the monthly income of the deceased at Rs. 24,000/- and after deducting 1/3rd for personal expenses, Tribunal awarded total compensation of Rs. 25,72,500/-. Out of which Rs. 5,00,000/- was awarded to the parents of the deceased [MCOP. No. 42/2000] and Rs. 20,72,500/- to wife and son [MCOP. No. 128/2000].

9. Challenging the apportionment of negligence as well as the quantum of compensation, Mr. Jagadeeswaran, learned Counsel for Appellant-Transport Corporation [CMA. Nos. 1692 and 1693/2002] contended that only the lorry was overloaded with eucalyptus timber which was protruding outside the lorry and as such Tribunal ought to have held that the accident was due to the negligence of the driver of the lorry. It was further contended that the question of apportionment of negligence equally between the driver of lorry and bus is not supported by any evidence. Learned Counsel for Transport Corporation has also raised objection as to the quantum of compensation contending that when the monthly income of the deceased is Rs. 21,829/-. Tribunal erred in taking the monthly income at Rs. 24,000/- per month.

10. Mr. Viyayaraghavan, learned Counsel for Appellant-Insurance Company [CMA. Nos. 1231/2003 and 2024/2002] submitted that FIR was registered only against the bus driver and without properly appreciating the same, Tribunal erred in fastening the liability on the Appellant-Insurance Company in the case where the accident was solely due to rash and negligent driving of the driver of the bus.

11. Supporting the apportionment of liability as well as quantum of compensation, learned Counsel for Claimants submitted that upon appreciation of evidence, Tribunal has rightly apportioned the negligence and liability at 50%: 50% and the quantum of compensation awarded by the Tribunal is quite reasonable warranting no interference.

12. Upon consideration of evidence and materials on record, the following points arise for consideration:

1) Whether the Tribunal was right in apportioning the liability between the lorry driver and bus driver at 50%: 50%?

2) Whether the quantum of compensation awarded by the Tribunal is excessive warranting interference?

13. Point No. 1: On the side of Claimants, one Sathasivam who traveled in the bus at the time of accident was examined as P.W. 4. In his evidence, P.W. 4 has stated that he was traveling in the bus bearing registration No. TN-29 N 1063 and the bus was proceeding in Krishnagiri-Dharmapujri National Highways. At about 7.30 P.M., when the bus was proceeding in the National Highways, the lorry bearing registration No. MDB 3007 carrying eucalyptus timber was proceeding in front and at that time, the bus attempted to overtake the lorry and the lorry took turn towards left side to proceed in Mottur road and at that time the bus hit against the lorry. In his evidence, P.W. 4 has stated that the accident was due to rash and negligent driving of both lorry driver and bus driver.

14. Lorry driver who examined himself as R.W. 1 has stated that he was driving the lorry bearing registration No. MDB 3007 which was carrying eucalyptus timber and

when he turned towards left to proceed in Mottur road, the bus which came from behind dashed against the lorry causing the accident. R.W. 1 has stated that the red light was put signaling the carrying of eucalyptus timber and the cleaner also showed hand signal for turning towards left and the bus driven in a rash and negligent manner hit against the lorry and only the bus driver was responsible for the accident.

15. Appellant-Transport Corporation bus driver who examined himself as R.W. 3 has stated that the lorry which was carrying eucalyptus timber was protruded to about 10 feet and there was no red signal or red flag signaling protruding of eucalyptus timber. R.W. 3 has further stated that at the time when the lorry turned towards left, there was neither indicator light nor any signal was made and therefore, only the lorry driver was responsible for the accident.

16. As observed by the Tribunal, the lorry which was proceeding in front could have seen the bus coming in the back side. Excepting the self interested testimony of lorry driver, there is no other evidence to show that there was red signal light or that there was red flag indicating protruding of eucalyptus timber from the lorry. If the lorry had slowed down, the bus would have safely passed away. The lorry appears to have turned towards left unmindful of the bus coming from behind.

17. In so far as responsibility of the bus driver, P.W. 3 who was driving the passenger bus ought to have been more careful and vigilant on seeing the lorry proceeding in the front. The driver of the bus ought to have slowed down the bus. The facts and circumstances show that the driver of the bus carrying passengers had not exercised due care and vigilance. In fact, Ex. P1 FIR in Crime No. 326/2000 was initially registered against the bus driver. As is seen from Ex. R3, after investigation, the charge sheet was filed against both the lorry driver and the bus driver. Upon analysis of evidence and having regard to the filing of charge sheet against both the drivers, in our considered view the Tribunal has rightly held that both lorry driver and bus driver were responsible for the accident and Tribunal rightly apportioned the negligence at 50%: 50% and this point is answered accordingly.

18. Point No. 2: Deceased Dr. Sivaprakasam was working as Professor in Tamil Nadu Agricultural University. From Ex. P6, it is seen that he was getting monthly salary of Rs. 21,829/-. In her evidence, P.W. 1 has stated that her husband was visiting the other States for giving guest lectures and he was also preparing question papers for Tamil Nadu Agricultural University and apart from the salary he was getting Rs. 5000/- per month. P.W. 1 has further stated that if had he been alive, he would have worked 13 more years and he had a further chance of promotion and he would have gone up to the level of being appointed as Vice Chancellor of Tamil Nadu Agricultural University.

19. In his evidence, P.W. 3 Muthusamy, Assistant Professor in Sericulture Department in Tamil Nadu Agricultural University has stated that Dr. Sivaprakasam was working as Joint Professor and he was getting the salary of Rs. 21,829/- per month. Ex. P12 is the Service Register of Dr. Sivaprakasam. Ex. P13 series would show that Dr. Sivaprakasam used to visit other States for giving guest lectures. From Ex. P14 series, it is seen that Dr. Sivaprakasam also prepared question papers on behalf of TNPSC for which he was paid. From Exs. P15 and P16, it is seen that Dr. Sivaprakasam was also publishing Research Articles for which he was paid amount. In his evidence, P.W. 3 has stated that the retirement age of Professor in Tamil Nadu Agricultural University is 60 and at the time of accident, deceased was aged 47 years [Ex. P12] and had he been alive, he would have worked for another 13 years.

20. As is seen from Ex. P6, deceased Dr. Sivaprakasam was getting salary of Rs. 21,829/-. The evidence and materials on record would clearly show that deceased was visiting the Universities in other States and giving guest lectures and was also writing Articles in various journals and he was also preparing question papers for TNPSC and was also a speaker in All India Radio. From the evidence of P.Ws. 1 and 3 and from the documentary evidence, it is seen that apart from the salary, deceased Dr. Sivaprakasam was getting other income. Having regard to the future prospects and the other evidence on record, Tribunal has taken the monthly income at Rs. 24,000/- per month which is quite reasonable. After deducting 1/3rd for personal expenses, Tribunal has taken the monthly income at Rs. 16,000/- [Rs. 24,000 - 8000] per month. As the deceased was aged 47years, as per Second Schedule to M.V. Act the Tribunal has adopted multiplier "13" and the same is maintained and the loss of dependency calculated by the Tribunal at Rs. 24,96,000/- [Rs. 16,000/- x 12 x 13] is maintained.

21. In so far as conventional damages, Tribunal has awarded Rs. 67,000/- for medical expenses; Rs. 5000/- for loss of consortium; Rs. 2500/- for loss of estate and Rs. 2000/- for funeral expenses totalling into Rs. 25,72,500/- which in our considered view are reasonable warranting no interference. Tribunal has also awarded interest at the rate of 9% p.a. Having regard to the facts and circumstances of the case, the interest awarded by the Tribunal at 9% p.a. is also maintained.

22. In the result, apportionment of negligence and the liability between the lorry and the bus at 50%: 50% to pay compensation ordered by the Tribunal is confirmed and the quantum of compensation of Rs. 25,72,500/- payable with interest at the rate of 9% p.a. and apportionment of compensation between Claimants [Claimants in MCOP. No. 42/2000 (parents of deceased) and Claimants in MCOP. No. 128/2000 (wife, son of deceased)] is also confirmed and all the Appeals [C.M.A. Nos. 1692/2002 and 1693/2002 preferred by State Transport Corporation and the Appeals preferred by Oriental Insurance Company [C.M.A. Nos. 123 1/2003 and 2024/2002] are dismissed.

It was stated before us that the Appellant-State Transport Corporation [CMA. Nos. 1692 and 1693/2002] has deposited 50% of compensation amount apportioned to them along with interest. Like wise, Appellant-Oriental Insurance Company [Appellants in CMA. Nos. 1231/2003 and 2024/2002] has deposited the entire amount of compensation as apportioned to them along with interest.

It was stated that Claimants in MCOP. No. 42/2000 [parents of deceased] and 1st Claimant in MCOP. No. 128/2000 [wife of the deceased] have withdrawn 50% from and out of compensation amount deposited by the State Transport Corporation as well as Oriental Insurance Company.

Claimants in MCOP. No. 42/2000 and MCOP. No. 128/2000 are permitted to withdraw the balance compensation amount deposited by State Transport Corporation and Oriental Insurance Company immediately after the receipt of copy of the judgment.

Appellant-State Transport Corporation is directed to deposit remaining 50% of compensation (less the amount already deposited) within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the Claimants [parents, wife and son] are permitted to withdraw the amount along with interest.

In the circumstances of the case, there is no order as to costs in these Appeals.