

indrani and Other Vs. S. Ramalingam and Another

indrani and Other Vs. S. Ramalingam and Another

SooperKanoon Citation : sooperkanoon.com/776306

Court : Chennai

Decided On : Feb-03-1989

Reported in : II(1989)ACC278; AIR1990Mad192

Judge : Sathiadev and Bellie, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 95(1); Workmen's Compensation Act, 1923

Appeal No. : L.P.A. No. 28 of 1985

Appellant : indrani and Other

Respondent : S. Ramalingam and Another

Advocate for Def. : T.S. Rangarajan and ;R. Vedantham, Adv.

Advocate for Pet/Ap. : O.R. Abdul Kalam, Adv.

Judgement :
ORDER

Bellie, J.

1. The claimants in the motor accident case are the appellants in this Letters Patent Appeal. An award was passed in their favour by the Motor Accidents Claims Tribunal but that was set aside in the appeal by a learned single Judge of

this court.

2. The first claimant is the mother and the claimants 2 and 3 are her children. The first claimant's husband Ekambaram, while he was travelling in a lorry MDF 3002 on G.S.T. Road, Thirutheri village, on 13-10-70 at 2.00 a.m. The lorry met with an accident which resulted in his death. Alleging that due to rash and negligent driving of the lorry the accident occurred the claimants claimed a compensation of Rs. 10,000/- The petition was filed against the owner-driver of the lorry the first respondent, and the insurance company second respondent.

3. The first respondent contested the petition contending that the deceased was a clandestine traveller in the lorry and the accident was not due to the rash and negligent driving and therefore the first respondent is not liable to pay compensation.

4. The second respondent insurance company endorsed the contention of the first respondent and also contended that the insurance company is not liable to pay compensation. It is further contended that the compensation amount claimed is excessive.

5. The Tribunal on consideration of the evidence let in held that the accident was due to rash and negligent driving of the lorry with regard to the contention raised by the 1st respondent that the deceased was a clandestine traveller, the Tribunal did not give any finding. The tribunal held that the claimants would be entitled to a compensation of Rs. 7,000/- out of which the first claimant would be entitled to Rs. 2,000/- and others Rs. 5,000/- and out of the said Rs. 5,000/- the first claimant would be entitled to withdraw a sum of Rs. 1,000/- for maintenance and education of the other claimants children and the balance to be deposited in a scheduled bank. The Tribunal further held that the first respondent carried unauthorised passengers in the lorry and therefore the insurance company is not liable to pay compensation. On these findings the Tribunal passed an award of Rs. 7000/- against the first respondent alone.

6. As against this the first respondent preferred an appeal to this court, and Surya-murthy, J. in C.M.A. No. 123 of 1977 did not agree with the trial court's finding that

the accident occurred due to the rash and negligent driving of the lorry and he further held that the deceased travelled in the lorry without the knowledge and permission of the first respondent and therefore the first respondent is not liable to pay compensation. In the result he allowed the appeal and set aside the award passed by the tribunal. Hence this Letters Patent Appeal by the claimants.

7. As regards the finding of the learned single Judge that the deceased was a clandestine traveller in the lorry was (we ?) find that it is a serious error. It' only the learned Judge had looked into the First Information Report marked in the case as Ex.A1 he would have seen that the first respondent driver himself has given a complaint in which he has stated that he permitted the deceased and another person to travel in the lorry (we find the original complaint itself in the file but it has not been marked). Therefore it is absolutely wrong to say that the deceased was a clandestine traveller. The co-traveller has been examined as P.W. 3 and he has spoken as to how the accident occurred. The learned Judge, commenting that it has not been elicited from him that they were authorised by the driver to travel in the lorry, held they were unauthorised travellers. When in the complaint by the first respondent itself it is stated that he authorised the deceased and P.W. 3 to travel there is no necessity for P.W. 3 to state that they were authorised by the driver. The learned Judge has not considered the fact that the driver has not chosen to get into the witness box. Therefore there is no gainsaying that the deceased and P.W. 3 were authorised travellers in the lorry. Then strangely when the first respondent himself has stated in the written complaint that he himself is the owner and driver of the lorry the learned single Judge has stated that it has not been proved that the first respondent owner was the driver himself, and he has on the assumption that the owner was not the driver further grievously erred in stating that there is no proof that the owner has authorised the driver to take travellers and therefore the owner cannot be held to be liable. The learned Judge seems to have forgotten for a moment that there is vicarious liability of the owner for the fault committed by the driver.

8. As regards the alleged negligence on the part of the driver of the lorry, here too, the learned Judge has gone wrong in holding that there is no negligence on the part of the driver of the lorry. It appears there is a repair spot in the road and a

culvert on the eastern side was dismantled. According to the petitioners a lorry from the opposite direction came with dazzling head light on the wrong side and to avoid a head-on collision with that lorry the respondent driver swerved his lorry to the right side and since there was no light showing that there was repair work the lorry went down the culvert and thus there was no negligence on the part of the driver. P.W. 3 has stated in his evidence that the lorry which came in the opposite side stopped on the other side of the culvert, and it was due to the rash and negligent driving of the first respondent driver the lorry met with the accident. P.W. 2 who claims to be a watchman at the workspot would state that there were two lights put up at the workspot and he was also holding another light and he had placed a bamboo stick across the road. He has further stated that the lorry which came from the opposite side had stopped and he has also stated that the lorry which met with the accident went down the road and dashed against tamarind tree. The trial court has not believed this evidence of P.W. 2 just because he has stated that the work was going on the western side of the road whereas the investigating officer has stated that it was on the eastern side. Rejecting the evidence of this witness for the said reason alone is not at all correct. The learned single Judge has considered neither the evidence of P.W. 2 nor the evidence of P.W. 3. As against this evidence let in by the petitioners there is no contra evidence. The driver of the lorry i.e., the respondent has not examined himself at all. Therefore the only conclusion that can be arrived at is that it was due to the rash and negligent driving of the first respondent the accident occurred.

9. The next question that arises is whether the second respondent insurance company is liable to pay compensation. According to them the deceased was travelling in a lorry which is a goods vehicle and therefore they are not liable. The insurance policy has not been filed, but however the argument of the learned counsel for the insurance company is that the law itself does not require insurance as regards travellers in a goods vehicle and therefore whether the insurance policy is filed or not is immaterial. S. 95 of the [Motor Vehicles Act, 1939](#) deals with the requirement of insurance policies and limits of liability. In this the portion relevant to this case in the proviso in sub-sec. (1). The material part of it reads as follows :--

'Provided that a policy shall not be re-quired-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of or, bodily injury to any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract or employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii)

(Explanation.-----.....'

Clause (i) in the proviso relates to death or injury to an employee and therefore that is not applicable to our case. But our case comes under clause (ii). A close reading of this clause would show that insurance policy shall not be required to cover liability in respect of death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises excepting where the vehicle is a vehicle in which passengers were carried for hire or reward or by reason of or in pursuance of a contract of employment. This means where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment an insurance policy is required. In the case of other vehicles an insurance policy shall not be required to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence out of which a

claim arises. It may be noted that in respect of the said other vehicles insurance policy shall not be required to cover liability in respect of death of or bodily injury to persons carried in or upon or entering or mounting or alighting from the vehicle at the time of occurrence and not in other respects i.e. for instance when an accident occurs by the vehicle hitting a person on the road. In such a case the section does not say that a policy is not required. But in our case, the deceased was travelling in the lorry and therefore this comes within the ambit of Cl. (ii) of the proviso. That means an insurance policy shall not be required in respect of such accident i.e., accident occurring while the person is travelling in a lorry, a goods vehicle. Therefore the insurance company cannot be said to be liable in this case.

10. Regarding the quantum of compensation, considering the fact that the petitioners are the widow and two children, and the deceased i.e. the husband of the first petitioner and father of petitioners 2 and 3 was the sole bread winner of the family, we find that the compensation of Rs. 7,000/- awarded by the trial court cannot at all be said to be excessive, and it is rather on the low side and hence this amount is confirmed. This amount will carry interest from the date of the petition at the rate of 12 per cent per annum. But, for the period in between the date of filing of the L.P.A. and the date of numbering it no interest shall be claimed because considerable time has elapsed because of the fault of the petitioners in complying with the points raised by the office and representing the appeal. All the petitioners will be entitled to the amount in equal proportions. Since the petitioners 2 and 3 have not attained majority they are entitled to receive their portion of the amount themselves and no question of deposit arises. The Letters Patent Appeal is disposed of accordingly. There will be no order as to costs.

11. Order accordingly.