

Muniammal Vs. G. Mohan and ors.

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Court : Chennai

Decided On : Apr-26-1974

Reported in : AIR1975Mad225

Judge : Maharajan, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110B

Appeal No. : Appeal Against Order No. 300 of 1972

Appellant : Muniammal

Respondent : G. Mohan and ors.

Advocate for Def. : A. Devanaliyam, Adv.

Advocate for Pet/Ap. : S. Venkataraman, ;R. Krishnaswami and ;P.R. Selvaraj, Adv.

Disposition : Appeal allowed

Judgement :

Maharajan, J.

1. This is an appeal by the claimant against the order of the Motor Accidents Claims Tribunal, Madras, dismissing her petition under Section 110-A of the Motor Vehicles Act, claiming a compensation of Rs. 15,000 for the death of her husband,

Munuswami in a lorry accident. The accident took place at about 10.30 a.m. on 3-11-69, at the junction between Wall Tax Road and Basin Water Works Street. The deceased was pulling a hand cart laden with medicines in a northerly direction along the Wall Tax Road (which is a north south road), and was turning in an easterly direction towards the Basin Water Works Street, when a lorry bearing MDU 5802 belonging to the third respondent and insured with the second respondent came at great speed in a southerly direction, knocked against the hand cart, ran over Munuswami killing him on the spot, proceeded to a distance of about 40 ft., then knocked against another cart and stopped short after travelling a further distance of 20 feet. Ex. P.3 is the rough sketch of accident prepared by P. W. 5, the investigating Police Officer and it shows that the Wealth Tax Road is 50 ft broad at the scene of accident and the accident itself took place about 20 ft, to the west of the eastern edge of the road. The lorry was loaded with 98 bags of rice. Judging from the distance it travelled after the double collision, there can be little doubt that it was driven at an excessive speed. According to the lorry driver, who has been examined as R. W. 1, there were a number of lorries parked on either side of the road. Having regard to these admitted facts as well as to the circumstances that the lorry was crossing a junction between the Wall Tax Road and the Basin Water Works Street, one would expect the driver of the lorry to have come to a considerable lower speed. According to the lorry driver, he saw the hand cart' of Munuswami turning into Basin Water Works Street at a distance of 30 ft and thereupon he swerved his lorry to the left and applied the foot brakes but that foot brakes did not act because of a rupture of the brake cylinder. The evidence of R. W. 2, the Motor Vehicles Inspector, who inspected the lorry a few hours after the accident, is that the foot brake had completely failed due to the failure of the rear right side wheel cylinder. Having regard to the evidence of R. W. 1 and R. W. 2, the Tribunal came to conclusion that the accident was an inevitable one and that it was due to an unforeseeable defect in the wheel cylinder. Upon this finding, the Tribunal held that the accident was not due to rashness or negligence on the part of the lorry driver and that consequently, the claimant was not entitled to any compensation.

2. Learned counsel for the appellant has advanced the legitimate criticism that the Tribunal has accepted a plea which was not put forward by the respondents in

their counter. Though the first respondent, who is the driver of the lorry, came into the witness box to speak to the inevitable character of the accident, he did not choose to file a counter to the petition of the appellant. As for the counter filed by the second respondent, the insurer, the only plea taken therein was that the accident was the result of negligence on the part of the hand cart puller and not the result of any rashness or negligence of the lorry driver. Be it noted that in this counter, the plea of inevitable accident was not so much as hinted at. As for the third respondent who could speak with authority upon the condition of his vehicle, he did not file even an independent counter. He merely adopted that of the insurance company. It was only during the enquiry and that too during the cross-examination of the last witness of the appellant that the theory of brake failure was suggested. No doubt R. Ws. 1 and 2 followed P. W. 5 to the witness box and spoke to the latent defect of the vehicle. Having regard to the evidence of the Motor Vehicles Inspector R W 2, the theory that the driver had lost control of the vehicle because of the sudden failure of brakes cannot be ruled out. The further question arises whether by merely invoking the suddenness of the brake failure the owner of the vehicle can be said to have discharged the burden that the law throws upon his shoulders. Where the facts established show that the proper and natural inference arising therefrom is that the injury complained of was caused by the lorry driver's negligence or when the doctrine of *res ipsa loquitur* applies and a presumption of fault is raised against the driver of the lorry and vicariously against the master, the latter, if they are to succeed in their defence, must overcome the inference or the presumption by contrary evidence. The burden on them will be to show how the act complained of could have reasonably happened without negligence on their part. If there was sudden brake failure and if it was due to a latent defect, which was not ordinarily visible on external inspection, has the driver or his master shown that he had been properly maintaining and inspecting the internal Parts of the lorry periodically One would expect the lorry owner to have examined some automobile engineer who had previously inspected the internal parts of the lorry or the engineer who had replaced the internal parts if they had been found to be worn out. The evidence of the Motor Vehicles Inspector in this case is that the failure of the wheel cylinder might be due to the part being worn out. The evidence of R. W. 1, the driver is that the lorry is of Fargo make of 1950

model. The accident took place in November 1969, that is to say, nearly 19 years after it had been manufactured. What did the owner of the lorry do during these 19 years? Did he set the internal brake cylinder inspected or replaced at any time by any engineer? Did he ever have the lorry serviced and kept in good repair These are questions which remained unanswered by the evidence adduced on the side of the respondents-questions which it is the duty of the respondents to answer to the satisfaction of the Court. The lorry is a huge vehicle which has been plying for hire for a long time and the owners of the lorry owe a duty to the society to keep such dangerous vehicles in good condition. At any rate, unless, in a case like this, the owner adduces evidence to show that he has taken reasonable care in maintaining the vehicle in good condition and having it inspected periodically for defects, he cannot escape liability.

3. A Division Bench of this Court in *Lakshmiammal v. State of Tamil Nadu*. : AIR1975 Mad157 has held that where it is alleged that there had been a latent defect which the driver of the bus could not know, and the accident was caused as a result of such latent defect resulting in the failure of the brake, the respondent can get over liability, only if he further shows that the latent defect was not discoverable in spite of reasonable care. I feel bound by this ruling, which, if I may say so with respect, lays down the correct legal position. Learned counsel for the insurance company, Mr. Devanathan. would however, bring to my notice the ruling of the Privy Council in *Tan Chey Choo v. Chong Kew Moi*, 1970 ACJ 325, in support of the proposition that neither the owner nor his driver could be held liable in case of a mechanical breakdown due to a latent defect. But that was a case where there was evidence given by the driver of the taxi that the car was inspected at periodical intervals and that there had been no failure to take proper steps to maintain the car. In fact, the trial Judge in that case held that 'the respondent has done all that she could be expected to do.' This finding of the trial Judge was accepted by the Privy Council and it is on the basis of that acceptance that they exonerated the driver and the owner of the vehicle of any negligence. But in this case there is not a title of evidence as to whether the owner of the vehicle periodically had the lorry examined and rectified and kept in good repair. I would, therefore, hold that the respondents have failed to discharge the burden which undoubtedly lies upon them. It would then follow that they cannot be exonerated of

the liability to compensate the appellant for the death of her husband.

4. The next Question arises, what is the quantum of compensation to be awarded. The Tribunal has given a finding in this behalf and fixed the compensation at Rs. 10,400. The deceased Munussami was 40 years old at the time of accident. He was a packer in a firm of Chemists and Druggists drawing a salary of Rs. 100 per month. He had no children and his only dependent was his wife, who is the claimant. There was a prospect of his living for another 20 years. The Tribunal was right to hold that he would have spent at least Rs. 50 every month upon his wife. The value of the dependency would then come to Rs. 600 per annum. Taking into account the relevant factors, the compensation may be fixed at Rs. 8,000. The amount will carry interest at 6 per cent, per annum from the date of the claim i.e., 26-11-1969 upto the date of deposit.

5. The appeal is allowed with costs. Time for payment two months.

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