

Devi Singh Vs. Mangathayammal

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Court : Chennai

Decided On : Mar-28-1934

Reported in : AIR1935Mad322

Appellant : Devi Singh

Respondent : Mangathayammal

Judgement :

Beasley, C.J.

1. The suit under appeal was one brought by the respondent who was the mother of a boy named Ponnusami, aged about 13, who was in the employment of one of the bailiffs of this Court, Mr. Boyton. On 27th April 1928 at about noon this boy was knocked down and killed by a motor omnibus of which the appellant was the owner. The omnibus was coming from Saidapet down the Mount Road in the direction of George Town. This accident happened opposite to the building of Messrs. Fiat and Co. Motor Dealers. The boy appears to have been killed instantaneously and it was alleged by the respondent who filed the suit that the accident was the result of negligent driving of the driver of the motor omnibus. If that allegation was proved, then clearly the appellant would be liable to pay damages being responsible for the negligent act of his driver. Rs. 2,000 damages were claimed. The learned trial Judge found that the appellant's servant had driven the omnibus negligently and that as a result of that negligent driving the boy Ponnusami was killed. Finding in favour of the respondent on the question of

liability, he assessed the damages at Rs. 600. On the question of negligence which is of course a pure question of fact only one eye witness was called; that was a man named Matcher, a sergeant who was at the time employed as door-keeper by Messrs. Fiat and Co., and was standing by the door or at any rate in such a position as enabled him to see what happened. His evidence is that the accident happened to the right hand side of the middle of the road, that is to say, on the motor bus's wrong side of it, that the bus was going along at about 30 miles per hour and that originally in the middle of the road it suddenly swerved to its wrong side and having done so knocked over the little boy, by means of its front wheels and ran over him and killed him. He also says that the bus driver did not sound the horn. There are no other eye witnesses.

2. A witness was called for the defence, and that was a Sub-Inspector of the City Police, Hopkins, who apparently was investigating the matter and who was present at the inquest. He says that at the inquest the witness Matcher who was also a witness at the inquest said that it was not the bus driver's fault. His evidence upon this point, in my opinion, should not be accepted and the learned trial Judge rightly rejected it. It is rather peculiar that he should have remembered the answers given by this one witness and none of the answers given by any of the other witnesses. In my opinion the evidence of Matcher is to be accepted. That establishes that not only was the omnibus travelling at a fast rate and the driver did not sound the horn as obviously as he ought to have done travelling at that speed, but that the omnibus also swerved to its wrong side. The motor bus driver, has not been called to explain how it was that he failed to blow the horn or state that he did do so or deny that he went on to his wrong side and why it was that he did not see the little boy in front of the car in sufficient time to pull up and avert the accident. In my opinion the negligence was clearly proved.

3. Then the question of damages arises. I observe" that the learned trial Judge has not addressed himself to the basis upon which damages in such cases as this have to be awarded. This was a fatal accident and obviously the suit had been brought under the Fatal Accidents Act (13 of 1855) which, as in England, enables the legal representatives of the deceased persons to maintain actions in respect of fatal injuries caused to these whom they legally represent, thus making on

exception to the rule of action per stirpes moritur cum persona ; but although a right of action is given to the 'legal' 'representatives, widows, husbands, fathers and children, there is a recognized basis for the assessment of damages. Only such damages can be awarded as can be shown to have been actually suffered financially by those who bring the suit; sentimental damages' cannot be 'awarded nor can damages be awarded merely for the loss of a son, daughter, a wife or a husband unless actual financial damages 'have been suffered or, as was decided in 'an English case, where there was at the time of the accident a prospective pecuniary advantage to those who afterwards bring the suit which prospective pecuniary advantage is lost by reason of the fatal injury caused to 'the person 'In respect of whose death the suit is filed.

4. In most cases' the damages which are recoverable are the amount of money which has been 'expended : for the medical and funeral expenses and where plaintiffs are able to show that they were wholly or partially dependent with the earnings of the deceased person, damages on that basis. On the latter basis previously to 1912' there were no reported cases where suitors had 'recovered damages in respect of 'fatal injuries unless they had been able' to show that, the deceased | person' was actually earning an income some or all of which was devoted to the maintenance or help or support of 'the suitor. But in *Taff Vale Railway v. Jenkins* (1913) AC 1 a considerable advance was made. There the facts were that a girl aged 16 was living with her parents and used to go from the place where her parents lived to another place by train. In the latter place, she was apprenticed to a firm of drapers and dressmakers and was learning the business of dress making. She was unfortunately killed in a railway accident in the train when either going to or coming back from the place of her work : and a suit was brought by her father for himself and her mother under Lord Campbell's Act (Fatal Accidents Act) for damages for the loss of the girl. There was evidence that she was an unusually intelligent girl, and though she was still an apprentice she was shortly to emerge from her apprenticeship ; and there was evidence that she had prospects of beginning before long to earn a remuneration which might quickly have become substantial.

5. There was further evidence that she came to her parent's house at night and that from time to time she gave them some assistance in the house ; and in the view of Viscount Haldane, L.C., there was certainly material on which the jury might think that she might have given some assistance in the shop which her mother kept which was a greengrocer's shop and the father was beginning to fail somewhat in health; he was at all events not so robust as in his younger days, and the jury might 'reasonably have taken the view that the amount of assistance which she would have given at home to the parents would have been considerable and also that 'she might have carried on her own business as a dressmaker and earned some money. Their Lordships refused to speculate with regard to the damages holding that was the function of the jury and upheld the jury's assessment of the damages at 75. The present case of course is a stronger case because there is evidence that this little boy was actually earning some money. Rs. 6 a month is what his mother, the respondent her state he was receiving. He was 12 years of age and although there is no evidence that he contributed any part of that very small monthly sum towards the support of his mother that is probably absent because it did not Strike anybody that such evidence as that is of considerable importance. In a case like this it is not wrong to think that the learned trial Judge might reasonably have supposed that he was in the habit of contributing either the whole of the amount some portion of it towards the support of his mother who was unemployed.

6. Then again, being 12 years of age and Earning that amount of money at that age, it is reasonable to suppose that his wages would have increased as he became older. It is of course impossible to say for how many years he would have remained single and assisted his mother nor how long his mother who was aged 60 at the time of the trial would live. The learned trial Judge has awarded Rs. 600 damages, and in my view, the damages awarded were not excessive. Rs. 6 a month is Rs. 72 a year and as I have before stated these wages would be likely to increase later on. For these reasons, I am of opinion that not only was the negligence allegation fully made out but that the damages awarded, namely Rs. 600. were quite reasonable. Therefore this appeal must be dismissed, and, as there is no appearance for the respondent, without costs.

Madhavan Nair, J.

7. I agree.

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