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Court : Chennai

Decided On : Sep-03-1987

Reported in : II(1987)ACC557

Judge : S. Swamikkannu, J.

Appellant : Seethamma and ors.

Respondent : The Director of Fire Services Represented by the State of Tamil Nadu

Judgement :

S. Swamikkannu, J.

1. It admits of no doubt that the occurrence took place only due to rash and negligent driving of the vehicle in question. The respondent had filed a counter wherein it is alleged that the deceased was responsible for his own death and as such there is no negligence on the part of the driver of the vehicle TMZ 140. A careful perusal of the evidence in this case clearly shows that in a most reckless manner, the vehicle in question had been driven by the driver. The driver of the vehicle in question was examined as R.W. 1. Henry, has stated in his evidence that the vehicle was being taken from the Fire Station for rescuing the buffalo and in that process while negotiating a bridge, this occurrence had taken place. The

rescue call was to rescue the buffalo which had fallen into the ditch. This is not a great emergency call. Therefore there is no justification for the van to proceed at a terrible speed in a' bridge locality and killed a pedestrain. To rescue the buffalo which has fallen into a ditch is not a sovereign function of the State as the job can be undertaken by any private individual or the public. There is nothing peculiar about it and the respondent, the Director of Fire Service representing the State, was not discharging a sovereign function of the State during the time of the occurrence. That apart Section 110A of the Motor Vehicles Act and the rules made thereunder expressly make every owner of the vehicle including the Government liable for the tortious acts by its servants as well. After the amending Act of 100 of 1956 by which Section 110-A of the Motor Vehicles Act has been inserted, the distinction of sovereign and non-sovereign acts of the State no longer exists, as all owners of vehicles are brought within the scope of the said Section, namely Section 110-A of the Motor Vehicles Act which reads as follows:

110-A. Application for compensation:

(1) An Application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made.

(a) by the person who has sustained the injury; or (aa) by the owner of the property: or

(b) where death has resulted from the accident, (by all or any of the legal representatives) of the deceased; or

(c) by any agent duly authorised by the person injured (or all or any of the legal representatives) of the deceased, as the case may be:

(Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application).

(2) Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain, such particulars as may be prescribed.

(3) No application for compensation under this section shall be entertained unless it is made within (six months) of the occurrence of the accident: Provided that the Claims Tribunal may entertain the application after the expiry of the said period of (six months) if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

2. The authority for this proposition is found in Government of Andhra Pradesh Transport Department v. Mrs. K. Padma Rani 1975 ACJ 462 where the claim of the State Government to immunity was negatived when the vehicle was involved in the construction of a Dam Bridge. Therefore even in a case where Dam Bridge was claimed to be a Sovereign Work, It was negatived. Hence, the Government cannot claim immunity in this case on the ground of Sovereign function. Here the van, for rescuing the buffalo, owned by the State had been utilised. Even before reaching the place where the buffalo might have been got itself, the deceased had been done to death by the driver of the vehicle. The evidence in this case disclosed that the hair and the particles of the flesh of the body of the deceased got struck up to the wall between which and the vehicle the deceased had been jammed. Therefore on behalf of the Government, respondent herein, it cannot be claimed that there was some immunity on the ground of sovereign function. Already this Court finds that using a Government van for rescuing a buffalo is not a Sovereign function especially when it is not the case of the respondent that the said buffalo has been owned by the State. Under the circumstances, this Court confirms the finding of the Tribunal that it was only due to the rash and negligent driving of the vehicle that the occurrence had taken place in which the deceased breathed his last. Though there is evidence to show that on the way to the hospital, he had died, it may not be incorrect it is presumed that only the dead body could have been taken from the place of impact, to the hospital. The fact that the heir and particles of the body can get themself struck to the wall to which the deceased had been pinned by the vehicle in question shows the valocity with which the vehicle was plying, at the time of the occurrence ringing the bell

attached to that vehicle as- if some great mishap had happened and as if thousands of people will lose their life if the vehicle does not reach its destination for which it had been sent by the authorities concerned. It is further irksome to note that the vehicles which are being used for the purpose of rescuing a buffalo should at all use bell. From the contents of the counter filed in the instant case, it looks as though that a pedestrain should fly away from the spot which is being utilised by the vehicle which is proceeding to discharge its duty which duty is the solomn function of rescuing buffalo. Learned Counsel for the claimants submits that the postmortem certificate in this case Ex. P. 4 where 25 external injuries and 13 internal injuries have been noted and the opinion offered by the doctor is that the deceased would have died due to the injuries sustained by him during the time of the occurrence.

3. Let us now discuss the quantum of compensation.

4. The Tribunal has awarded a sum of Rs. 20,000/-, as compensation. Learned Counsel for the appellants submits that the deceased was a clerk earning about 250 per month and in proof of the same Ex P. 5 Employment Certificate had been produced before the Tribunal. P.W. 3 is the widow of the deceased who has given evidence on this aspect. She has also produced the Salary Certificate from the employer namely the Provision Store to the effect that the deceased was an accountant in the firm drawing a salary of Rs. 250/-. The income certificate has not been properly proved, but the salary describe therein is not only fair but also reasonable and issued by a firm which appears to be in existence for more than half a century. The Tribunal has correctly fix'd the income of the deceased at Rs. 200/- p.m. The petitioners claimed Rs. 45,000/- for the loss of pecuniary benefits to the family. Having regard to the age of the deceased, I am of the opinion that he would have continued to be an Accountant for 15 more years and therefore I apply 15 years multiplier to this case. Out of the salary of Rs. 200/-., he would have spent Rs. 50/- for his lunch and bus fare and he would have contributed a sum of Rs. 150/- p.m. to the family. Calculating at this rate, the compensation for the loss of pecuniary benefit would come to Rs. 150 x 12= Rs. 1,800/-. For 15 years, the amount comes to Rs. 27,000/-. From this lump sum payment, 25% has to be deducted. Thereafter the net amount comes to Rs. 20,250/-.

5. The petitioners/Appellants claimed a sum of Rs. 5,000/- as loss of consortium of life for the widow. This Court is of the opinion that if a sum of Rs. 5,000/- is awarded, it would certainly be in the interests of justice and a sum of Rs. 5000/-, is hereby awarded for loss of consortium. The widow P.W. 3 has six children all minors and she herself is aged about 35. She is now living in the lurch with her six minor children and also aged mother-in-law. Therefore, a sum of Rs. 5,000/- is awarded to her for loss of consortium.

6. In the result the appeal is allowed and an award is passed against the respondent for a sum of Rs. 25,250/-. Out of this sum of Rs 25,250/-the mother of the deceased, the first appellant is granted a sum of Rs. 2,000/-, the second appellant, who is the widow is granted a sum of Rs 8,000/-(including the sum of Rs. 5,000/- awarded as compensation towards consortium); appellants 5 and 6 who are aged 12 and 10 respectively at the time of the accident are granted a sum of Rs. 3,000/- each; and appellants 3, 4,7 and 8 are each allotted a sum of Rs. 2,302.50 P. The said amount has to be deposited within 2 months from today, since it is submitted on behalf of the appellants that the respondent had not deposited the compensation awarded by the Tribunal. Therefore the entire sum of Rs. 25,250/-has to be deposited within two months with interest at 12% per annum from the date of petition till date of deposit. The shares of the minors should be kept in fixed deposit in any one of the Nationalised Banks till they attain majority. The second appellant is permitted to draw the interests due on the amounts once in three months for the maintenance of the minors. There will be no order as to costs.

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