Vimala and ors. Vs. Devadoss and ors.

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Court : Chennai

Decided On : Dec-02-1991

Reported in : 1993ACJ321

Judge : K. Venkataswami and ;A. Abdul Hadi, JJ.

Appeal No. : C.M.A. No. 867 of 1991

Appellant : Vimala and ors.

Respondent : Devadoss and ors.

Advocate for Def. : Arul Silambayiram, Adv.

Advocate for Pet/Ap. : R. Vedantham, Adv.

Disposition : Appeal Allowed

Judgement :

Abdul Hadi, J.

1. This appeal is against the award of the Motor Accidents Claims Tribunal, Tirunelveli, in MCTOP No. 50 of 1989 granting compensation of Rs. 45,000/- Nos. 1 to 3 herein, for the death of one Devi, who is the widow of the first respondent herein and mother of the respondent Nos. 2 and 3 herein, in the motor accident that took place on 30.10.1988 at about 4 a.m. By the said award the said

compensation is made payable by the appellants herein on the one hand and the fourth respondent Thiruvalluvar Transport Corporation Limited on the other hand, in the ratio of 50:50. Admittedly the bus TML 9935 of the fourth respondent herein, while it was going to the claimants, who are the respondent on the road, in its trip from Coimbatore to Nagercoil, hit the stationary lorry TNL 9198 which was parked on the road and, as a result of the said accident, the above said Devi, who was travelling in the bus, got injured and died in the hospital subsequently. The above said lorry belongs to the first appellant herein and the insurer thereof is the second appellant. They were respectively respondent Nos. 2 and 3 in the Tribunal below while the fourth respondent herein was the first respondent in the Tribunal below. In view of the above said accident and the resultant death, the above said claimants filed the above said MCTOP No. 50 of 1989 seeking a compensation of Rs. 1,00,000/- from the fourth respondent herein as well as the appellants herein.

2. The only point argued by the learned Counsel for the appellants is that the appellants should not have been fastened with any liability, that only the fourth respondent herein should have been made liable solely and that at any rate, the apportionment of liability cannot be in the ratio of 50 : 50 but that it should be 75 : 25 between the fourth respondent and the appellants herein respectively. To substantiate this contention, the learned Counsel drew our attention to the finding of the Tribunal below holding that the driver of the above said bus, viz., RW I was negligent. The relevant observation of the Tribunal below giving out the said finding is as follows:

(Omitted as in vernacular)

However, after making the above said statement, the Tribunal also makes the following statement:

(Omitted as in vernacular)

and thereby comes to the conclusion that the appellants are also liable along with the fourth respondent herein. The learned Counsel points out that after coming to the above-referred-to finding expressed in the first of the above said two statements, the Tribunal below has no justification to hold the appellants also

liable.

3. There is force in this argument of the learned Counsel. A mere plea by the claimants is not enough to hold that the appellants are also liable. On the other hand, the evidence of PW 2, the only eye-witness to the accident, who is the brother of the deceased Devi and who was travelling along with her in the abovesaid bus when the accident took place, is as follows:

(Omitted as in vernacular)

Further, he also deposed that

(Omitted as in vernacular)

All these depositions were in the chief-examination itself. So according to the only eye-witness to the accident, the negligence was only by the fourth respondent, i.e., bus driver. The other witness on the side of the claimants was admittedly not present at the spot when the accident took place. He no doubt deposed, inter alia, that he sent the deceased and her brother (PW 2) in the abovesaid bus for going to Nagercoil. In the cross-examination of PW 1 there was no suggestion that PW 2 did not go in the said bus along with the deceased. However, curiously, the counsel for the Corporation put a suggestion to PW 2 alone that PW 2 did not travel along with the deceased in the abovesaid bus. So the said suggestion to PW 2 cannot be given any weight and it should be taken that PW 2 travelled along with the deceased and that he witnessed the accident. PW 2, apart from what he had stated in the chief-examination as stated above, in his cross-examination by the first appellant admitted that the abovesaid first appellant's lorry was parked on the road at its left side. That apart, RW 1, the driver of the bus, also admitted in cross-examination as follows:

(Omitted as in vernacular)

This also shows that the road in question where the accident took place is a broad one and the lorry of the first appellant was not on the main part of the road but it was below, presumably, the kacha part of the road.

4. No doubt the learned Counsel for the Corporation which owned the bus has strenuously contended that the red light of the lorry at its rear side was not kept burning while it was parked on the road and so the driver of the lorry also was negligent and hence the owner of the lorry and the insurer thereof are also liable; and further, he argued that the apportionment of the liability between the appellants on the one hand and his client on the other hand, done by the Tribunal below is correct and the said apportionment should not be in any way disturbed. In this connection, he also drew our attention to the Rule 296 (a) and Rule 296(c) of Tamil Nadu Motor Vehicles Rules, 1940, which prescribes that even when a vehicle is parked in a road during night time, the red light in the rear side of the vehicle should be kept burning. The said learned Counsel also brought to our notice that the appellants did not examine anybody on their side.

He also brought to our notice the decision in Palghat-Coimbatore Transport Co. Ltd. v. Narayanan AIR 1939 Madras 261, where it has been held that in a case of composite negligence of two vehicles, both the owners of the vehicles are jointly and severally liable.

He also drew our attention to decisions where in the case of a composite negligence equal apportionment of liability was resorted to. On the other hand, the learned Counsel for the appellants drew our attention to the decision in Principal, Tamil Nadu Theological Seminary v. A. Saraswathi , where the apportionment was in the ratio of 75 : 25.

5. Regarding these rival submissions, no doubt we find that RW 1 deposed that in the abovesaid parked lorry, there was no red light burning at its rear side. But it has been held in K. Gopala krishnan v. Sankara Narayanan 1969 ACJ 34 , that the failure to observe the driving regulations does not in itself necessarily constitute negligence and the effect given to the said failure must necessarily depend on the facts of each case. In the present case, we find that RW 1 also deposed in cross-examination that through the front lights of his bus he could see 30' distance on the road. So he could have easily seen the parked lorry at a distance of 30' and if he had been careful he could have applied the brakes and stopped his vehicle without hitting the lorry, particularly when it is admitted by him that the lorry was

only on the left side of the road, that too, below the main part of the road and that the road in question was a broad straight road. RW 1, no doubt, sought to defend himself by saying:

(Omitted as in vernacular)

But first of all there seems to be no plea to this effect. That apart, as soon as he found that in view of the glare of the bright lights of the vehicles from the opposite side he could not see the road before him, he should have very much slowed down his vehicle or even stopped it. Further, anyway, the negligence on the part of those vehicles in creating the said glare and the want of care on the part of RW 1 in such a situation cannot be disregarded. So the non-burning of the rear red light of the lorry, by itself, cannot be taken as negligence on the part of the lorry driver, in the face of the abovesaid evidence of RW 1.

6. Another feature in the evidence of the RW 1 also may in this connection be noted. He deposed that his employer, the Corporation, had agreed to pay Rs. 25,000/- as compensation (no doubt according to him on compassionate ground) which cannot be believed and that if the Tribunal directed any sum in excess of the said Rs. 25,000/- as compensation, the said excess over Rs. 25,000/- should be paid by the appellants herein. This shows that if the Tribunal came to a decision that a compensation of Rs. 25,000/- alone should be paid to the claimants then the fourth respondent itself would bear the entire responsibility of paying the said sum. That means in that case he was alone negligent. If that is so, it cannot be said he was not negligent exclusively if the compensation is above Rs. 25,000/-. Further the argument based on the non-examination of any witness on the side of the appellants has no merit. In the light of the evidence given by RW 1 and also PW 2 we do not think that there is any necessity for the appellants to examine anybody on their side. The non-examination of any witness on the side of the appellants is not fatal to the case of the appellants.

7. In the above circumstances, we hold that the fourth respondent herein alone is liable to pay the abovesaid compensation and not the appellants. In the abovesaid view we have taken, there is no necessity for going into the other question regarding the justification or extent of apportionment of compensation payable in a

case of composite negligence. Accordingly, appeal is allowed; however, in the circumstances of the case, no costs.