

SUPREME COURT OF INDIA

M/s Tamil Nadu State Transport Corporation, Tanjore, rep. by its M.D.

Vs.

Natarajan

C.A.No.3991 of 2003

(Doraiswamy Raju and D.M. Dharmadhikari JJ.)

06.05.2003

JUDGMENT

D.M. Dharmadhikari, J.

1. Leave to appeal is granted. The learned counsel appearing for the parties are heard on the merits of the case.

2. The facts of this case are peculiar and the procedure adopted and decision rendered by the Division Bench of the high Court is rather strange.

3. The appellant is Tamil Nadu State Transport Corporation (referred to as the 'Corporation' for short). On 28.11.1983, respondent No. 1 while driving bus of the Corporation collided against private bus coming from opposite direction. The bus of the private operator was insured with respondent No. 3 United India Insurance Company. As a result of the accident Respondent No. 1 who was driver of the bus of the Corporation suffered multiple fractures of his right leg which had to be ultimately amputated. The driver of the Corporation bus filed a claim petition for compensation under the provisions of *Motor Vehicles Act 1939* in the Court of Subordinate Judge, Chidambaram. In the claim petition only the proprietor of the private bus and the Insurance Company from which it was insured were made parties. The Claims Tribunal i.e. the Court of Subordinate Judge, Chidambaram in its award made on 21.10.1986 came to the conclusion that the cause of accident was due to contributory negligence of the drivers of both the buses and their liability was apportioned to be 50 : 50 per cent. The total quantum of compensation determined by the Tribunal is Rs. 1,20,000/- [Rupees One Lac & Twenty Thousand] only. In view the fact that the claimant as driver of the Corporation bus was negligent to the extent of fifty percent, the Claims Tribunal fixed joint liability of the private bus owner and its insurance company at Rs. 620,000/- [Rupees Sixty Thousand] only with interest rate at 9% per annum from the date of filing the claim petition.

4. The respondent/claimant preferred an appeal to the High Court seeking enhancement of the amount of compensation. The learned Single Judge of the High Court dismissed the

appeal on 7.3.1996 on the ground that there was long nine years delay in re-filing the appeal after remedying the defects pointed out at the initial filing of the appeal.

5. Against rejection of the appeal by the learned Single Judge, the claimant preferred Letters Appeal before the Division Bench of the High Court of Madras. The Division Bench suo motu impleaded the present appellant-Corporation as respondent in the appeal before it. The Division Bench upheld finding of the tribunal that the cause of accident was contributory negligence on the part of drivers of both the vehicles. The Division Bench re-determined the quantum of compensation and held the claimant entitled to a total sum of Rs. 2,09,800/- [Rupees two lakh nine thousand and eight hundred] only on different heads. It also awarded 9% interest per annum on the amount of compensation from the date of filing claim petition. Surprisingly without stating the law, the Division Bench ordered that the compensation awarded shall be borne equally by the insurer of the private bus (respondent No. 3 herein) and the Corporation (the appellant herein).

6. Learned counsel appearing for the appellant-Corporation contends that the claimant had not made the Corporation as a party-respondent either before the Tribunal or in appeal before the learned Single Judge. There was no justification in law for the Division Bench to suo motu implead the Corporation as a party in the Letters Patent Appeal to fasten liability to extent of 50% of the total sum awarded on the Corporation.

7. The owner of the private bus was initially impleaded as respondent No. 2 in the Special Leave Petition before us but his name subsequently came to be deleted as he was reported to have died in the course of proceedings before the High Court. His legal heirs were not brought on record and his name was allowed to be delted by this Court.

8. The insurer of the private bus is however before us as respondent No. 3. The learned counsel appearing for the Insurance company is also heard. The contention advanced on behalf of the insurance company is that since the Corporation did not prefer any appeal against the order dated 31.11.2001 where-under the Division Bench suo motu impleaded it as a party, the grievance raised in this appeal before the Court should not be entertained. Such argument is unacceptable as we have to decide on the correctness of the ultimate order made in the appeal by the high Court.

9. From the facts of the case and nature of the claim stated above, we find absolutely no justification in law for the Division Bench of the Madras High Court in its impugned order imposing liability to the extent of 50% on the appellant/Corporation. The Division Bench of the high Court completely over-looked that the claimant himself was driver of the Corporation bus and was found negligent to the extent of 50% for causing accident. In view of the above finding of contributory negligence on the part of the claimant as driver of the Corporation bus, the Corporation as an employer cannot be held to be vicariously liable for the negligence of the claimant himself. The claim petition did not make the Corporation as a party to the claim obviously because the claimant exercised option of approaching the Claims Tribunal under the Motur Vehicles Act against the owner and insurer of the private bus. He did not file any claim under the Workmen Compensation Act against the employer.

Since the Corporation was not at fault and the accident was caused because of the contributory negligence of the drivers of both the buses, the Corporation could not be held liable under the provision of Motor Vehicle Act. It was not a claim based on 'no fault liability'. It was a claim petition filed by the claimant against the owner and insurer of the private bus. The claimant is also represented before us and on his behalf it is stated that he has been given compassionate appointment on suitable alternative job and he never desired to obtain any other compensation from his employer. The Division Bench of the High Court therefore committed a serious error in apportioning and fastening 50% liability of compensation on the appellant/Corporation. This part of the award therefore deserves to be set aside. The liability of the respondent/insurance company as insurer of private bus is found to be only to the extent of 50% of the total compensation determined. The total compensation determined is Rs. 2,09,800/ [Rupees two lakh nine thousand and eight hundred] only. Fifty per cent liability of the insurer of the private bus would therefore be Rs. 1,04,900/- [Rupees one lakh four thousand and nine hundred] only. On the aforesaid amount, the claimant would be entitled to an interest rate at 9% per annum from the date of filing the claim petition as awarded.

10. Consequently, the appeal is allowed. The impugned order of the High Court dated 6.12.2001 in so far as it fastens 50% liability towards compensation on the appellant/Corporation is concerned is hereby set aside. It is held that in view of the contributory negligence on the part of the claimant, the respondent Insurance company being the insurer of the private bus, would be liable to pay compensation in the sum of Rs. 1,04,900/- [Rupees one lakh four thousand and nine hundred] only with 9% interest from the date of filing the claim petition, as directed by the High Court. In the circumstances, there shall be no order as to costs.