

C.M.A.No.1842 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1842 of 2006

K.Shanmugam

... Appellant / Claimant

..VS..

1. V.Krishnamurthy, Proprietor,
Aviation Express,
No.142 Eldams Road, Teynampet,
Chennai 600 018
2. United India Insurance Co. Ltd.,
B.O.012601 Appasamy Towers,
II Floor, Pondy Bazar,
Chennai 600 017

... Respondents /
Respondents before the Tribunal.

Appeal filed under Section 173 of Motor Vehicles Act 1988,
against the Judgment and Decree, dated 27.09.2004 made in
M.C.O.P.No.201 of 2003 on the file of the Motor Accident Claims
Tribunal, Fast Track Court No.IV, Additional District Court,
Poonamallee.

For Appellant : Mr. U.M.Ravichandran
For Respondent-1 : No Appearance
For Respondent-2 : Mrs. I.Malar.

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellant / claimant as against the award passed by the Motor Accident Claims Tribunal, Additional District Court / Fast Track Court No.IV, Poonamallee, in MCOP No.201 of 2003.

2. According to the appellant / claimant, on 21.04.2003 when he was riding his M-80 Motorcycle, near DC Road, Meenambakkam, in GST Road, the Ambassador Car belonging to the first respondent, which was driven by its driver, came at a high speed and hit the claimant and the pillion rider. Due to the said impact, the claimant fell down and sustained fracture on left ankle, besides receiving multiple injuries all over the body. Stating so, he has filed a claim petition before the Tribunal claiming a sum of Rs.2,00,000/- as total compensation.

3. The Tribunal, after elaborate trial, has held that the accident had occurred due to the rash and negligent act on the part of the driver of the Ambassador Car belonging to the first respondent herein and insured with the second respondent / Insurance

C.M.A.No.1842 of 2006

Company as well as the claimant and fixed the contributory negligence at 60% and 40% on them and ultimately arrived at the total compensation at Rs.65,880/-. Accordingly, the Tribunal after deducting 40% from the said quantum towards contributory negligence on the part of the claimant, has directed the Insurer to pay a sum of Rs.39,500/- along with interest and costs. Branding the quantum so awarded as disproportionate to the nature of the injuries sustained and lesser, the claimant / appellant has preferred this Appeal, seeking enhancement of the compensation awarded by the Tribunal.

4. Heard the learned counsel for the appellant / claimant, the learned counsel for the second respondent / Insurance Company and perused the records. Despite serving the notice on the first respondent and his name having been printed in the cause list, there is no appearance on his behalf.

5. The learned counsel for the appellant / claimant submitted that the Tribunal erred in fixing 40% contributory negligence on the claimant, since there is no concrete evidence or document to speak

C.M.A.No.1842 of 2006

about the involvement of the claimant in the accident due to the fact that he was in drunken state; considering the fact that the claimant has suffered bi-Malleolous left ankle injuries and other serious injuries in all over the body, the Tribunal ought to have awarded compensation towards loss of income, loss of amenities and attendant charges; further the amount awarded towards transportation expenses and extra nourishment is too low; in any event, the total amount of compensation arrived at by the Tribunal needs substantial enhancement.

6. Per contra, the learned counsel for the second respondent / Insurance Company submitted that Ex.P-10-Wound Certificate, coupled with the evidence of P.W.2-Dr.N.Saichandran would establish the fact that, at the time of accident, the claimant was in a drunken state and hence, the Tribunal ought to have dismissed the claim petition itself, since the claimant himself is a tort-feasor to the accident; on the contrary, the Tribunal erred in fastening 60% liability on the Insurer based on the evidence and document adduced by the claimant; in any event, the quantum arrived at by the Tribunal is against the settled principles of law, excessive and

C.M.A.No.1842 of 2006

exorbitant and also perverse and hence, the same has to be set-aside. The learned counsel for the second respondent submitted that the claimant was in an inebriated condition, which was proved by Ex.P-10 wound certificate, no claim can be sustained by him.

7. This Court has paid its anxious consideration to the learned counsel for the claimant / appellant and Insurance Company / second respondent and perused the materials available on record.

8. A perusal of the award of the Tribunal would go to show that the Tribunal, by considering Ex.P-1-FIR and Ex.P-10-Wound Certificate and taking note of the fact that the rider of the two-wheeler (claimant) was in an inebriated condition at the time of accident, has fastened 40% contributory negligence on the claimant himself and 60% on the Insurance Company. Thus, the Tribunal has apportioned the contributory negligence between the claimant and the Insurer of the Ambassador Car at 40% and 60% respectively.

9. While considering the claim of enhancement, the point to be answered in this Appeal is, whether 30ML outer limit of alcohol consumption as fixed under Section 185 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") for a person driving the vehicle, is correct.

10. At the outset, it is necessary to look into some of the materials available globally with statistics on this issue.

11. 96% of countries are having either national or sub-national laws on drunken driving. However, only 88 countries (49%) have a drunken driving law that uses a Blood Alcohol Concentration (BAG) limit of less than or equal to 0.05 g/dl, as recommended in the World Report. While most countries (86%) in the European region, have BAG laws in line with the recommendation and in other regions of the world, they either do not have BAG limits or have limits that are above 0.05 g/dl.

12. Random breath-testing and police checkpoints are important enforcement mechanisms that have been shown to reduce alcohol-related crashes. 79% of countries reported that they use one or both of these methods of enforcement. However, only 23 countries (13%) reported an enforcement rating of over 7 on a scale of 0 to 10. This represent 21% of high-income countries, 11% of middle-income countries and just 9% of low-income countries. Taken together, these findings show that only 10% of participating countries, covering 24% of the World's population, have both adequate drunken driving laws (as defined by a BAG limit of less than or equal to 0.05 g/dl) and enforcement ratings of over 7.

13. Drinking and driving increases both the risk of a crash and the likelihood that death or a serious injury will result. The risk of involvement in a crash increases significantly above a Blood Alcohol Concentration (BAG) of 0.04 g/dl. Laws which establish lower BACs (between zero and 0.02 g/dl) for young / novice drivers, can lead to reduction between 4% and 24% in the number of crashes involving young people. Enforcing sobriety checkpoints and random breath-testing can lead to reduction in alcohol-related crashes about 20%,

and has been shown to be very cost-effective.

14. Young or novice drivers are at a much increased risk of having a road traffic crash, when under the influence of alcohol. Consequently, the World Report advised that BAG limits for this group be set lower than limits for the general population. Only 19 of the 139 countries, which have BAG limits for the general population, have stipulated lower BAG limits for these young and novice drivers, and most of these countries are in the European Region.

15. Reports say, India has less maintained roads. More than 130,000 people were killed on its roads during 2015. In 2006, India overtook China as single largest contributor to the global number of road deaths.

16. Drunken driving has been responsible for at least 70% of all fatal road accidents in Delhi, which reports between 1,500 to 1,700 road fatalities and 6,000 to 75,500 grievous injuries in road accidents every year. As many as 295,967 drunken driving cases

C.M.A.No.1842 of 2006

were registered between 2006 and 2014 and Rs.45.55 crore of fines were collected from the offenders. Out of this, 58,232 drivers have been jailed since 2007, and the driving licences of 48,601 offenders have been cancelled. In the first six months of 2015, more than 15,000 convictions have been handed out. All these accidents have been caused only due to drunken driving.

17. Breathalysers act as important weapons in the hands of the police to administer quick roadside tests in the fight against drunken driving.

18. According to law, individuals found with 30 ml per 100 ml of alcohol in their blood are considered to be incapable of driving. A breathalyser estimates an individual's blood alcohol levels. When a person breathes into the device, it picks up on the molecular content of alcohol in the breath from the lungs and converts it into the approximate blood alcohol level. When alcohol enters the bloodstream after being consumed, it is not instantly digested and chemically remains unchanged. This means that when the blood passes through the lungs, some of this alcohol, which is naturally

highly volatile, evaporates into the air present there. When expelled, this is picked up by the breathalyser.

19. While not as accurate or reliable as blood tests, the blood alcohol level readings registered by breathalysers generally comes quite close to the actual levels, according to the reports. However, several factors such as the improper calibration of the device, radio frequency interference and physiological differences (weight, body temperature and breathing patterns), can at times, increase the margin of error. However, if an individual does refuse, they are required to provide a blood sample for a lab test to check blood alcohol levels. Additionally, if the police suspect, that the reason for refusal is drunkenness, they can put a person under arrest without a warrant and take them to the closest hospital or police station for a blood test.

20. At this juncture, it is apropos to extract Sections 19(1)(f) and 185 of the Motor Vehicles Act, 1988 and Rule 21 of the Central Motor Vehicles Rules, 1989, which read as under:

“19. Power of licensing authority to disqualify from holding a

driving licence or revoke such licence. - (1)If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that the –

- (a) to (e) or
- (f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or...”

“185. Driving by a drunken person or by a person under the influence of drugs. – Whoever, while driving, or attempting to drive, a motor vehicle -

- (a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or
- (b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle.

shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two year, or with fine which may extend to three thousand rupees, or with both.

Explanation – For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.”

“21. **Powers of licensing authority to disqualify.**—For the purpose of

clause (J) of subsection (1) of section 19, the commission of the following acts by holder of a driving licence shall constitute nuisance or danger to the public, namely:—

- (1) Theft of motor vehicle.
- (2) Assault on passengers.
- (3) Theft of personal effects of passengers.
- (4) Theft of goods carried in goods carriages.
- (5) Transport of goods prohibited under any law.
- (6) Driver, while driving a transport vehicle, engages himself in activity which is likely to disturb his concentration.
- (7) Abduction of passengers.
- (8) Carrying overload in goods carriages.
- (9) Driving at speed exceeding the specified limit.
- (10) Carrying persons in goods carriage, either inside the driver's cabin in excess of its capacity or on the vehicle, whether for hire or not.
- (11) Failing to comply with the provisions of section 134.
- (12) Failure to stop when signaled to do so by any person authorised to do so.
- (13) Misbehaviour with and showing discourtesy to passengers, intending passengers or consignors and consignees of goods.
- (14) Smoking while driving public service vehicles.
- (15) Abandoning vehicle in a public place causing inconvenience to other road users or to passengers in the vehicle.
- (16) Driving vehicle while under the influence of drink or drugs.
- (17) Interfering with any person mounting or preparing to mount upon any other vehicle.
- (18) Allowing any person to sit or placing things in such a way as to

impede the driver from having a clear vision of the road or proper control of the vehicle.

(19) Not stopping a stage carriage at approved stopping places for a sufficient period of time in a safe and convenient position upon demand or signal of the conductor or any passenger desiring to alight from the vehicle and unless there is no room in the vehicle, upon demand or signal of any person desiring to becoming a passenger.

(20) Loitering or unduly delaying any journey and not proceeding to the destination as near as may be in accordance with the time table pertaining to the vehicle, or, where there is no such time table, with all reasonable despatch.

(21) Not driving a contract carriage, in the absence of a reasonable cause, to the destination named by the hirer by the shortest route.

(22) The driver of a motor cab not accepting the first offer of hire which may be made to him irrespective of the length of the journey for which such offer is made.

(23) The driver of a motor cab demanding or extracting any fare in excess to that to which he is legally entitled or refusing to ply motor cab.

(24) Abandoning a transport vehicle as a mark of protest or agitation of any kind or strike in a public place or in any other place in a manner causing obstructions and inconvenience to the public or passengers or other users of such places.

(25) Using mobile phone while driving a vehicle.”

21. On a conjoint reading of clause (f) of sub-section 1 of

C.M.A.No.1842 of 2006

Section 19 of the Motor Vehicles Act with clause (16) of Rule 21 of the Central Rules, this Court finds that on registration of an offence under Section 185, the power to suspend the driving licence under Section 19 can be exercised by the Licencing Authority. The Licencing Authorities will have to invoke the said power in the cases of violation of clause (a) of Section 185. The exercise of the said power may have the desired deterrent effect. The State Government will have to issue appropriate directions to ensure that there is a proper coordination between the Police and the Licencing Authorities so that an action of suspension of the driving licence is initiated immediately after the offence is committed.

22. At this stage, this Court is constrained to express grave concern about the growing problem of driving while under the influence of alcohol. Daily newspapers clearly demonstrates the likely impairment of cognitive functions essential to driving a vehicle caused by an intake of alcohol. While Section 185 prescribes the so-called 'limits', it is duty-bound to observe that these limits seem to be theoretical. The effect of alcohol on an individual can vary widely. It may be a function of a multitude of factors, including body type,

C.M.A.No.1842 of 2006

the amount of food taken before or after alcohol consumption, a genetic disposition to high or low tolerance for alcohol, how fast the alcohol is consumed and even external factors. These effects are well studied, but they cannot be viewed in isolation, nor is it reasonable, in the view of this Court, to adopt any particular norm that may be applied in other jurisdictions overseas.

23. According to the Ministry of Road Transport and Highway, India's road fatality figures are directly linked to drunken driving. About 16 persons die every hour across India in road mishaps. While the report titled 'Road Accidents in India 2014' carries the statistics indicating the number of persons injured and dead in road hazards, it does not specifically mention the number of persons affected by drunken driving.

24. Further, despite the law's seemingly stern approach to drunken driving offenders, societal attitudes, by far and large, do not match. A study by the National Institute of Mental Health and Neuro Sciences (NIMHANS) found that 99% of drivers who drink and drive, agree that it (drinking and driving) is dangerous and 97%

were aware that it is prohibited under laws. Despite this, many Indians are still getting behind the wheel whilst intoxicated.

25. In India, the legal age for drinking varies from 18 years to 25 years from state to state, while some states have completely banned alcohol. For instance, a state like Goa, Himachal Pradesh, Karnataka and others have a legal drinking age of 18 years. States like Delhi, Haryana and others have a legal drinking age of 25 years, while most states have a legal drinking age of 21 years. Consumption of alcohol is completely banned in the states of Gujarat, Bihar, Manipur and Nagaland, as well as the union territory of Lakshadweep.

26. In fact, India holds the world record in the number of road accidents annually, according to a report released by the World Health Organization in 2010. It is also not uncommon to read something like this. A 25-year old youth, suspected of driving drunk, crashes his Chevrolet Cruze into 3 pedestrians. Around 1,34,000 people die every year in India on account of road accidents. The most shocking fact is that 70% of these are due to the consumption of alcohol, according to a report released in 2011

C.M.A.No.1842 of 2006

by CADD (Community Against Drunken Driving). For 10 years, Chennai has held the record of the highest drunken driving cases. The situation is worse outside the cities. "Around 99% of the fatal accidents that occur outside the cities are due to drunken driving," as per reports.

27. Regard must necessarily be had to the conditions in our country and in our cities: the overcrowded roads, pedestrian movement on roads, the absence of sufficient sidewalks or pavements, a general indiscipline and indifference to traffic regulations, and the fact, too, that our roads and such few sidewalks as exist are used by hawkers during the day and by the poorest of the poor at night. This makes drunken driving all the more dangerous, and this Court does not think that it is possible to ignore these conditions, especially given our experience with fatalities caused to third parties by reported incidents of drunken driving. It is not possible to countenance an argument that any person has a fundamental right to drink, let alone to drink any amount and then get behind the wheel of a motor-car or onto a two-wheeler. Even the most minute impairment caused by alcohol

intake might have the most disastrous consequences.

28. It is worthwhile to note that, on 03.08.2012, by way of a detailed judgment, the Supreme Court in the case of **State Tr.P.S.Lodhi Colony, New Delhi v. Sanjeev Nanda** in Crl.Appeal No.1168 of 2012, after referring to Section 185 of the M.V.Act and various other reports / materials on the drunken driving, in paragraphs 30 and 31, has observed as follows:-

"30. Drunken driving has become a menace to our society. Everyday drunken driving results in accidents and several human lives are lost, pedestrians in many of our cities are not safe. Late night parties among urban elite have now become a way of life followed by drunken driving. Alcohol consumption impairs consciousness and vision and it becomes impossible to judge accurately how far away the objects are. When depth perception deteriorates, eye muscles lose their precision causing inability to focus on the objects. Further, in more unfavourable conditions like fog, mist, rain etc., whether it is night or day, it can reduce the visibility of an object to the point of being below the limit of discernibility. In short, alcohol leads to loss of coordination, poor

judgment, slowing down of reflexes and distortion of vision.

31. Punishment meted out to a drunken driver, is at least a deterrent for other such persons getting away with minor punishment and fine. Such incidents are bound to increase with no safety for pedestrians on the roads. The contention raised by learned senior counsel that the accused was not under the influence of liquor or beyond the limit prescribed under the M.V. Act and he was in his senses and the victims were at fault being on the middle of the road, is without any substance and only to be rejected."

29. The above said observation was also followed by the Andhra Pradesh High Court in the decision dated 03.07.2018 rendered in Crl.R.C.No.1625 of 2018, in the case of **D.Chandra Sekhar v. The State of Telangana, by Traffic Police Station.**

30. Also, the Supreme Court in the case of **State of Tamil Nadu Rep. by its Secretary v. K.Balu and another**, on the point of granting licences for the sale of liquor along National and State Highways, has referred to drunken driving and Section 185 of the Act. While dealing with the issue, the Supreme Court, in

paragraph 11, has observed as follows:-

"11 We are conscious of the fact that the policy of the Union government to discontinue liquor vends on national highways may not eliminate drunken driving completely. A driver of a motor vehicle can acquire liquor even before the commencement of a journey or, during a journey at a place other than a national or state highway. The law on preventing drunken driving also requires proper enforcement....."

31. In view of the above and since [Section 185](#) is placed in Chapter 13 of the Motor Vehicles [Act](#), the Central Government is to consider a suitable amendment in this regard by allowing various State Governments / Union Territories to adopt a zero tolerance norm in [Section 185](#) itself. The time has now come for just such a measure. Too many lives have already been lost to this lethal cocktail of internal consumption and internal combustion.

32. Coming back to the case on hand, since this Court, by the above reasonings, has come to the conclusion to adopt stringent views on drunken driving, the findings rendered by the Tribunal, on

C.M.A.No.1842 of 2006

contributory negligence as well as quantum, have no legs to stand. This Court finds that the claimant himself was the tort-feasor and was responsible for the accident. As such, the question of fastening liability either on the owner or on the Insurance Company does not arise.

33. In view of the above reasonings, this Court holds as under:

(i) the judgment and decree passed by the Tribunal is set-aside, in so far as fastening the liability on R-2 / Insurer at 60%;

(ii) no relief is granted to the appellant / claimant in this Appeal;

(iii) the second respondent / Insurer is permitted to withdraw the amount if any already deposited by it before the Tribunal on making proper application.

34. In the result, the Civil Miscellaneous Appeal filed by the claimant / appellant is dismissed. No costs.

25.10.2019

Index : Yes / No
Web : Yes / No
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C.M.A.No.1842 of 2006

R.MAHADEVAN, J.

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Note to office.: Office is directed to mark a copy of this judgment to the Ministry of Road Transport and Highways, Union of India, New Delhi, to consider a suitable amendment in Section 185 of the M.V.Act, by allowing various State Governments / Union Territories to adopt a zero tolerance norm.

To

1. Motor Accident Claims Tribunal,
Fast Track Court No.IV, Additional District Court,
Poonamallee.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

C.M.A.No.1842 of 2006

25.10.2019