

M. Subramaniam Vs. the General Manager, Punjab Roads, Chandigarh

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Court : Delhi

Decided On : Apr-15-1991

Reported in : 1992ACJ187; 44(1991)DLT750

Judge : Santosh Duggal, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110A

Appeal No. : First Appeal No. 18 of 1974

Appellant : M. Subramaniam

Respondent : The General Manager, Punjab Roads, Chandigarh

Advocate for Def. : Mrs. Avnish Ahlawat

Advocate for Pet/Ap. : P.R. Monga and; A. Ahlawat, Advs

Judgement :

Santosh Duggal, J.

(1) This appeal has been filed against the award dated 23rd July. 1973 whereby the claim petition of the appellant was dismissed for the reason that there was no evidence that death of the deceased late Shri Swamy had occurred due to accident caused by rash and negligent driving of bus No. Pnu 1981 that belonged to Punjab Roadways.

(2) The claim petition was filed on behalf of the minor son of the deceased Shri Swamy, named, Subramaniam, the preseat appellant through his maternal uncle Shri R. Mogam. The claim was made on the allegation that the deceased Shri Swamy, who was working as a labourer in Ajodhya Textile Mills, was coming from the said mill after finishing his duty at 2 p.m. and when he was proceeding on his Cycle from the Kingsway Camp side and was going towards Azadpur, he was struck by Punjab Roadways bus No.PNU 1981 and subsequently succumbed to his injuries while being taken to hospital in the same bus. The claim was made against Punjab Roadways who owned the said bus and although the allegation was that at the time of accident it was being driven by Jagir Singh, driver, but a statement was made during proceedings that the claim was being confined only against Punjab Roadways. The result is that there is no written statement or statements before the Court, of Jagir Singh, alleged to be the driver of the bus.

(3) The claim petition was tried on the following issues :

(1)Whether the deceased died as a result of accident arising out of the rash and negligent driving of bus No. Pnu 1981 as alleged

(2)Whether the petition discloses any cause of action

(3)Whether the petitioner is entitled to any compensation If so, how much 7

(4)Whether the Punjab State is not liable for damages in this case owing to the allegations in written statement to the effect that Jagir Singh was not authorised to drive,the bus

(5)Relief.

(4) The claim petition was dismissed because of the negative findings reached on all the issues against the appellant.

(5) I have heard the counsel for the appellant today, Mr. Monga and has also been taken through the relevant facts by Mrs. Avnish Ahlawat, appearing for the respondent and I find that there is no-error or infirmity in the judgment recorded by the Motor Accidents Claims Tribunal. It has been rightly observed that the basic

ingredients, namely, the rash and negligent driving on the part of the driver of the concerned bus has not been even alleged in the claim petition and to that extent it lacked in requisite particulars and did not disclose any cause of action for award of compensation.

(6) I further find on a perusal of the record that there has been no error in the appraisal or analysis of the evidence. Only two persons were examined as witnesses to the accident, namely, R. Mogam (Public Witness 1) and one Sundram

(7) So far as Pwi is concerned, he is for all purposes an interested person because the claim petition was filed by him as next friend of the minor son of the deceased. The testimony of both these witnesses that they had witnessed the accident does not inspire confidence for the reason that on their own showing they were more than 100 feet behind the deceased when the accident took place. Both of them stated that they were proceeding towards their respective houses on foot, whereas the deceased had gone ahead on bicycle is not possible to believe that in the ordinary course of human conduct a person walking more than 100 feet behind would have noticed in what manner the person going ahead on bicycle would have met with an accident. They also do not state as to on which side the cyclist was proceeding and whether the bus had come on wrong side and had not blown any horn, nor had given any other particulars of the rash or negligent driving on the part of the driver. According to PW1, who is close relation of the deceased, the injured remained lying on the road for 1-1/2 hours after the accident and was then removed to hospital in the same bus. This situation seems to be very improbable for two reasons. Firstly, in case this witness was at the spot, he would not have let the injured remain lying on the spot for such a long time and would have taken steps with the help of others, to take him to some nearby hospital or doctor, and secondly, it is not explained as to how the offending bus would have remained on the spot for so long after causing the alleged accident when there is no indication that the police had come at the spot or had stopped the bus or had started proceedings at the spot.

(8) The investigating officer of the case Si Pyara Singh has been examined as PW9 and he has clearly deposed that he received information at a later point of time and for the first time saw the dead body in the bus near Mori Gate and thereafter he carried out proceedings of recording of Fir, preparation of the site plan and statements of witnesses. He has named four persons who gave statements as eye witnesses of the accident but curiously enough neither Pwi nor PW2 are amongst those four persons. In case these two persons, as they have now deposed, were in the bus with the dead body, when the investigating officer reached there, in normal course they would have given their statements to the investigating officer about their eye witness account. This leads to the inescapable inference that they were not present when the investigating officer reached the place where the bus was parked with the dead body nor had met the investigating officer at any time when he was recording statements of the eye witnesses, and that they had been inducted subsequently and put up as eye witnesses being close relation or friend of the deceased.

(9) Mr. Monga then tried to argue on the theory of rest ipsa loquitur but unfortunately the site plan could have been the only indication of such state of affairs but in this case the copy of the site plan, which is on record as proved by the investigating officer, does not lend much assistance. This is obviously for reasons that the investigating officer reached the spot of accident at a very late stage and scene of occurrence would have been disturbed by that time. Consequently, the site plan does not represent the position as at the time of accident or soon thereafter, and thus does not reflect any situation, amounting to rest ipsa loquitur from which the Court could draw some inference about rash or negligent driving on the part of the driver of the bus, or any other fault on his part.

(10) For all these reasons, I find that the claim petition was rightly dismissed and no case has been made out for interference. The appeal is accordingly dismissed.

(11) No order as to costs.