

Bhaskaran Vs. Ravindran

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Court : Kerala

Decided On : Mar-09-1990

Reported in : I(1991)ACC129

Judge : U.L. Bhat, J.

Appellant : Bhaskaran

Respondent : Ravindran

Judgement :

U.L. Bhat, J.

1. Petitioner in M.A.C. No. 654 of 1981 of the M.A.C. Tribunal, Tellicherry has filed this appeal challenging the dismissal of the claim petition.

2. Appellant was injured in an accident involving bus K.L.C. 6832 at about 8.30 A.M. on 3-2-1981. His case is that the bus stopped at Koduvally bus stop and he boarded it, the bus moved about hundred yards and when it entered the Koduvally bridge it was driven in such a rash and negligent manner while giving way to another bus coming from the opposite direction that the bus collided with the pillar of the bridge and the appellant who was still on the foot board of the bus was injured. He claimed Rs. 75, 000/- from the driver, owner and insurer of the vehicle.

3. The driver and owner of the vehicle filed written statement admitting the accident in which appellant sustained injuries. According to them, bus did not stop at Koduvally junction as it had full complement of passengers and as the bus was proceeding slowly appellant in a reckless manner attempted to board the bus and hit against the rear left side of the bus, fell down and was injured. Bus did not dash against pillar of the bridge. The accident was the result of rashness and negligence on the part of the appellant and not of the driver of the bus. Insurer admitted existence of policy and supported contentions of other respondents.

4. The Tribunal rejected appellants case for the following reasons: if the accident had taken place as alleged by the appellant, others besides the appellant would have been injured and a matter of fact P.W. 1 was the only person injured. Police referred the case and appellant did not file a protest complaint Appellant admitted that he attempted to get into the bus at the bus stop but the bus left the stop and he did not run after the bus. He also admitted that he could not get into the bus. In the claim petition it was not averred that the accident took place while giving way to another bus coming from the opposite direction, which is a new story at the stage of evidence. P.W. 1 also admitted that the bus and pillar of the bridge were not damaged. P.W.2 who was alleged to be waiting at the bus stop to board a bus going in the opposite direction could not have seen anybody getting into the bus involved in the accident P.W.3, another independent witness could not be believed because he deposed that P.W.1 had boarded the bus at the junction though P.W.1 himself had admitted that he did not get into the bus. In these circumstances, evidence of the driver examined as R.W.I to the effect that he did not stop the bus at Koduvally bus stop as there was full complement of passengers in the bus and the appellant attempted to board the running bus and hit against the left side of the bus and fell down was acceptable. On this basis Tribunal rejected the contention of the appellant that the accident was the result of rash and negligent driving on the part of the driver of the vehicle and held that it was the result of rashness and negligence on the part of the appellant in boarding a running bus. These findings are seriously challenged by the appellant.

5. In the claim petition it is averred that petitioner was travelling in the bus to attend to work at Chirakkara and when it reached Koduvally bridge, due to rash

and negligent driving of the vehicle it collided against the pillar of the bridge and the petitioner was injured. It is true that the claim petition did not mention that the petitioner boarded the bus at Koduvally bus stop or was on the foot board and later the bus gave way to another bus coming from the opposite direction. In the written statement filed by driver and owner of the bus they stated that the petitioner ran behind the bus with intent to board the bus and while so he hit against the rear side of the bridge and fell down. In other words, stand taken is that he was not even on the foot board. The written statement also did not refer to driver giving way to another bus coming from the opposite direction. We do not think any adverse inference can be drawn against either party for not giving the details in their petitions.

6. Claimant examined as P.W.1 deposed to his case. In chief-examination he deposed that the bus hit against the second pillar of the bridge and he was injured, the scene of accident being hundred yards away from the bus stop. He alone was injured in the accident and there was no damage to the bus or the bridge. He had not filed protest complaint against the refer report of police. He admitted that he attempted to board the running bus. He stated that 'I attempted to board the bus at Koduvally bus stop. Then the bus started. I did not run behind the bus. I could not get inside the bus...The bus was giving way to another bus coming from the opposite direction'. It was suggested to him whether it was not true that he was injured in an accident which took place by his jumping into a running bus and he denied the suggestion. The Tribunal did not properly appreciate his evidence. Reading this evidence as a whole it is clear that he boarded the bus at the bus stop by getting into the foot board and then the bus started and at the bridge when the bus was trying to give way to another bus coming from the opposite direction it hit against the pillar and he was injured. We cannot interpret the evidence to mean that he jumped into the running bus and that he did not enter the bus which had already stopped. His evidence that he attempted to get into the bus but could not go inside the bus and immediately bus started would clearly lead to the inference that he was on the footboard when the bus was started.

7. P. W.2 is an independent witness who was waiting on the opposite side of the road to board a bus going in the opposite direction, he deposed that when P.W. 1

fell down from the bus he ran up and took him to the hospital. He had seen P.W.1 getting into the bus. P.W.2 stated that the accident took place when the bus gave way to another bus by swerving to the leftside. He deposed that from where he stood persons getting into that bus could not be seen. At the same time he stated that one or two other persons followed P.W. 1. His evidence would show that he could not actually see persons getting into the bus but he could see these people waiting at the bus stop before bus came and not being at the bus stop after the bus left. Therefore he could infer that P.W.1 and a few others got into the bus. There is no reason for rejecting his evidence in entirety.

8. P.W.3 is a college student who claimed to have boarded the bus at Koduvally bus stop after it stopped there. According to him, P.W.1 was struck by the second pillar of the bridge and the bus was driving at an excessive speed and in a rash and negligent manner while giving way to another vehicle coming from the opposite direction. He deposed that there were several standing passengers. He was almost at the back entrance. There were twenty standing passengers in front of him. According to him, ten to fifteen persons got into the bus from Koduvally bus stop. He boarded the bus after five to ten persons entered the bus and P.W. 1 boarded the bus after P.W.3 entered the bus. He remained at the back because people did not move forward. It was hind part of the bus which hit. This witness also is an independent witness. We do not find any material contradiction between his evidence and the evidence of P.Ws.1 and 2.

9. R.W.1 driver of the bus, deposed that he did not stop the bus at Koduvally bus stop because there were a large number of passengers in the bus and when he saw a bus coming from the opposite direction he slowed down the bus and at the stage P.W. 1 tried to jump into the bus and fell down. Bus did not hit the bridge or the pillar. The attempt of the claimant to board the running bus was the cause of the accident. He deposed that there was a cleaner in the bus who will prevent people from sneaking into the bus.

10. The evidence is that bridge is situated about hundred yards away from the bus stop. It is the case of the driver also that near the bridge a bus came from the opposite direction. So that the omission to refer to this aspect of the case in the

claim petition is of no significance. Going by the evidence of R.W.I, P.W.1 attempted to board the running bus, but did not succeed in doing so and fell down. The evidence of P. Ws. 1 to 3 would suggest that P.W.1 boarded the bus at the bus stop and he was constrained to remain at the entrance of the bus because there were a large number of standing passengers which would clearly suggest that he must have been on the footboard after he boarded the bus. Therefore, absence of specific reference to foot board in the claim petition loses significance. According to R.W. 1 he slowed down the bus when the bus from the opposite direction approached. That must have been very near the bridge which is about hundred yards away. It is difficult to believe that P. W.1 would have run a distance of nearly hundred yards with a view to board the running bus. He must necessarily have boarded the bus when it was stationary, i.e. at the bus stop.

11. Section 82 of the Motor Vehicles Act, 1939 states that 'No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle'. In the case of a bus, conductor is also in charge of the vehicle since it is his duty to admit passengers and issue tickets. It is the duty of the driver and conductor to see that foot board passengers are not allowed in the bus and to see. that bus is not set in motion when there are passengers on the foot board. Driver may not be in a position to observe if there are passengers on the foot board. It is the duty of the conductor to give appropriate directions to the driver. Where the conductor gives signal for the bus to move or the driver starts the bus without waiting for such an instruction, the starting and moving of the bus with passengers on the foot board is a rash and negligent act Taking the bus to the extreme left side in a bridge which has pillars is fraught with danger and risk to passengers on the foot board. It was the duty of the driver to have ensured passage of the bus without any harm to passengers. If such passage could not be secured, it was his duty to stop the bus to allow the bus from the opposite direction to pass by. Swerving the bus to the extreme left side of the road in a bridge with pillars on it when there are foot board passengers in the bus, is by itself a rash and negligent act. Such rash and negligent driving of the bus casts vicarious liability on the owner of the bus in an action for compensation by persons injured in an accident caused by such driving. The contra finding of the tribunal cannot stand.

12. It is argued by learned Counsel for respondents 1 and 2 that even it was the rash and negligent driving of the bus which caused the accident, appellant must be held to be guilty of contributory negligence. It is argued that the driver or other person in charge of the vehicle is statutorily barred from carrying any person or permitting any charge of the vehicle is statutorily barred from carrying any person or permitting any person on the foot board. Foot board passenger must be aware of the risk he is taking in travelling on the foot board. Passenger of a bus, though he has not a duty to take care of others, has a duty to take care of himself, that it by refraining from travelling on the foot board of a bus. Travel on foot board by the passenger has contributed to the accident as well as nature and extent of the injured. learned Counsel for the appellant rebuts this argument and contends that the foot board passenger cannot be regarded as having contributed to the accident or the injuries.

13. Our attention is invited to some decisions which indicate that sitting in a bus with elbow on the window sill which is injured ultimately by an accident cannot amount to contributory negligence. See *State of Punjab v. Smt. Guran Wand* . *Delhi Transport Undertaking v. Smt. Krishna Wanti and Anr.* : AIR1973 Delhi196 , *GM. Shetty v. Unnikrishnan nair and Ors.* 1981 A.C J. 293 (Karnataka), and *State of Haryana and Anr. v. Ram Pal and Anr.* 1989 A.C.J. 276 (Punjab & Haryana): 1989(11) A.C.C. : 239. See also *Radley and Anr. v. London Passenger Transport Board* 1942(1) All E.R. 433 and *London Passenger Transport Co. v. Upson* 1949 (1) AH.E.R. 60. These decisions proceed on the basis that it is common knowledge that passengers generally put their arms outside the bus and driver who is conscious of this must take requisite care to avoid injury to such passengers while overtaking or giving way to another vehicle. Placing elbow on the window sill is a comfortable way of sitting and as long as passengers were not warned at the appropriate time they cannot be regarded as guilty of contributory negligence. We do not think the same principle can be ordinarily applied to passenger on foot board of moves. That is because ordinarily a passenger gets into foot board with the intention of moving inside the bus and taking a seat Even when a person boards a bus having standing passengers his intention is to move inside and be a standing passenger and not to continue on the foot board or travel as a foot board passenger. Before boarding the bus he cannot be expected to

know the number of standing passengers inside the bus, and the number of standing passengers allowed by the permit. It is the duty of the conductor to keep track of the number of standing passengers and warn the intending passengers that there will be no seats or space for standing and that they should not board the bus. As intending passenger ordinarily gets into the foot board with intent to move forward and if the bus starts before he moves in or before he realises that there is no room for standing passengers inside the bus and decides to get out of the bus, he cannot be held to have contributed to the accident.

14. In *Kuldip Lal Bhandari v. Umed Singh* 1966 A.C.J. 110 Punjab), where a passenger boarded the bus and was still on the foot board the bus started on the signal of the conductor, the accident was held to be the result of rash and negligent driving on the part of the driver. In *Ishwari Devi and Ors. v. Union of India and Ors.* 1968 A.C.J. 141 (Delhi) when a passenger who boarded the bus was still on the foot board with part of his body outside the bus, conductor gave signal and the bus driver started the bus and moved it too close to a stationary bus and the foot board passenger was sandwiched between the two buses and was injured. The court held that the safety of the public who travel by public conveyances like the bus in question is the primary concern of the conductor and the driver who are incharge and controller of the vehicle and when the conductor knew that deceased was boarding the bus and was yet on the foot board he should not have given the signal for the bus to start and was guilty of rashness and negligence. The conduct of the driver in driving the bus and was guilty of rashness and negligence. The conduct of the driver in driving the bus so closely to the parked bus was also a rash and negligent act. In *Varadamma v. H. Mallappa Gowda and Ors.* 1972 A.C J. 375 Mysore) the conductor inadvertently gave signal without ensuring that all the passengers had alighted. A child on the foot board slipped and was run over. Accident was held to be due to the negligence of the conductor making owner also liable. It was observed That the conductor controls movements of the bus by giving instructions to the driver. In *Mrs. Nanibai and Anr. Dashrath Lal and Ors.* 1977 A.C.J.. 145 (M.P.)) when the bus reached a muddy patch passengers were requested to alight and board the bus after the bus crossed the muddy patch. After crossing the muddy patch driver set the bus in motion before all passengers including the deceased boarded the

bus. Deceasel was thrown out and rushed under the rear wheel. The court held that driver was negligent in view of his failure to keep the bus stationary till every passenger had boarded the bus and it was observed that permitting over-crowding also would amount to negligence. In *Municipal Corporation of Greater Bombay v. Akatai Tataba Hankare* 1982 A.CJ. 284 (Bombay) an off duty conductor of the BEST Transport Organisation who was entitled to free ride in any bus of the company while off duty if he travels in the space of the foot board at the rear was thrown of and was injured when the driver applied brakes suddenly. The court held that it was common knowledge that even passengers on payment of fare are allowed to travel on foot board on account of too many passengers being compelled to travel in too few buses and the fact that there was a passenger on the foot board would cast duty on the understating to carry him safely. On the facts it was held that contributory negligence was not proved. In *Makbool Ahmed and Ors. v. Bhira Lal and Ors.* 1986 A.CJ. 219 (Rajasthan): 1986(2) ACC 233 it was held that at a bus stop it was the duty of the conductor to stand at the opening of the door to ensure that passengers who wanted to get down have got down and those who wanted to board the bus have boarded it and only thereafter he can give signal for the bus to move. It he gave signal when passengers were still on the foot board, he would be guilty of dereliction of his duty exhibiting rashness and negligence. In that case it was found that there were many passengers standing on the foot board for want of seats inside the bus and the conductor was busy issuing tickets without caring to discharge his duties towards the passengers. In *Radhika Devi v. U.P. State Road Transport Corporation* 1989 A.CJ. 661 (Allahabad) 1990(2) A.C.C. 244) it was held that driver's conduct in suddenly starting the bus when an intention passenger was boarding the bus when the bus was stationary is guilty of negligence. See also *Swaraj Motors Pvt. Ltd. v. T.R. Raman Pillai* 1968 A.CJ. 127 (Ker.).

15. A slightly different view has been taken by the Calcutta High Court in *Gobinda Prosad Mukherjee v. Sujit Bhowmick and Anr.* : AIR1978 Cal109 . A student aged 14 years tried to board abused the bus stop holding books in one hand. Before he could board, conductor gave signal and the bus started moving. The boy lost his balance and fell down and was run over by the rear wheel. It was held that accident occurred on account of the negligence of the conductor who gave signal

when the boy was trying to board the bus. The court held that boy was also guilty of contributory negligence since he was trying to board the over-crowded bus with books in one hand.

16. The correct principle appears to be what we have already indicated. It is the duty of the conductor to see that the bus is set in motion only after all alighting passengers have alighted and passengers intending to travel in the bus board the bus. Boarding a bus does not mean merely entering the foot board. Boarding the bus means getting inside the bus and either sitting in a seat or standing in the space reserved for standing passengers. If a conductor has a statutory duty to see that there are no foot board passengers. If a passenger is on the foot board and there is no space at all for him to sit or stand inside the bus, he must be asked to get down and the bus can be set in motion only after he alights. When there is sitting or standing space inside the bus, it is the duty of the conductor to see that a passenger who is on the foot board gets inside the bus and seats himself or stands in the space reserved for standing passengers before giving signal for the bus to start. This corresponds with the driver's duty to ensure that bus is moved only after ensuring safe several travel conditions. In the discharge of his duty he is largely guided by the instructions of the conductor. If a bus with no vacant seats and no standing space is started when a passenger is on the foot board and he is not asked to alight from the bus or nor cautioned against travel on foot board and accident takes place and the foot board passenger sustains injury, wholly or partly on account of his position in the foot board, he cannot be held to be guilty of contributory negligence. It may be that if he refuses to alight in spite of the direction by the conductor or if he is cautioned about the risk he is undertaking by travel on foot board, it is not possible to absolve him of the responsibility in the accident. We therefore hold that the claimant was not guilty of contributory negligence.

17. Learned Counsel for respondents 1 and 2 places reliance on two decisions to contend for the position that even where the claimant is not guilty of contributory negligence, he can be awarded only reduced damages. *Froom v. Butcher* 1975(3) All. E.R. 520, is a case of collision of cars on account of negligence of the defendant. Plaintiff who was in the front seat of the other car was not wearing seat belt fitted to the car seat. He was injured on the head, chest and left finger on

account of the accident. Lord Denning Mr Speaking for the Court of Appeal, Civil Division, consisting of himself, Lawton and Scarman LJJ held 'In the ordinary way the driver or front seat passenger in a motor vehicle failed to wear a seat belt and was injured in an accident had a bear some responsibility for those injuries, even though he was not responsible for the accident, if the injuries would have been avoided or their extent reduced, by wearing a seat belt, since the plaintiffs injuries to the head and chest would have been avoided by the wearing of a seat belt the damages on that amount should be reduced by 25%'. A distinction was drawn between cause of accident and cause of damage. Cause of accident is bad driving of the driver. Bad driving which caused the accident also causes damage. Ordinarily bad driving which causes the accident also causes damages and in part by the failure of the plaintiff to wear the seat belt. Cause of accident is one part and cause of damage is another part While the accident is caused by the bad driving of the driver, cause of damage is on the part of the driver and in part by the plaintiffs failure to wear the seat belt, even though wearing of seat belt is not compulsory in law. If anyone does not wear the seat belt, he cannot be penalised. But it is not a sensible thing to do. If he does not wear it, it is his own fault. Prudence requires every one to wear seat belt. Driver must bear greater share of the responsibility as it was his negligence which caused the accident. Plaintiff must bear a smaller share of the responsibility. A decision has to be arrived at having regard to the particular factor, its blameworthiness and what is just and equitable. If on evidence it is seen that there was no failure of the plaintiff to take precaution, there will be no reduction in damage.

18. Ext. A4 shows that claimant sustained fracture of left clavicle, fracture of left ribs 6th, 7th and 8th and haemothorax (left). It is clear that he must have sustained violent fall on account of the impact of the bus with the pillar of the bridge. We are not impressed by the argument that P.W.1 deposed that there was no damage to the bus or the pillar. At that moment he was not in a condition to observe those matters. The injuries sustained are very serious. Nature and seriousness of the injuries was determined by the fact that he was on the foot board and exposed to such dangers which he must have been aware of. As a person who owes a duty to take care of himself he should not have travelled on the foot board or should have at least tried to move inside. His own action must necessarily have contributed to

the gravity of the injuries. We there hold that damages must be reduced by 25% on this account.

19. Claim put forward by the appellant was for Rs. 75, 000/-, the break up being as follows: Loss of earnings 1796.61, Transport expenses to hospital Rs. 400, 00, Expenses for extra-nourishment Rs. 4, 600.00, Compensation for pain and suffering Rs. 20, 000.00, Compensation for continuing and permanent disability Rs. 33, 203.39, Compensation for loss of earning power Rs. 15, 000.00. The Tribunal fixed the compensation payable as Rs. 615/- for incidental expenses, Rs. 400/- for transport charges, Rs. 2, 000/- for pain and suffering, Rs. 308.33 for loss of past earning, total being Rs. 3620.84. It is urged by the appellant that the estimate is wrong.

20. The injuries sustained by the appellant are fracture of ribs, fracture of left clavicle and haemothorax (left), all of which are grievous injuries. He was hospitalised for 41 days. His claim for loss of future earning power and permanent partial disability was dusakkiwed because P.W.1 admitted that both before and after the accident he was earning salary of Rs. 700/-. This is inspite of the fact that the court fixed his income as Rs. 250/- per month. Tribunal ignored the fact even after a few years his salary did not increase. Petitioner is working as a turner which requires some amount of physical exertion. No disability certificate has been produced. No medical evidence has been adduced to show extent of permanent disability, if any. Considering the nature and extent of injuries, we are of opinion that there may be some discomfort or slight disability of permanent nature. Some compensation ought to have been allowed on this score. The amount awarded as compensation for pain and suffering also appears to be too low. So also the amount awarded for medical and other expenses. Having regard to all these circumstances, we fix aggregate amount of Rs. 20, 000/- as compensation for the injure is sustained and pass an award for 75% of the same, namely, Rs. 15, 000/-, which shall be paid by the third respondent insurer with interest at 10% per annum from date of accident till payment and cost before the Tribunal and in this court. The appeal is allowed accordingly.