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SooperKanoon Citation : sooperkanoon.com/771448

Court : Rajasthan

Decided On : Jan-07-2005

Reported in : 3(2005)ACC72

Judge : Dalip Singh, J.

Appellant : Vimla

Respondent : Moolchand and ors.

Judgement :

Dalip Singh, J.

1. This appeal has been filed against the award dated 4.2.1994 passed by the Judge, Motor Accident Claims Tribunal, Sambhar Lake, Distt. Jaipur in MACT Case No. 156/1992 filed by the appellant for compensation for the injury received by her while travelling in the bus bearing registration No. HNM 2755 owned by the respondent No. 2. It is on account of the said injury, her right hand was amputated and she filed the claim petition.

2. However, the learned tribunal while deciding the Issue No. 1 has held that the negligence was not of the driver of the bus owned by the respondent No. 2 but that of the vehicle approaching from the opposite direction and it was also contributory negligence of the appellant herself who was sitting with her hand protruding out of the window and she received the said injury on account of being struck by the

vehicle approaching from the opposite direction. In the opinion of the Tribunal, the claim petition ought to have been filed against the owner of the vehicle approaching from the opposite direction and consequently absolved the respondent of its liability.

3. Learned Counsel for the appellant has submitted that even assuming that it was the fault on the part of the appellant that she was sitting with her hand protruding out of the window arid it was on account of her fault that she received the injury oh account of impact from the vehicle approaching from the opposite side, if is also the responsibility of the driver of the bus in which the appellant was travelling as a passenger to have ensured the safety of the passengers is not undermined and that the sufficient space should have been left and precaution should have been taken to avoid any kind of impact with the vehicle approaching from the opposite direction. Learned Counsel for the appellant placed reliance on the judgment rendered in the case of Gyan Prakash Bhargava v. Baboolal 1985 ACJ 661. In the said case the injured was driving a car resting his elbow on the window and met with an accident. As a result of the impact the claimant injured his hand on account of the impact by the bus approaching from the opposite direction. The Court held that there was no contributory negligence on the part of the car driver in resting his elbow on the car window. It was also held that the driver of the car was under a duty to maintain a safe distance. He has also placed reliance on the decision of this Court rendered in the case of Abdul Zabbar v. Ram Swaroop and Ors. 1985 ACJ 594, in which case the passenger of the bus received injury resulting in the amputation of right hand. Injured had projected a part of his hand outside the bus. The injured received injury on account of impact from the bus approaching from the opposite direction. This Court held that the passenger was not guilty of contributory negligence and it was the duty of the driver to ensure the safety of the passenger. Learned Counsel for the appellant has also placed reliance on the judgment of the Hon'ble Supreme Court rendered in the case of Jamnagar Motor Transport Union (P) ltd. v. Gokaldas Pitamber's L.Rs. and Ors. 1966 ACJ 42, where in the similar circumstances, on account of the grazing of the two vehicles approaching from the opposite directions, it was held that it was the duty of the driver to have maintained control over the speed so that no collision would have occurred. It may be very difficult to say that only one of the drivers of

the bus was negligent. Their Lordships have held that the driver of both the vehicles would be held negligent.

4. In the light of the aforesaid, learned Counsel for the appellant submits that the option lies with the claimants in such circumstances, to file a claim petition for compensation against the owner, driver and insurer of both the vehicles or against any one of them. He has also placed reliance on the decision rendered in the case of Sampat Kanwar Bai and Anr. v. Gurmeet Singh and Anr. 1988 ACJ 342, whether on the principle of joint tortfeasors it was held that the owner, driver and insurers of both the vehicles may be proper parties but it cannot necessarily be held that they are the necessary parties and in the absence of one of the parties, the claim petition cannot be allowed. On the contrary, both the parties are jointly and severally liable and the claimants can choose to file a claim petition and recover the damages from any one of them or both.

5. On the other hand, learned Counsel for the respondents has submitted that it was the duty of the claimants to have taken a precaution and due care that her safety was not undermined and should not have kept the arm resting on the window and if any injury is caused, in such circumstances, the driver of the vehicle cannot be said to have driven the vehicle rashly or negligently and the injury cannot be attributed to the act of the driver of the respondent Corporation and, therefore, the award passed by the Tribunal is just and proper.

6. I have given my anxious consideration to the submissions made at the Bar and have also perused the impugned award. This Court has clearly held that it was the duty of the driver of the vehicle in which the passenger was travelling to ensure that adequate distance is maintained between the vehicles in which the passenger was travelling and the vehicle approaching from the opposite direction. Failure to do so would amount to negligence and lack of due care and precaution and as such the driver of such vehicle in which the passenger was travelling and who received injury on account of impact from the vehicle approaching from the opposite direction cannot be absolved of the liability in such a case. In this view of the matter, the award passed by the Tribunal on the basis of the finding on Issue No. 1 deserves to be set aside and is set aside in the light of the two judgments

referred to above reported in 1985 ACJ 661 and 1985 ACJ 594.

7. So far as the other finding of the Tribunal is concerned, that the claimant should have filed a claim petition against the vehicle approaching from the opposite direction i.e., also liable to be set-aside in view of the judgment rendered in the case of Sampat Kanwar Bai and Anr. v. Gurmeet Singh and Anr. (supra), wherein this Court has held that it is open to the claimant to have filed a claim petition against both or either of the vehicles.

8. Consequently, in view of my decision as indicated above on issue No. 1 and 2 the finding in the award passed by the Tribunal is set aside. It is hereby held that the vehicle of the respondent was being driven rashly and negligenty. Since, the claim petition has been filed against the owner, driver and the insurer of the vehicle in which the appellant was travelling, the appellant is entitled to recover the amount of compensation from the respondents.

9. In view of the fact that the learned Tribunal has decided the case solely on the basis of the finding of Issue Nos. 1 and 2 only the matter is remanded back to the learned Tribunal for decision on Issue Nos. 3 and 4. Since, both the parties are agreed that the evidence has already been led by the parties before the Tribunal, no further evidence is required to be taken in the matter. Since, the matter is an old one of the year 1991 when the accident took place, it is expected of the Tribunal to decide the claim petition within a period of three months from the date of furnishing the certified copy of this order.

10. In the facts and circumstances of the case, the parties are left to bear their own costs. Learned Counsel for the parties submit that the date for appearance of the parties before the Tribunal may be fixed by this Court. It is, therefore, directed that both the parties would appear before the Tribunal concerned on 5.2.2005.

11. The appeal is accordingly disposed of.