

Hansa Devi and ors. Vs. Parashar Parsad and ors.

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Court : Delhi

Decided On : May-31-2010

Judge : Shiv Narayan Dhingra, J.

Appeal No. : F.A.O. Nos. 13 and 27 of 1993

Appellant : Hansa Devi and ors.;national Insurance Co. Ltd.

Respondent : Parashar Parsad and ors.;jhaman Singh Chauhan and ors.

Advocate for Def. : Kamal Deep, Adv. in F.A.O. No. 13 of 1993 and H.L. Raina, Adv. in F.A.O. No. 27 of 1993

Advocate for Pet/Ap. : H.L. Raina, Adv. in F.A.O. No. 13 of 1993 and Kamal Deep, Adv. in F.A.O. No. 27 of 1993

Judgement :

Shiv Narayan Dhingra, J.

1. By this judgment I shall decide above two appeals. Both the appeals have been preferred against the same award dated 18th September, 1992; one by the insurance company and other by the claimants. While claimants have claimed enhancement in the compensation, the insurance company has assailed the award on the ground that the learned Tribunal wrongly held that the liability of the insurance company was unlimited. There is no appeal by owner of the vehicle.

The claim petition before the Tribunal was contested by the owner of the vehicle on the ground that there was no negligence on the part of the driver of the vehicle. The insurance company in its written statement before the Tribunal had supported the owner on the issue of negligence but had taken a stand that liability of the insurance company was limited to Rs. 15,000/- only because the deceased in this case was a passenger and each passenger of bus was insured only for Rs. 15,000/-.

2. Brief facts relevant for the purpose of deciding these appeals are that Sh. Bishan Singh was travelling in a bus bearing No. DEP-4106 plying on DTC route No. 40. When the bus was taking a turn from Connaught Place, Outer Circle to Parliament Street, Sh. Bishan Singh, who was standing near the front gate of the bus, jumped from the moving bus, fell down and struck against pavement. He was removed to hospital where he died. In the claim petition it was alleged by legal heirs of the deceased that he was standing near front gate of the bus and fell down due to a jerk as the driver had suddenly applied brakes. However, the evidence adduced before the Tribunal was to the effect that Sh. Bishan Singh while in the bus cried that he had boarded a wrong bus and the bus should be stopped, as he wanted to get down from the bus. The bus was slowed down by the driver at the turning and before he could get down from the bus, bus picked up the speed and he fell down on the road. Testimony of three witnesses was recorded before the Tribunal regarding how the accident had happened and from this testimony; the Tribunal had come to the conclusion that the passenger had boarded a wrong bus. He cried for stopping the bus and the driver slowed down the bus but before he could get down, the driver speeded up the bus and, therefore, it was negligence of the bus driver. While calculating the compensation, the Tribunal considered that Sh. Bishan Singh could not be considered as a passenger of the bus since his one foot was on the footboard and other foot was on the road as he was trying to alight from the moving bus and, therefore, he was a third party.

3. Although, the conclusion arrived at by the Tribunal regarding negligence of the bus driver is farfetched and the Tribunal only seemed to be moved by the fact that the deceased had left behind five young children and a widow and somehow

deceased should be helped, therefore, the Tribunal seems to have thrown all norms of appreciation of evidence to the dustbin and considered the evidence in a manner to make driver negligent. The Tribunal had observed in its judgment that deceased was an educated person and he could not have jumped from the moving bus forgetting that the Tribunal itself observed at another place that one foot of the deceased was on the road and other foot was on the footboard while the bus was moving. No doubt, the passenger seems to be educated but there is no presumption that educated persons do not commit mistakes or fallacies or do not board and get down by jumping from the moving buses in Delhi. If it is believed that the passenger had boarded a wrong bus and wanted the bus driver to stop the bus, next bus stand of Parliament Street that fell near Jantar Mantar, was hardly 200 yards away from the turning where this passenger jumped from the bus. The passenger could have waited for the bus to halt at the bus stand and got down from the bus at bus stop and then boarded other bus but it only seems that to save a foot walk of 200 yards, he jumped to his death. However, since no appeal has been preferred by the owner, this Court cannot go into the issue of negligence. The only issue to be decided is whether Sh. Bishan Singh could be equated with a third party and whether liability of the insurance company was unlimited as has been held by the Tribunal.

4. I consider that in view of categorical evidence produced before the Tribunal whereby it is proved that Sh. Bishan Singh was travelling in the bus, he asked the driver to halt the bus without bus stop at the turning from Connaught Place to Parliament Street, he has to be held a passenger in the bus. Merely because Sh. Bishan Singh ventured to jump from moving bus when bus slowed down as it had to negotiate a 90 degree turn to Parliament Street from Outer Circle of Connaught Place, it cannot be said that he ceased to be a passenger. It cannot be expected of any bus driver that he would stop his bus in the middle of the road because a passenger is crying halt. That would have been an act of negligence on the part of the driver. Non-stopping of the bus at the turning and jumping of a passenger from the bus on the road would not make the passenger cease to be a passenger and would not convert him to be a third party.

5. The Tribunal has relied upon a judgment of this Court in Pandit Ram Saroop and Anr. v. Balbir Singh and Ors. 1987 ACJ 358 wherein it was held by the court that a passenger ceased to be a passenger once he had alighted from the bus and touched the ground. In that case, the passenger had bought a ticket upto Ordinance Depot but the bus did not stop at the Ordinance Depot, which was the point of destination of the passenger and he tried to get down from the moving bus and came under its rear wheel and got killed. The reliance placed upon by the Tribunal on this case was misplaced. In the present case, it has not been proved that the passenger could not get down at the stop of his destination. What has been proved is that the passenger instead of getting down at the bus stop asked the driver to stop the bus at the turning and instead of waiting for the bus to stop at the bus stop, which was hardly 200 meters away, he jumped at the turning when the bus per force had to slow down. Under no circumstances it can be said that Sh. Bishan Singh ceased to be a passenger merely because he dared to jump from a moving bus. I also consider that the driver of the bus had no duty and no obligation to the passenger to stop the bus at the turning at the risk of causing accident of the vehicles following the bus. I, therefore, consider that Sh. Bishan Singh was a passenger and could not be treated as a third party.

6. As far as liability of the insurance company is concerned, I consider that the liability of the insurance company has to be fixed as per the contract entered into between insurance company and the owner. A perusal of trial court record shows that the bus was insured for risk to 53 passengers, that being the capacity of the bus, and a premium of Rs. 636/- was charged by the insurance company from the owner as per Exhibit RW 1/1. Thus for each passenger, a premium of Rs. 12/- was charged. This is also clear from the insurance certificate No. 830040 placed on record of the trial court and the insurance policy proved on record. The tariff rates for the liability towards passenger in respect of commercial vehicles are as under :

(2) Legal Liability for Accidents to Passengers (compulsory for all vehicles falling under Class B).

(a) Schedule of rates applicable to all Passenger Vehicles except (i) Motorised

Rickshaws, (ii) Miscellaneous Vehicles and (iii) Motor Trade - Road risks on Total Licensed Passenger Carrying Capacity (including standing passenger, if any, mentioned in the license).

Limit of Liability(a) Any one Passenger Rs. 15,000/- Rs. 20,000/- Rs. 30,000/- Unlimited(b) Any one Accident Overall limit depending upon the total licensed Passenger Carrying Capacity. Rate per Passenger Rs. 12/- Rs. 23/- Rs. 30/- Rs. 50/-

7. Perusal of the above tariff rates show that where the premium paid per passenger was Rs. 12/-, the liability of the insurance company for one passenger was limited to Rs. 15,000/-. The unlimited liability of the insurance company would have been only if the premium of Rs. 50/- per passenger had been paid by the bus owner. I, therefore, consider that the liability of the insurance company in this case was limited to Rs. 15,000/- only plus interest on this amount as awarded by the Tribunal.

8. In its appeal filed by the claimants, the claimants have stated that the Tribunal gave compensation on the lower side. However, I find that the Tribunal has been extremely generous to the claimants while awarding compensation. The age of the deceased was wrongly stated by the claimants as 35 years. The Tribunal found that the age of the deceased at the time of accident was 40 years. In the year 1987, the retirement age in all public sector and Government departments was 58 years. However, the Tribunal considered the retirement age of 60 years and applied a multiplier of 20 after giving deduction for personal expenses of the deceased. The Tribunal does not seem to have taken into account the income tax payable by the deceased. Under these circumstances, I consider that the Tribunal has not awarded unjust or less compensation to the dependents of the deceased.

9. In terms of the above order, both the appeals stand disposed of. Any excess amount paid by the insurance company may be recovered by it from the owner.