

(1995) 04 J&K CK 0029
In the Jammu And Kashmir High Court
Case No : CIMA No. 184/93

Asia Begum and Others

APPELLANT

Vs

Mohd.Amin and Others

RESPONDENT

Date of Decision : 05-04-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 166

Citation : (1995) JKL R 473 : (1995) SriLJ 256

Hon'ble Judges : V.K.Gupta, J

Bench : Single Bench

Advocate : M.S.Bhat , H.L.Koul , Abdul Rouf , Advocates appearing for the Parties

Judgement

1. This appeal is directed against a judgments dated 1491993 in file no. 19/ Claimof 1991 in the case of Asia Begum and Others Vs. Mohd Amin

and Others delivered by the learned Motor Accident Claims Tribunal, Rajouri whereby the claim petition filed by the appellantsclaimants was

dismissed. The appellants had approached the Tribunal for getting the relief of compensation relating to the death of Sagger Shah, son of the

appellants Asia Begum and Kale Shah and brother of other appellants who is alleged to have died on 29 April 1991 while traveling in Bus No.

JK022754 at Fatepur near Dharal Morh in Rajouri District. The case of the appellants as put up before the Tribunal was that the deceased Sagger

Shah, on 29491 was traveling in the bus in question which was going towards Darhal. When the bus reached near Darhal Morh, the deceased fell

down from the vehicle and was crushed under its tyres. The deceased succumbed to the injuries and died. The appellants' contention was that the

death of the deceased occurred because of rash and negligent act of the driver of

the vehicle in question. The respondents in the claim petition refuted the allegations of rashness and negligence and set up a defense that the death occurred due to the own act of the deceased because he was not exercising due care and caution and that he fell down from the door of the bus on his own. On the pleadings of the parties, the following four issues were framed by the Tribunal vide its order dated 481992:

1. Whether the death of deceased Sagir Shah was caused by the rash and negligent driving of respondent No.1 Mohd Amin while driving vehicle

No. 2754/JK02 on 29491 at Fatepur near Darhal Morh, Rajouri? OPP

2. If issue No. 1 is proved in affirmative what is the amount of compensation payable by the respondents to the petitioners? OPP

3. Whether respondent No. 1 was driving the vehicle in question unauthorisedly without having any driving licence. If so, what is its effect on the petition? OPR

4. Relief.

The finding on issue No. 1 having gone against the appellants, the Tribunal did not return any finding on issue No.2. The finding on issue No.3 has not been assailed by any party in this appeal.

2. The trial Court decided issue No. 1 against the appellants on the ground that the falling out, of the deceased from the bus through its door could

not be considered to be an act of rashness or negligence on the part of the driver of the bus and that this was an act attributable to the deceased

alone voluntarily or involuntarily and that the driver of the bus had nothing to do with the same. Statements of witnesses Zamrood Hussain Shah

and Masood Hussain, produced on behalf of the appellants are relevant, in so far as appellants are concerned to the merits of issue No. 1.

Similarly the statement of Mohd Amin, respondent No. I, who was the driver of the bus is also relevant for this issue. Whereas PWs Zamrood

Hussain Shah and Masood Hussain have taken a consistent stand that the deceased fell down from the door of the bus while it was moving and

that the bus was full at that time. According to them, the deceased was standing near the back door, door opened and the deceased fell down on

the road. According to these witnesses, the conductor was at the relevant time taking money from the passengers. These witnesses do not know as

to why, how and under what circumstances the door of the bus opened and the deceased fell down.

3. According to Mohd Amin respondentdriver, the deceased admittedly was near the door at the relevant time, but he was unnecessarily fiddling

with the door by opening and dosing it time and again. Even the driver does not know how the door suddenly gave way resulting in the felling out

of the decease and his being crushed.

4. This in all is the entire evidence on the issue relating to the falling out of the deceased, the circumstances in which it happened and his resultant

death. The Tribunal has taken a view that the falling out of the deceased could not be attributed to any act of rashness and negligence on the part of

the driver. On a consideration of all facts and circumstances of the case, totality of situation appreciation and minute appraisal of the statements of

three witnesses mentioned above. I feel that this is a case where the driver of the bus, and for that matter even its conductor could not escape the

liability of exercising due care and caution in ensuring that the bus was not only in good condition, but that during its journey, the doors of the bus

remained properly bolted, fastened and locked so that the passengers traveling in the bus perform their journey safely. The safety of the passengers

is the paramount duty of the crew, be it the conductor or the driver. It is the duty of crew of the bus to ensure that the passengers are not allowed

to fiddle with the doors of the bus or the locks or for that matter any of its parts. It is also similarly the duty of the crew to ensure that the

passengers are seated at appropriate and proper place and that they are not allowed to be near the do others The crew is expected to take due

precaution in all such matters so that the journey is performed safely. The mere fact that the deceased was standing near the door or that he might

have been fiddling with it{which has not conclusively been proved, because of total absence of any corroboration of the statement of

respondentdriver) cannot absolve a crew of its liability to ensure the safety and security of the passengers. It was the duty of the driver and the

conductor to make sure that the deceased was not standing near the door.

5. There is another angle to the situation. For all one knows the doors may not have properly been secured, fastened or locked. For all one knows

there may have been some mechanical defects in the functioning of the arming

or locking system of the door resulting in its sudden opening, while the bus was moving leading to the falling of the deceased. After all, if a door is properly fastened, armed and locked, even if one is near the door or close to it, one does not fall from the door because it is supposed to be secure by proper locking system. It appears that in all probabilities, the functioning of the doors' locking system was might have resulted in its opening of mid journey while the bus was in motion and that alone might have been the cause of the accident, in so far as deceased was concerned.

6. For the view that I have taken, I find that the finding of the Tribunal on issue No. 1 was neither correct nor proper, in the light of the evidence adduced and on its true and correct appreciation. I accordingly finding myself in disagreement with such finding of the Tribunal, allow this appeal.

The Judgment of the Tribunal is set aside in so far as its finding on issue No. 1 is concerned. For the reasons that I have given, issue No. 1 is

decided in favor of the appellants and against the respondents. Since issue No. 2 has not been decided by the Tribunal, because of its decision on

issue No. 1, I remand the case to trial Court with directions to decide issue No. 2, in the light of my finding on issue No. 1. It appears that the

parties have led enough evidence relating to issue No. 2 as well. However, if they desire to lead any further evidence, they may be permitted to do

so. The Tribunal shall rehear the parties on issue No. 2, consider all questions involved relating to this Issue and, after returning its finding thereon,

decide the case finally, expeditiously and with reasonable dispatch.

7. Record to sent back forthwith. The parties through their learned counsel are directed to appear before the MACT Rajouri on May 3rd, 1995.