

(2008) 09 GUJ CK 0025
In the Gujarat High Court
Case No : First Appeal No. 797 of 1999

Chandreshbhai Narendra Trivedi	APPELLANT
Vs	
Manager, Ahmedabad Transport Corp. and Others	RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:

Constitution of India, 1950 — Article 136
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2008) 3 GLH 599

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Hriday Buchs 1, for the Appellant; H.S. Munshaw for Defendant(s) 1, Mr. Maulin R. Raval for Defendant(s) 2 and Notice Served by Ds for Defendant(s) 3, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. Hriday Buch appearing on behalf of appellant, learned advocate Mr. H.S. Munshaw appearing on behalf of respondent No. 1 -Ahmedabad Municipal Transport Service and learned advocate Mr. Maulin R. Raval appearing on behalf of respondent No. 2. Respondent No. 3 is served, but, no appearance is filed on behalf of respondent No. 3. The present appeal is filed by appellant - original claimant Chandreshbhai Narendra Trivedi of Rs. 5 lakhs for Court Fees. The Claims Tribunal, Ahmedabad has dismissed the claim petition by award dated 16th December 1998. Therefore, present appeal is filed.

2. The appellant has filed Motor Accident Claim Petition No. 359 of 1993 against the respondents due to bodily injuries, sustained to the applicant in vehicular accident on 17th November 1993. The total claim for compensation was made for Rs. 8,50,000/-.

3. The short facts of the case is that on 17th November 1993 at about 7-30 a.m., the applicant was boarding or alighting in the city bus on Route No. 150 i.e. Vasna to Kalupur, from Vasna Bus Stand and at that time, the driver started the bus with jerk in speed and in result, he lost grip from the handle in city bus and

fell down and left wheel of the city bus run over on the right ankle Of the applicant and in the said mishap or accident, he sustained grievous injuries.

4. According to claimant, because of injuries he sustained in the accident, he suffered permanent disablement and at the time of accident, he was serving at Talod as Branch Manager in Dena Bank of India and was drawing salary of Rs. 10,000/- per month and-because of injuries he suffered, now, it is not possible for him to do that work with same efficiency and that resulted into future economic loss to him, and he had to incur huge expenses for medical treatment and also undergone pain, shock and suffering.

5. According to claimant, accident occurred on account of sole negligence of opponent No. 3 - driver of offending vehicle during the course of employment with opponent Nos. 1 and 2 and therefore, the opponent No. 3 is liable for the accident while opponent Nos. 1 and 2 are vicariously liable and therefore, all the opponents are jointly and severally liable to pay the compensation claimed. The opponent Nos. 1 and 3 have resisted the claim petition filed by the applicant by filing their composite reply at Ex.12.

6. According to respondent, on 17th November 1993, opponent No. 3 was on duty as a driver on city bus on Routes No. 150 and bus started from Vasna Terminus towards Chinubhai Nagar, and reached near gate of Vasna Terminus, at that time, the applicant had attempted to alight in the bus from front door, but, could not climb and fell down suddenly and therefore, the accident occurred on account of sole negligence of the applicant himself and they are not liable at all to pay the compensation claimed. The averments made in the claim petition is also denied by the opponent. The issues were framed by Claims Tribunal at Exh.23 and Tribunal has assessed the compensation which comes to Rs. 2,87,037/-, but, because of finding on negligent issue, Tribunal has come to conclusion that applicant is not entitled any amount of compensation from the respondent. Before the Claims Tribunal, applicant has examined on oath vide Exh.26. One Head Constable Thavraji Rupaji was examined vide Exh.61 on behalf of opponent, who, immediately after accident, recorded the statement of applicant and according to witness at the relevant time, he was serving as Investigating Officer at Vejalpur Police Station and he was entrusted or hand over the investigation in respect to accident took place at Vasna Bus Stand and witness has also stated that on the strength of "vardhi" he had gone at V.S. Hospital and recorded the statement of the applicant and it may be noted that applicant is an educated officer serving as a Branch Manager in Dena Bank, and as such even no suggestion has been put to the witness Thavraji Exh.61 that he recorded the statement of the applicant in his own way or that it was not dictated by the applicant himself and the witness has denied the suggestion of the learned advocate for the applicant that the applicant because of injuries was unable to speak and even at the time of granting permission for examining the present witness by the opponents, this Tribunal has observed that it would be open for the applicant to examine himself, if he feels necessary in view of

deposition of Shri Thavraji but the applicant thereafter has not considered proper to examine himself on oath and to state that no such statement was recorded by Head Constable Thavraji and that it was not written as per his say and therefore, I am of the opinion to decide that what was the case of the applicant immediately after accident, his statement should be referred by exhibiting the said and therefore, Mark 62/2 is ordered to be exhibited as 63 is considered, wherein, it is mentioned that "today in the morning at about 6-45 a.m., I had reach at the Municipal Bus Terminus while walking from my house, at that time, at about 7.00 a.m., bus of route No. 150 was coming from Vasna Bus Terminus. At that time, I tried to board the bus hurriedly from the front door of the bus, but, I could not board the bus and had fallen down, therefore, wheel of the bus run over on the ankle of my right leg, therefore, I received injury." According to further statement made by applicant that "in fact, no accident has taken place with me, but, as I tried to board the bus hurriedly from the front door of the bus, this incident has been occurred."

7. The Tribunal has appreciated the evidence of the claimant and taking into account the piece of evidence of the claimant. According to Panchnama, Exh.35 to decide that actually at what place the accident occurred which reads as under :

"Vasna Terminus is in the middle of the Exit Gate of the Compound. At the place, Municipal Bus No. GRU-8171 is stationed having face towards southern side from Gate."

8. When the bus was in motion and was passing from the gate of Vasna Terminus, the claimant had attempted to catch the running city bus and could not control himself and fell down, and scene of accident is not shown as Vasna Bus Stand where the city buses halt for getting down the passengers as well as for taking passengers. On behalf of opponent, conductor of the city bus was not examined. The driver was also examined before the Claims Tribunal and charge-sheet for committing an offence u/s 279 and 338 of the Indian Penal Code Exh.46 filed against driver, but, only that fact is not sufficient to hold that the accident occurred on account of sole negligence of opponent No. 3 and in my opinion, to get out from the first earlier version regarding occurring of accident, the son of the applicant who is also a practicing advocate had filed private complaint in Metropolitan Magistrate Court, Exh.36 and charge-sheet was filed. Therefore, tribunal has come to conclusion that accident in question is not occurred on account of negligence on the part of respondent No. 3.

9. Before I discuss the evidence on record Exh.26, Exh.48 and Exh.61 and Exh.63, it is necessary to have the said evidence on record, so, it can be appreciated by the Court that how the Claims Tribunal come to findings while deciding the Issue No. 1 being a contradictory finding from the evidence on record. Therefore, the evidence of the claimant Exh.26, evidence of the driver Exh.48 and evidence of Head Constable Exh.61 are quoted as under :

[The deposition which has been reproduced by the Court is in veranacular and

hence it is not printed.]

10. I have considered the aforesaid discussions made by Claims Tribunal in its award. I have also considered the evidence of claimant Exh.26 along with cross examination and also considered Exh.48 evidence of AMTS driver and evidence Exh.61 a Head Constable Thavraji Rupaji Investigating Officer. In his examination-in-chief, at Exh.26, claimant Chandresh N. Trivedi deposed that on 17th November 1993 at 7.00 a.m., he had come on the stand of AMTS Bus. Bus of Route No. 150 was standing near the Stand of Vasna. Office of the AMTS is at the distance of ten steps on the opposite side. When he boarded the bus, the bus was not in motion. He had boarded from the passage from which the passengers have to board. When he was entering in the bus by holding the rod from the desk board, at that time, as the conductor gave signal, therefore, driver had started the City Bus and in view of the jerk, his grip on the rod had gone and he had fallen down on the land. The wheel which had come on the knee of his right leg was the wheel of left rear side. After he had fallen, driver and conductor of the same city bus had taken him by rickshaw in V.S. Hospital. For two and half months, he had remained as an indoor patient in VS Hospital and during the said period, he had undergone four operations in the Hospital. Since no recovery was found thereafter, he was admitted in the hospital of Dr. Lagavankar, Near Parimal Garden and in the hospital of Dr. Lagavankar, three operations were performed and was admitted as indoor patient for 13 days. From there, he was admitted in the hospital of Dr. Chhappan at Vasna, where, one operation was performed on him and he was admitted as an indoor patient for three days. In VS Hospital and before Dr. Lagavankar, Plastic Surgery was done. After the discharge was given from the Hospital of Dr. Chhappan, he was coming to his house regularly for the purpose of dressing for 20 days and thereafter, for two months, claimant was going to his hospital for dressing. Thereafter, he had done exercise through Physiotherapist in Vijay Towar at Vasna for six months. He had received injury in leg and there was constant dribbling of the liquid from leg, therefore, he was advised by Dr. Chhappan to approach Skin Specialist Dr. Gupta and the treatment of Dr. Gupta had continued for about one and half year and the problem of dribbling of liquid was not faced by him for the period while he was taking medicine and thereafter, he had started Ayurved treatment and he had obtained such treatment from Dr. Hardikar Vaidya and the treatment had continued for about one and half year. During that period, Protein from his body had reduced therefore as per advice of his family doctor, he had shown to Dr. Mayur Shah. That treatment had been recently over. Treatment before Dr. Mayur Shah was taken for about 20 days and thereafter, he was not required to take any treatment. After the accident, he is not able to walk in the same manner in which he was walking prior to the accident. And he is required to take support of stick and could not walk for a long distance and could not stay for a long period and unable to seat while crossing the legs and also unable to stand erect. When he has to climb the stair, he is required to take support of stick and rallying and therefore, this evidence is given by the claimant before the Claims Tribunal. Total

amount spent by him towards medicine was about Rs. 1,14,000/-. Towards transportation, he incurred total expenditure of about Rs. 10,000/- and towards Nutritious Feed, there was expenditure of about Rs. 10,000/-. He has produced the bills of expenses towards medicines. The leg which has met with accident has become thick and swollen and has not remained exactly as left leg which has resulted into great difficulties to wear the shoes. After accident, private complaint was filed by his son against the driver of City bus in the Metropolitan Court and the charge-sheet was issued by Magistrate against the City Bus Driver. He has demanded total Rs. 5 lakhs towards compensation. The driver was examined before the Claims Tribunal. The claimant in cross-examination denied the suggestion that at the time when the accident occurred, the bus was in motion. He also denied the suggestion that all of sudden, the control over the pipe/rod was lost by the claimant, but, in fact, he again reiterated that because of sudden jerk given by the driver while starting the bus on the basis of the ringing bell by conductor. Therefore, the driver who has not given details of accident as to why it has occurred, but, according to him, that claimant was tried to alight in the bus on the front door not from the back door and accident occurred because of sudden jerk in running bus, claimant was made efforts to alight in the bus. The statement was recorded by the Investigating Officer when claimant was in V.S. Hospital and that part has been made it clear by the claimant that when he was in VS Hospital, at that time, two police constables and one person from traffic police came to him and approached the claimant for obtaining the signature on the statement which was already written by them and gave threat to the claimant that if, he will not sign in the statement, the treatment will not be started. He has not obtained the copy of the statement obtained by the head constable and he also denied that "because of he entered into the bus from the front gate, the accident occurred." the Head Constable evidence at Exh.48 where he visited the claimant in VS Hospital and obtained the statement of the claimant which was produced on record vide Exh.62/2 and thereafter, report was submitted by the constable and first statement was obtained from the claimant. Then, statement of driver and conductor was recorded by the Head Constable. Looking to the evidence of Head Constable Exh.61 and cross-examination of the claimant, the statement was already prepared by the Head Constable and only signature was obtained by the Head Constable. These facts, in terms, deposed by claimant in cross-examination that first, claimant shall have to sign the statement, then only, his treatment will start and on that basis, having the threat from Head Constable, he signed the statement. Therefore, it was not his voluntarily statement given by claimant to Head Constable and statement was not recorded as per say of the claimant. That is how, statement obtained by Head Constable is contrary to the deposition given by the claimant. Legally a statement obtained by head constable under the provisions of Code of Criminal Procedure is not having any evidentially value except it can be used for contradiction at the time of cross-examination of the claimant.

In view of aforesaid evidence of the claimant, driver and head constable, the finding given by Claims Tribunal is basically contrary to the aforesaid evidence Exh.26, Exh.48 and Exh.61 respectively. Therefore, this finding is to be vitiated being a non-application of mind of the Claims Tribunal. The Claims Tribunal has not properly read the evidence of all the three witnesses as referred above and not properly dealt with, with application of mind and entire facts are differently discussed by the Claims Tribunal. The Claims Tribunal has come to conclusion that after taking passengers from Vasna Terminus left Vasna Terminus and reached near gate of Vasna Terminus and while the bus was in motion, the applicant had attempted to gate the bus from front door of the bus, but, could not catch the grip/rod and fell down. This versions are taken by the Claims Tribunal from the evidence of the claimant vide Exh.26. The statement which was recorded by Head Constable Exh.61 evidence, it was not dictated by the claimant and such suggestion has been denied. Therefore, the statement which was not dictated by the claimant Exh.63 referred in the evidence of Head Constable Exh.61 is totally wrong, incorrect and contrary to the oral evidence of claimant which has been relied by Claims Tribunal. The reasoning given by Claims Tribunal that claimant has subsequently denied the statement recorded by head constable and merely signature was obtained, this is nothing but afterthought version. The Claims Tribunal relied upon Panchnama Exh.35 for deciding the fact that actually at what place, the accident occurred which reads that bus was lying in the middle portion of the gate having a face on southern side. The conclusion and finding from Panchnama that when the accident was occurred, bus was in motion and was passing from the gate of Vasna Terminus and applicant has admitted to gate the running city bus and could not control himself and fell down as scene of accident is not shown as Vasna Bus Stand where the city buses halt for getting down the passengers as well as for taking passengers, is contrary finding from the real fact which deposed by claimant. The driver's evidence Exh.48 is also not made it clear that accident occurred when bus was in motion. Therefore, conclusion of Claims Tribunal that the accident in question has not occurred on account of negligence on the part of the driver is factually contrary to the evidence on record and it amounts to basic error committed by the Claims Tribunal. The Claims Tribunal has heavily relied upon the statement obtained by head Constable Exh.63 as per his evidence Exh.61 which was denied by claimant in his evidence vide Exh.26 that said statement was not dictated by him and it was not obtained according to his say, but, merely, signature was obtained in prepared statement by the head constable, otherwise, treatment would not commence unless he does not signs the statement which compelled the claimant to sign the statement. In comparison to both evidences Exh.63 and Exh.26 evidence of the claimant, the reliable evidence is of the claimant before the Claims Tribunal not the statement obtained by head constable which was objected and denied by claimant in his cross-examination.

Therefore, according to my opinion, the finding given by Claims Tribunal in Para 16 in respect to Issue No. 1 is contrary to the facts and record and evidence

before the Claims Tribunal and basic error has been committed by the Claims Tribunal even ignoring the fact that driver was prosecuted for an offence committed u/s 279 and 338 of the Indian Penal Code vide Exh.46. Once the driver received the charge-sheet, it proves the involvement of the vehicle and negligence of concerned driver. Therefore, Claims Tribunal has committed gross error in coming to conclusion in respect to Issue No. 1.

11. In view of evidence of the claimant read with evidence of the driver and Head Constable, according to my opinion, the claimant was not at all in negligence, but, when bus was not in motion and standing at Vasna Bus Stand Gate, at that occasion, claimant was alighted/boarded in the bus from back door gate and after entering into the bus, the grill/pipe of the bus was caught by him. Thereafter, conductor has rang the bell and immediately, driver has started the bus to be in motion which resulted into the accident, where, wheel of bus ran over on the right leg upto knee of the claimant and because of that he was fell down and received injury and admitted as in indoor patient in the V.S. Hospital. Looking to the injuries, claimant has received serious injury and about ten operations were carried out by different Doctors. The conductor was not examined from that door where the claimant was entered in the bus, because, he was eye-witness, even though, respondent - Transport Service has not examined the conductor. Even his statement was also not placed on record and discussed by Claims Tribunal. Therefore, the crucial facts stated by claimant in Exh.26 that when he entered into the bus, bus was standing on the stand of Route No. 150 on the gate and at that occasion, the claimant was boarded in the bus from the back door not from the front door. Because of ringing the bell by conductor, then, driver had started bus and due to sudden jerk, the grip of claimant was lost which resulted into serious accident, where, right leg of the claimant upto knee point was injured as left side wheel being a last wheel from rear side of the AMTS bus ran over on the right leg of the claimant upto knee. Therefore, looking to the aforesaid evidence, conclusion arrived at by the Claims Tribunal in Para 16 is contrary to the record and therefore, it is required to be set aside such finding and this Court has come to conclusion that AMTS driver is solely responsible for the said accident as rashness and negligent driving was proved before the Claims Tribunal by the evidence of claimant. The driver of heavy and big vehicle must have to take sufficient care and require a caution while driving the bus in City Area. So, it may not resulted into any accident in City Area. But, that care and caution was not maintained by driver.

12. What is the duty of the conductor and driver in Public Transport to maintain the safety of the passengers those who are driving in public transport. The Madras High Court has recently examined this question having almost similar facts in case of The Managing Director, Tamilnadu State Transport Corporation, (VPM DVN 1) Ltd. Vs. N. Balachandran, , where, the accident while alighting the passengers, passenger was getting down from the bus when the driver suddenly, moved the bus, passenger fell down and wheel of bus ran over his leg, the defence that passengers attempted to get down from the moving bus, lost

balance and fell down. The bus driver deposed that injured had alighted the bus at a turning which was not supported by evidence of the conductor. The Tribunal held that bus driver was rash and negligent in causing the accident. That finding is confirmed by the High Court. The Madras High Court has considered one decision of Madras High Court in case of Venkataswami Motor Service P.N. Palayam Vs. C.K. Chinnaswamy and Others, .

"(21)... The life and limb of the passengers are to be borne in mind by the crew, namely, the driver and the conductor of a bus. It is not for merely mechanically driving the bus and for collecting the fares from passengers that both of them are employed in a bus. The driver of the bus has to look into both the entrances, front exit as well as rear exit, before actually starting the vehicle, even though whistle might have been given by the conductor inadvertently without noticing both the exits due to the pressure of collection of fares from the passengers or due to his noting in the memo, as in the instant case before us. But the fundamental duty of both the driver as well as the conductor is to verify specifically whether any passenger is getting into the bus or getting down from the bus before actually the bus is moved from the bus stop where it is stopped, irrespective of the fact whether that place of stopping is a bus stop or not..."

13. The Apex Court has also considered the question that what is the duty of the driver and conductor and whether it would consider to be negligence on their part or not in case of Pallavan Transport Corporation Ltd. Vs. M. Jagannathan, , which is quoted as under :

"5.... It is always important to have coordination between the conductor and the driver, whenever passengers start getting down or are led to get down, to see that before any signal is given by the conductor, in any form, as normally there is bell in most of the buses which conductor rings signaling the driver to start the bus, the driver should not restart the bus. In the absence of coherence or lack of coordination between the two, it is bound to result into accident, which has happened in the present case. This would constitute to be negligence on the part of both the conductor and the driver. Once this evidence is accepted, which has been in this case, there is no scope to reassess the evidence in the present proceedings, about which attempt has been made, unless it can be said, this finding is based on no evidence or is perverse. Learned counsel for appellant submitted with vehemence and attempted to take us to the evidence to show that there was no negligence on the part of the driver. However, as we have said, it is not proper for this court to reassess the evidence and even if another view is possible, this court would not do so in a proceeding under Article 136 of the Constitution of India. In the present case, we further find, as per evidence of PW 1, that he was getting down from the front gate of bus, which is almost adjacent to he driver. If that be so, there is no difficulty for the driver to take this much of care, even if the version of RW 1 is accepted, to restart the bus suddenly when the passengers were getting down..."

(Emphasis added)

14. Therefore, considering the aforesaid view taken by Madras High Court relying upon the Judgment of Madras High Court as well as Supreme Court and also decided that test of negligence is only to find out whether the driver by exercising due care and caution and by observing due diligence after averted the accident, looking to the facts of this case, conductor was not examined, a Head Constable Exh.61 examined who was not eye-witness, but, statement is recorded by him vide Exh.63 of the claimant and Tribunal has committed gross error in appreciating the claimant's evidence by way of piece of evidence obtaining certain portion from the evidence of claimant and come to conclusion that according to claimant, accident was not occurred and it was his mistake alighting in the moving bus and not able to catch the handle and fell down. These are the facts stated by the claimant where have been considered by the Claims Tribunal as if that claimant specifically come to the bus with a request to driver that kindly allow to run over the wheel upon my right leg and let it be run over. This type of appreciation by the Claims Tribunal is totally misdirected himself in not properly appreciated the evidence of the claimant and Claims Tribunal has not considered other facts, Panchnama that so long, bus has not crossed the compound and remained in compound and not reached to the road, a passenger is entitled to alight in the bus and during that portion of Vasna Bus Terminus, it is a duty of the driver and conductor to see that to allow safely the passengers and to alight in the bus and in such a situation, they have to stop the bus. Such a due diligent, care and caution has not been maintained by the driver of the bus when claimant was alighted in the bus, when bus was standing. At the time of starting the bus, due to sudden jerk, claimant lost the grip of rod and fell down. So, claimant entered in the bus and conductor had given immediately gave the signal, meanwhile, due to sudden jerk by starting the bus, accident occurred. Therefore, it is clear negligence of driver proved from the records.

15. The Apex Court has recently considered the same question in case of A.P.S.R.T.C. and Another Vs. K. Hemalata and Others, , where, in case of contributory negligence, test is that of the two vehicles who was driving his vehicle negligently and rashly and in case both were not so doing who was more responsible for the accident and who of the two had the less opportunity to avoid the accident are the relevant facts. The Apex Court has also observed that in case of contributory negligence if driver ought to have forcing that if he did not act as a responsible reason man, he might himself by hit and he must take into account the possibility of others being careless. Therefore, considering the facts of this case, at the time when bus was within compound on stand, no doubt, bus was not moving, claimant had made efforts to alight in the bus from the rear door, the driver was definitely aware about the fact that one passenger was trying to alight in the bus from the rear side, but, he could not immediately start the bus and he could not move the bus after knowing fully well that one passenger was trying to alight in the bus, he should have to take care for safety of the passenger, which has not been maintained by the bus driver and accident occurred. Such statement has given by the driver while giving evidence before

the Claims Tribunal even conductor has not been examined. A Head Constable who was not an eye-witness was examined only to prove the statement obtained by him of the claimant vide Exh.63. The relevant Para 11 from the decision of Apex Court as referred above is, therefore, quoted as under :

"11. To determine the question as to who contributed to the happening of the accident, it becomes relevant to ascertain who was driving his vehicle negligently and rashly and in case both were so doing who was more responsible for the accident and who of the two had the last opportunity to avoid the accident. In case the damages are to be apportioned, it must also be found that the plaintiff's fault was one of the causes of the damage and once that condition is fulfilled the damages have to be apportioned according to the apportioned share of the responsibility. If the negligence on the plaintiff's part has also contributed to damage this cannot be ignored in assessing the damages. He can be found guilty of contributory negligence if he ought to have foreseen that if he did not act as a reasonable, reasoned man, he might himself be hit and he must take into account the possibility of others being careless."

16. Recently, in case of Vijay Nath Tiwari Vs. Surender and Another, , where, question of contributory negligence is decided on the basis of the facts that passenger jumped from front gate of a moving bus and sustained injury. The Apex Court has discussed that it is a duty of the driver and conductor of bus to ensure that passenger stand inside of bus and not on foot-board; owner of passenger bus plying within the city has a duty to install movable device which opens/closes the exit gate and is operated by the driver to open the exit gate by causing the device to move.

17. The Division of this Court in case of New India Assurance Co. Ltd. Vs. Takhuben Raghobhai and Others, , where, issue of negligence has been examined in detail, where, in case of fault liability where the burden is on the defendant to prove that he took all reasonable care and precautions, i.e., the accident did not result from any fault or negligence or wrongful act on his part. The relevant discussions are made in Para 22 and Para 35, therefore, the same are quoted as under :

"22. To appreciate the heart of the debate, we may broadly categorise the civil liability to pay compensation in different categories in terms of the burden of proof on the plaintiff/claimants arranged in the descending order:-

I Fault Liability

(i) burden of proof on plaintiff (ii) burden of proof on defendant

II Strict Liability

III No Fault Liability I Fault Liability:

(i) Where the burden is on the plaintiff to prove some fault, negligence or wrongful act on the part of the defendant:

The common law as well as the Indian Fatal Accidents Act, 1855 provide for this kind of tortious liability. Here, even after it is admitted or shown that the accident arose out of the use of the motor vehicle in question, if no further evidence is led on the relevant issue by any party, the plaintiff will fail and the claim petition will be dismissed.

(ii) Where the burden is on the defendant to prove that he took all reasonable care and precautions i.e. the accident did not result from any fault or negligence or wrongful act on his part:

Once it is shown that the accident arose out of the use of the motor vehicle in question, if no evidence is led by any party on the relevant issue, the Court will decide the issue in favour of the plaintiff and proceed to quantify the compensation amount in favour of the claimant.

35. In light of the above discussion, we are of the view that even if the Courts may not by interpretation displace the principles of law which are considered to be well settled and, therefore, the Court cannot dispense with proof of negligence altogether in all cases of motor vehicle accidents, it is possible to develop the law further on the following lines :-

(i) When the motor vehicle is being driven with reasonable care, it would ordinarily not meet with an accident and, therefore, the rule of *res ipsa loquitur* as a rule of evidence may be invoked in motor accident cases with greater frequency than in ordinary civil suits (per three Judge Bench in *Jacob Mathew Vs. State of Punjab and Another*, - quoted in para 23 above)

(ii) In claim petitions where the victim was not driving any of the motor vehicles involved in the accident, the Courts may, therefore, raise a presumption of fact (and not a presumption of law) that the accident in question was caused on account of the motor vehicle not having been driven with reasonable care. Even where such a presumption is raised, it is open to the defendant in the claim petition to plead and prove that he had taken all care and precaution or that the injured claimant himself (or the deceased) was guilty of a negligent act resulting into the accident. In case of such a plea and proof, the injured plaintiff or the legal representatives of the deceased have to establish by preponderance of evidence that there was no negligence on the part of the injured or the deceased (vide three Judge Bench decision in *National Insurance Co. Ltd. Vs. Prembai Patel and Others*, .

By the above process, the burden of proof may ordinarily be cast on the defendant in a motor accident claim petition to prove that the motor vehicle was being driven with reasonable care.

(iii) the rule of strict liability as explained in *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, should apply when the person who was injured on account of the motor vehicle accident, or who died on account of the injuries sustained in such accident, was a pedestrian/ bystander/

on road not travelling inside the vehicle.

The justification for this distinction could be that -

(a) The provisions for compulsory insurance provided by Legislature for the benefit of third parties would not be meaningful and efficacious without applicability of strict liability rule.

(b) while pedestrians have no choice about the vehicles being plied on the roads, passengers travelling in motor vehicles have some choice about the vehicle/s in which they would travel."

18. Therefore, in absence of due diligent on the part of the driver and conductor, the safety of the passengers are danger which has been resulted into number of serious accidents. Similarly, in the facts of the present case also, due diligent was not maintained knowing fully well that from rear door, a passenger was making efforts to get in the bus, even though, bus was started by the driver. Not only that but driver has not informed to the office immediately though wheel of the bus was run over on the right leg of the claimant. These are the hard reality which cannot be ignored by this Court even though claimant was not able to make clear statement before the Head Constable Exh.63 as deposed by Head Constable vide Exh.61. The Claims Tribunal has to consider entire statement not in peaceful manner. Therefore, as basic error committed by the Tribunal in appreciating the evidence of Head Constable and claimant.

19. Therefore, according to my opinion, the Claims Tribunal has committed gross error in deciding the question of negligence while scrutinising the evidence of the claimant as if that he is just find out the fault from the evidence of the claimant and from relevant paragraph from the entire chief examination and cross examination not taken in account and on that basis, the finding which has been given, according to my opinion, such finding of fact vitiated because such method of appreciating part of evidence by the Claims Tribunal is totally contrary to law and contrary to the principles of appreciation. Therefore, according to my opinion, a bus driver was negligent and not discharging his duties properly and not taken due care and caution and diligent while driving the bus and therefore, finding of Tribunal in respect to the negligence is reversed by this Court and this court has come to conclusion that driver of the bus was sole in negligence and due to his negligence, accident occurred. So, finding of Issue No. 1 is reversed by this Court and answered accordingly in affirmative. It is the duty of the driver and conductor to see that subsequently if any passenger may come, they should have to accommodate in the bus while giving peaceful entry in the bus even while stopping the bus. That part has been totally not observed by the bus driver and conductor and due to their failure and negligence, accident occurred and claimant received injuries. Therefore, finding is reversed accordingly. The Claims Tribunal has decided the Issue No. 2 for compensation after appreciating the evidence on record and I am not disturbing the finding and calculation of compensation which has been decided by the Claims Tribunal. The Claims

Tribunal has come to conclusion that claimant was entitled for Rs. 2,87,037/-, no interest is specified, because, according to Claims Tribunal, claimant is not entitled any amount of compensation, because, accident occurred due to claimant's negligence. Therefore, it is held that appellant claimant is entitled for the compensation considering that accident occurred on account of negligence of opponent No. 1 and appellant is entitled the compensation as decided by the Claims Tribunal Rs. 2,87,037/- with 9% interest from the date of application till the date of realisation.

20. Accordingly, it is directed to respondent Corporation and Transport Service to pay Rs. 2,87,037/- with 9% interest from the date of application till the date realisation to the appellant within a period of three months from the date of receiving the copy of the said order.

21. Accordingly, award is modified. It is open for the appellant to execute the modified award against the respondent. Accordingly, appeal is allowed with proportionate cost to that extent.