

(1989) 08 GUJ CK 0015
In the Gujarat High Court
Case No : F.A. No. 714 of 1989

Commissioner, Jamnagar Municipal Corporation, Jamnagar
and Another

APPELLANT

Vs

Vijaykumar Bhagwanji and Another

RESPONDENT

Date of Decision : 11-08-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1990) ACJ 712 : AIR 1990 Guj 134 : (1990) 1 GLR 664

Hon'ble Judges : M.B. Shah, J;A.P. Ravani, J

Bench : Division Bench

Advocate : J.R. Nanavati, for the Appellant;

Judgement

Ravani, J.—Respondent-original claimant met with an automobile accident on February 19, 1983 while boarding a public bus belonging to Jamnagar Municipal Corporation. He fell down from the bus as the bus had started all of a sudden with a jerk. On account of the accidental injuries he was admitted in hospital as indoor patient. The injury resulted into permanent partial functional disability of left lower limb to the extent of 22%. The doctor who has examined the injured has also opined that the injured will have difficulty in walking and running and it will be difficult for him to sit cross-legged and in squatting position.

2. The respondent-ori. applicant claimed an amount of Rs. 1,31,280 /- as and by way of compensation. The appellants herein i.e. the Commissioner of Jamnagar Municipal Corporation and the Driver of the bus and the Insurance Company (respondent No. 2 herein) resisted the claim of the applicant on various grounds. The motor Accident claim Tribunal came to the conclusion that the driver of the bus was negligent in driving the vehicle. On overall appreciation of evidence and having regard to the facts and circumstances of e case, the Tribunal held that the applicant-claimant was entitled to receive Rs. 43,300/- from the appellants and from respondent No.2 herein i.e. the Insurance Company, jointly and severally. However, the liability of the Insurance Company is limited to the extent of Rs.

15,000/- only inasmuch as the Tribunal held that the applicant claimant was a passenger of the bus and in case of such passenger the liability of the Insurance Company did not exceed the limit mentioned in the Insurance Policy in question which in this case is Rs. 15,000/-.

3. x x x x x x]

4. The learned Counsel for the appellants submitted that the injured cannot be said to be a "passenger" and therefore the Tribunal erred in holding that the liability of the Insurance Company is limited to the extent of Rs. 15,000/- only. In his submission the insurance policy covered the liability in respect of third parties and the injured was not a passenger but he was a third party. The injured had not boarded the bus, only one of his legs was on the foot-board and another leg was on the earth or it was at the most hanging. He had not even purchased the ticket. In his submission, at the most injured was a trespasser. It is contended that a person can be said to be a passenger only if he is a bona fide passenger who has lawfully entered the vehicle and who has purchased the ticket.

5. In support of this contention, the learned Counsel for the appellants has relied upon a Full Bench decision of Allahabad High Court in the case of Smt. Sundri and Others Vs. Union of India (UOI) and Another, . It was a case under Railways Act (9 of 1890). In that case one Suraj Prakash aged about 18 years was travelling with his father Chet Ram in a train. The train collided with a goods train. As a result, both, the father and son, died in the accident on the spot. It was contended that Suraj Prakash was not a bonafide passenger inasmuch as the pass of Suraj Prakash was obtained by misrepresentation. Since he was not holding lawful pass to travel, he was an unauthorised passenger and his status was not higher than that of a trespasser. In this context and having regard to the provisions of Ss. 82A, 66, 68, 113 and 122 of Railways Act (9 of 1890), the Full Bench of the Allahabad High Court came to the conclusion that deceased Suraj Prakash was not a bona fide passenger and therefore the claimants were not entitled to claim compensation from the Railways.

6. This decision does not help the appellants for the simple reason that the provisions of the Railways Act are not to be considered by the Court in this case. Even assuming for a moment that having regard to the principles underlying the provisions of Railways Act, the question involved in this case is required to be considered, and then also the appellants cannot succeed. In para 18 of the Judgment, the Full Bench has observed as follows: -

"A consideration of Ss. 66, 68, 113 and 122 of the, Act would indicate that a person assumes the status of a passenger and becomes entitled to all the rights and privileges accruing from such relationship when he travels either on ticket or on pass or with permission of the authorised officer."

In a case of city buses there is always an implied permission for all the members of the public to board the bus at bus stops. It is found by the Tribunal that, at the Custom Post the bus stopped and the injured tried to board the bus. It is not the

case of the appellants that entry of members of public was prohibited and the conductor of the bus lawfully restrained the injured to enter the bus. In case of public vehicles and particularly city buses, the permission to board the bus is to be presumed. As far as the railways are concerned, the practice as well as the provisions of statute are different. At all railway stations there is a booking office. No one can enter the platform even without purchasing platform tickets. Similarly no one can lawfully board the railway trains without purchasing the railway ticket or without having lawful pass or permit to board the train. Such is not the case with regard to the public buses. In case of public buses permission to board the bus at particular stops is to be presumed. Such presumption would be there in favour of the injured unless the same is rebutted by leading necessary evidence. In the instant case evidence is to the contrary. Moreover, it is not even contended that despite refusal and/or restraint, the injured tried to board the bus. In this view of the matter the decision of the Full Bench of Allahabad High Court in the case of Smt. Sundri and Others Vs. Union of India (UOI) and Another, does not help the appellants.

7. The term "passenger" is not defined in the Motor Vehicles Act, 1939. Therefore one has to go by the dictionary meaning and the meaning of the word ordinarily understood by the people. Dictionary meaning of the word "passenger" as given in Black's Law Dictionary is "a person whom a common carrier has contracted to carry from one place to another". The Full Bench of the Allahabad High Court in the case of Smt. Sundari (supra) has referred to the following passage from the American Jurisprudence which deals with the relationship of carrier and passenger: -

"In accordance with the principles discussed in the preceding section, a "passenger" in the present connection and in the legal sense of the term, has been defined generally as one who travels in a public conveyance by virtue of a contract, express or implied, with the carrier as, to the payment of fare, or that which is accepted as an equivalent thereof."

8. In case of public buses there is always an open offer to the members of the public to travel by the bus. The members of the public by their conduct accept the offer when they board or try to board the bus. On the part of the public conveyance, when there is no restriction whatsoever for any member of the public to board the conveyance, and when a member of public boards the conveyance the relationship of passenger of the public carrier comes into existence. Thus, by necessary implication there is a contract between the two. In this view of the matter, it can be said that when the injured tried to board the bus when it stopped at the Custom Post bus stand, on the part of the injured he had accepted the offer of public conveyance. When there was no restriction to board the bus, it was an acceptance by conduct on the part of the public conveyance to carry him on payment of necessary fare. Thus by conduct of the parties, a contract came into existence and mutual rights and obligations arose out of the contract which came into existence.

9. It is the common practice of almost all the city buses to allow the passengers to board the bus without ticket. Tickets are being issued to the passengers after they enter the bus and while the bus is moving. This is so because at each and every bus stop there is no booking office. It may be that at the terminal point sometimes the conductor might be standing at the door of the bus and allowing the passengers to board the bus only after they purchase tickets. This is usually not done at the intermittent bus stops. It is not even the case of the appellants that the conductor had refused the injured to enter the bus without purchasing the ticket. Therefore, the contention that the injured had not purchased ticket and therefore he is not a passenger has no merits.

10. The Tribunal has relied upon a decision of Rajasthan High Court in the case of Makbool Ahmed and Others Vs. Bhura Lal and Others, . The facts in that case were almost identical to the facts of this case. The deceased had placed one foot on the foot-board and the bus moved. The deceased fell down and the bus ran over him and he was crushed by rear wheel of the bus. The parents and widow of the deceased had claimed compensation. Therein it was contended that the deceased was not a passenger. While dealing with this contention the learned single Judge of Rajasthan High Court referred to the provisions of Section 95 of the Motor Vehicles Act, 1939 and also referred to a decision of Calcutta High Court in the case of Gobinda Prosad Mukherjee Vs. Sujit Bhowmick and Another, . The learned single Judge of Rajasthan High Court agreed with the principles laid down by the Calcutta High Court and thereafter referred to proviso (ii) to sub-section (1) of S. 95 of the Act which reads as under: -

"(ii) Except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises."

After extracting the aforesaid provisions, the learned single Judge of Rajasthan High Court has observed as follows (at p. 181 of AIR): -

"These provisions constitute an exception and are a lever to the proviso. The insurer is, therefore, to cover liability in respect of death of a person entering or mounting the bus. The provisions of sub-section (2) are subject to the provisions of sub-section (1) of Section 95 of the Act. The liability of the insurer in a case where a person dies while entering or mounting the bus will be governed by the provisions of subsection (2)(b)(ii) of S. 95 of the Act, depending on the registered sitting capacity of the bus but in no case it will be above a sum of Rs. 5,000/- provided the registered sitting capacity of the bus is for more than six passengers."

We are in respectful agreement with the aforesaid observations. In above view of the matter the contention that the injured was not a passenger of the bus cannot be accepted.

* * * * * 11. Appeal dismissed.