
(2008) 09 DEL CK 0201

In the Delhi High Court

Case No : Writ Petition (Criminal) 878 of 2007

Court on Its Own Motion

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 160(3A), 166, 171A, 70

Citation : (2009) 107 DRJ 600

Hon'ble Judges : A.P. Shah, C.J.; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Kailash Vasudev, /Amicus Curiae, A.J. Bhambani, Nisha Bhambani, Apoorva Agrawal and Ranjit, for the Appellant; Mukta Gupta, Rajat Katyal and Ajay Chakti, Secretary STA, Public Prosecutor Malhotra, A.S.G. and Gaurav Duggal, for UOI, Sumit Pushkarna and Jitendra Kumar for DTC, Jyoti Singh and Amandeep Joshi for PWD, Jasbir Singh Malik, for Association Victims of Blue Line Buses, V.P. Singh and Rani Chhabra, for Blue Line Bus Operators and Federation, Sanjeev Sen, Nandini Gore, Debmalya Banerjee, Seema, Lakshmi Ramachandran, Abhishek Roy and Jatin Mongia for Tata Motors and Madhu Tewatia, Sidhi Arora and Ajay Verma for NDMC, for the Respondent

Judgement

1. The gravity of repeated accidents caused by Private Stage Carriage buses, commonly called Blue Line buses, leading to loss of life and limb has been engaging the attention of this Court for quite some time. Acting upon the newspaper reports all of which spoke of the terror let loose on the roads of Delhi by Blue Line buses, the Court initiated a suo motu action on 10th July, 2007. The Court took note of the fact that in spite of a public outcry in face of persistent and fatal accidents by the Blue Line buses, no effective deterrent action appears to have been taken to curb the menace to the pedestrians and commuters, posed by Blue Line buses. Initially vide order dated 10th July, 2007 the Court framed six questions seeking response thereon from the respondents. After referring to the directions given by the Supreme Court in M.C. Mehta Vs. Union of India (UOI) and Others, and the subsequent orders in same case, the Delhi Administration was directed to file affidavit within three weeks indicating the

response on the six points. The point (b) framed by the Court was as follows:

What action is taken against a bus involved in a fatal accident and what further action is taken against a driver involved in a fatal accident?

2. On 31st July, 2007 this Court was pleased to frame twelve additional questions and directed the Govt. of the NCT of Delhi to furnish their response on the said twelve issues. Issue No. 5 which is material is as follows:

What action has been taken against the buses involved in fatal accidents and the figures of cancellation of permits of such buses involved in two (the) fatal accidents be furnished and the average period for which a bus involved in a fatal accident is impounded be brought on record?

3. On 8th October, 2007, this Court taking note of the gruesome accident caused by a Blue Line bus where seven persons including five women and one infant lost their lives for no fault of theirs by being run over by a deviant Blue Line bus decided to have another emergent look at the operation of the Blue Line vehicles. A notice was issued to the Blue Line Operators Association and the Delhi Administration to show cause as to why:

(a) The scheme for the replacement of blueline vehicles be not made available to the court not later than four weeks from today.

(b) Why the vehicles involved in any accident involving an injury or a fatality be not impounded under the orders of this Court and be only released after this Court is satisfied about the future safety of the citizens.

(c) Why interim compensation under the Fatal Accidents Act, 1855/The Motor Vehicles Act, 1988 not be directed to be deposited in the event of an accident involving an injury or a death prior to the release of such vehicles.

(d) Why the extension of four months" each permitted by earlier orders of this Court be not withdrawn.

In the said order, the Delhi Administration as well as the Blue Line Operators Association were directed to file reply to the pleas of the learned amicus curiae who asked for the following amongst other directions:

2. That all buses plying under the Stage Carriage Permits be directed to deposit a sum of Rs. 10 lakhs as security for disbursement in case of a fatal accident.

7. All buses involved in fatal accidents must not be allowed to ply and the permit granted must be cancelled in the public interest.

The Court further directed that so far as fatal accidents are concerned, the State and Blue Line Operators Association shall indicate as to out of the fatal accidents of this year, how many drivers are back on the roads driving public transport vehicles. The Blue Line Operators Association was directed to file a list of drivers attached to each bus with the authorities.

4. By order dated 11th October, 2007 this Court recorded the statement of learned Counsel appearing for the Blue Line Operators Association that he has no objection to the steps contemplated for the release of an offending vehicle involved in cases of fatalities and grievous injuries. It was further recorded that whenever a vehicle is involved in any accident involving a fatality or a grievous injury, then apart from the procedure indicated in paragraph 2(b) of the reply/affidavit filed by the Blue Line Operators Association, which the learned Counsel for the State Ms. Mukta Gupta also affirmed, the release of the vehicle even after the order of the Metropolitan Magistrate, shall only be with permission of this Court. It was further recorded that after taking into account the nature of the recklessness leading to the accident, this Court may consider imposing the condition of monetary deposit to compensate the victim before the vehicle is ordered to be released by this Court. Thereafter, this Court has been ordering the release of Blue Line buses involved in accidents subject to their furnishing fixed deposits in the Court of the concerned Magistrate in the sum of Rs. 1 lakh for fatal accident, Rs. 50,000/- for grievous injury and Rs. 25,000/- for minor injury.

5. In the past also, this Court after taking note of the breaches of traffic regulations by Blue Line buses, issued various directions but there was no improvement in the situation which can be seen from the statistical data of the accidents caused by the Blue Line buses. During the period 1st October, 2007 to 31st July, 2008, 83 fatalities were caused by Blue Line buses apart from the large number of cases of grievous/simple injuries. We are informed that so far around Rs. 80 lakhs have been collected from the Blue Line buses owners involved in different accidents and this amount is lying in different Magistrate Courts. We hasten to add that the other Stage Carriage operator i.e. DTC is also involved in large number of accidents which has resulted in several injuries and deaths. During this 10 months period DTC caused as many as 66 fatalities and 214 persons were injured. Both Blue Line buses and DTC buses are Stage Carriage within the meaning of Motor Vehicles Act, 1988. The Stage Carriage vehicles are permitted to ply in terms of the permits granted to them under Chapter V of the Motor Vehicles Act, 1988 particularly under Sections 70 to 72 thereof. Stage Carriages are of two categories i.e. Public Stage Carriage and Private Stage Carriage. Blue Line buses fall in the category of Private Stage Carriage while DTC buses are Public Stage Carriage. It is placed before this Court that both classes of vehicles have been involved in large number of accidents both fatal and non-fatal.

6. The large number of injuries and deaths on account of accident caused by Blue Line buses and DTC buses is really tragic. Survivors and family members are affected not only by the immediate death or disability, but sometimes a lifetime of psychological and physical suffering. Crashes often result in orphans, and some victims, as young as infants, spend the rest of their lives in medical facilities. In Rathnashalvan Vs. State of Karnataka, , the Supreme Court had noted the economic impact of the human toll in motor accidents:

In addition to the devastating human toll, the economic impact of road crashes is also enormous. Many of those injured or killed are wage earners; leaving families destitute and without means of support. Loss of wages, property damage, and other factors affected by road traffic crashes represented 4.6% of the gross national product of the United States in 1994. In developing countries, road traffic crashes represent 3-5% of the GNP. The estimated annual cost of road traffic crashes in developing countries exceeds \$100 billion (US). This amounts to nearly double the total combined development assistance these countries receive every year from bilateral and multilateral government organisations. Globally, the estimated annual cost of road crashes is 500 billion (US).

7. In *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, , the Supreme Court in the context of the applicability of principle of strict liability in cases arising out of the motor accidents quoted the observations made by E.S. Venkataramiah, J. (as His Lordship then was) in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, :

Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in *Rylands v. Fletcher* (1868) 3 HL 330. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. "Hit and run" cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault.

8. Our attention is brought to The Motor Vehicles (Amendment) Bill 2007, in which one of the proposed amendments is for providing interim compensation to the victims of the accidents by inserting Section 171A. We are informed that this Amendment Bill has referred to the Select Committee and it has been approved by the Committee. Be that as it may, the fact remains that as the law stands today there is no immediate succour or help to the victims of the accidents.

9. In our opinion, for the purpose of protecting the rights of citizens from rampaging Blue Line buses and DTC buses, it is necessary to release a fixed sum in favour of the victims of the accidents. We therefore propose to frame a Scheme for providing immediate compensation to the victims of such accidents by ordering every vehicles falling in this class to pay compensation forthwith through the Magistrate to the victims/family members of the victims. On behalf

of the Association of the Blue Line buses, it was contended that all Blue Line vehicles are insured and if the amount is directly paid to the victims, owners of the vehicles will not be able to recover the money from the Insurance Companies. We wish to clarify that the payment of this amount to the victims of the accidents by the owner would not preclude the owner from claiming the same from the Insurance Company and if it is permissible for the vehicle's owner to claim this amount from the Insurance Company directly, the owner of the vehicle is free to approach the Insurance Company for reimbursement of the amount. In any event when the claim of the victim is decided by the Motor Accident Claim Tribunal the amount paid to the victims under the Scheme shall be liable to be deducted from the amount of compensation which is payable to the victims u/s 140 or Section 160(3A) or Section 166 of the Motor Vehicle Act, 1988 and if the owner of the vehicle has not received the reimbursement from the Insurance Company it will be open for the Tribunal to pass appropriate orders for such reimbursement in accordance with law.

10. The Scheme which we are inclined to frame is to be called "the Scheme for Victims of Accidents caused by the Stage Carriage buses (Blue Line/DTC buses)". The terms and conditions of the Scheme are as follows:

(i) In accidents leading to fatalities by Stage Carriage buses (Blue Line/DTC buses) a sum of Rs. 1 lakh per fatality shall be deposited in the court of the Magistrate by the bus owner/DTC as a pre-condition for the release of the vehicle.

(ii) Immediately on an accident by a Blue Line/DTC bus being reported (FIR being lodged) intimation of the lodging of the FIR be sent to the Delhi State Legal Services Authority and the concerned Magistrate.

(iii) On an application for the release of the bus being made by the owner/DTC, notice thereof be sent to the recorded next of kin of the deceased victim. The next of kin shall apply for the release of this amount.

(iv) The Magistrate on the identification of the next of kin should disburse the entire amount available in the deposit to the next of kin of the deceased.

(v) For receiving the amount the next of kin shall give an undertaking to the Court that he/she will initiate action seeking compensation under the Motor Vehicles Act, 1988.

(vi) On filing of such an undertaking and after identification of next of kin the Magistrate shall disburse this amount subject to producing the proof of filing an application for compensation before the Tribunal under the Motor Vehicles Act, 1988.

(vii) For filing of two applications, one before the Magistrate and other before the Motor Accident Claim Tribunal, the Delhi Legal Services Authority shall extend the necessary assistance to the next of kin of the deceased and arrange for filing the appropriate applications in the court of the Magistrate as well as in the Motor Accident Claim Tribunal for compensation.

(viii) In instances where the next of kin of the deceased are not immediately traceable, all attempts must be made by the Magistrate to trace them by seeking assistance of the police and following the due process.

(ix) Till such time as the next of kin of a deceased is not identified the money deposited by the owner be kept in a fixed deposit and after tracing the next of kin of the deceased the amount shall be payable to them along with the accrued interest on the deposit.

(x) The cheque issued to the next of kin of the deceased shall be deposited only in the account which is opened in the name of the next kin of the deceased.

(xi) In so far as the motor vehicle involved in the accident is concerned, the Magistrate shall order to release the vehicle immediately upon the deposit of sum of Rs. 1 lakh per fatality.

(xii) The Motor Accident Claims Tribunal while deciding the application filed by the next of kin of the deceased, at the time of passing award shall deduct the amount paid to the next of kin of the deceased from the amount which is found to be payable in accordance with the provisions of the Motor Vehicles Act, 1988 and also pass appropriate orders regarding the reimbursement of the amount by the Insurance Company in accordance with law, in cases where the vehicle is insured.

(xiii) The amount of Rs. 1 lakh shall be payable to the next of kin of the victim on the basis of no fault liability and the negligence of the driver of the vehicle shall not be relevant for the purpose of release of the amount towards interim compensation. It is further made clear that the amount so released in favour of next of kin of the deceased shall not be refundable under any circumstances.

(xiv) In case of grievous hurt/permanent disability the aforesaid norms shall be applicable with the following exceptions:

(a) The amount of compensation shall be Rs. 50,000/- per injured.

(b) The disbursement shall be made to the victim on an application being filed by the victim before the Motor Accident Claims Tribunal.

(c) The victim shall be notified of the filing of an application for the release of the bus by the owner. The concerned Magistrate on receipt of the application for supardari release of the vehicle by the vehicle owner shall call forthwith report received from the police about the identity of the victim and on receiving the information relating to the victim, he/she shall be notified of the filing of an application for the release of the bus by the owner.

11. The next issue is about the medical aid. The immediate medical aid has to be given to the victims of the accident at the medical centre nearest to the site of the accident. The victims of the accident need urgent medical attention and the assistance should be made available at any hospital/centre to the victim irrespective of the fact that the said hospital is private or government run. In Pt.

Parmanand Katara Vs. Union of India (UOI) and Others, , the Supreme Court has recognized the right of every injured citizen to receive immediate medical treatment. The Court observed that every injured citizen brought for medical treatment should instantaneously be given medical aid first to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death. The effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such an incident or a situation. This was reiterated by the Supreme Court in Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, .

12. As indicated earlier around Rs. 80 lakhs have been recovered so far from the owners of the Blue Line buses and a part of this amount has been recovered towards simple injuries pursuant to the directions given by this Court for recovery of Rs. 25,000/- in case of simple injury. Insofar as the simple injuries cases are concerned, a sum of Rs. 25,000/- out of the amount collected towards the simple injury be released in favour of the injured person as a one time measure. The amount in case of death/permanent injury shall be liable to be released in favour of the victims/next of kin only in accordance with the provisions of the Scheme.

13. Learned Counsel appearing for the Govt. of NCT of Delhi states that the entire information relating to the victims/next of kin in respect of the accidents, shall be furnished to the Delhi Legal Services Authority and also the copy of our order shall be served upon the said Authority. Thereafter, Delhi Legal Services Authority will take appropriate steps in order to ensure the implementation of the Scheme and interim compensation is paid to the victims/next of kin of the deceased in accordance with the Scheme. It is made clear that as far as DTC buses are concerned, this Scheme will apply only in respect of the accidents henceforth as no amount was collected from DTC buses in the past.

14. Learned Counsel appearing for the Blue Line Operators Association also contended that such a Scheme cannot be restricted only to the Stage Carriage vehicles but it should be applied to the victims of all accidents whether caused by Stage Carriage vehicles or by any other vehicle including private cars. Mr. Malhotra, Additional Solicitor General, informed to Court that the Union of India is exploring the possibility of framing a similar type of Scheme for compensation which would cover comprehensively not only the victims of the Blue Line/DTC buses but even the victims involved in the accidents caused by the other vehicles and for that purpose a Committee of Joint Secretaries is likely to be constituted to consider the framing of such Scheme. We direct the Union of India to consider the creation of the fund for the payment of interim compensation for the victims of accidents caused by Motor Vehicles in Delhi and submit a report to this Court within a period of three months.

15. Matter is adjourned to 05th November, 2008.