
(1976) 05 DEL CK 0005

In the Delhi High Court

Case No : F.A.O. No. 105 of 1970

General Manager, Delhi Transport Undertaking and Others

APPELLANT

Vs

Balkrishan and Others

RESPONDENT

Date of Decision : 04-05-1976

Acts Referred:

Citation : (1976) ACJ 335

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : Y.K. Sabharwal, for the Appellant; R.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

D.K. Kapur, J.—This appeal is concerned with an application u/s 110-A of the Motor Vehicles Act 1939, claiming compensation on account of the death of Mrs. Prem Wati as result of an accident which occurred on 14th February, 1966. The claims was tried by the Motor Accidents Claims Tribunal, Delhi which by its order dated 4th September, 1970, came to the conclusion that the deceased died on account of the rash and negligent driving of the driver. Mr. Harish Chander and the conductor Mr. Ram Mehar these two are now Appellants Nos. 2 and 3 before this Court. The Tribunal also held that there was no contributory negligence on behalf of the deceased and on this basis compensation amounting to Rs. 6,290/- was awarded in favour of the husband and three minor children of the deceased. The General Manager, D.T.U. the driver and the conductor of bus No. DLP 761 as well as the Municipal Corporation of Delhi have now jointly appealed against the decision. The Respondents are the legal representatives of the deceased consisting of her husband and three minor children.

2. To appreciate questions that arise in this case, it is necessary to mention the uncontested facts. Appellant No. 2 was the driver of bus No. DLP 761. The third Appellant was the conductor, the deceased was a passenger on the bus on 14th February, 1966. The deceased fell off the moving bus somewhere on North

Avenue in New Delhi. According to the Petitioners; the deceased had gone to see her brother who was in the Willingdon Hospital, and while she was getting off the bus the bus started so that the deceased fell down and received injuries which led to her death. On behalf of the Respondents, it is claimed that the deceased jumped from the moving bus and received injuries as a result of this. The conclusion of the Motor Accidents Claims Tribunal on the facts was expressed in the following words:

The only irresistible conclusion would be that the bus did not stop at North Avenue bus stand when bus reached near the bus stand, the deceased lady stood up and went near the gate but after crossing the bus stand, the bus slowed down its speed but without caring to know that the passengers had got down or that the passengers were going to get down, the conductor gave the bell to the driver not to stop the bus. The driver accelerated the speed of the DUS which was already in motion. So it is clear case of negligence on the part of the driver not to stop the bus on the North Avenue bus stand and to take it ahead and to accelerate the speed without stopping even after crossing the bus stand. There is no contributory negligence on the part of the deceased lady.

From this quotation, it will be apparent that the Tribunal was of the view that the accident was caused by the mutual default of the driver and the conductor. It appears that the bus did not stop on the bus stand and then slowed down after crossing the same. At that point of time, the bus instead of stopping accelerated and thus the deceased fell off the bus. The facts in the case are not very much in dispute. The only dispute is to why the lady fell out of the bus. If the bus did not stop as claimed by the Petitioners then clearly the lady should not have fallen out of the bus. On the other hand, it is claimed before me that she was about to step out of the bus when it accelerated and she thereupon fell down. In my view, the case is a somewhat unusual one, because for whatever reason there may be, the deceased fell out of the bus of her own volition. The question to be analyzed is whether she fell out of the bus due to the negligence of the driver or the conductor) or on account of her own negligence, or whether she fell out of the bus by a pure accident or finally, whether the driver, the conductor and the deceased were all negligent. The oral evidence in the case is not very satisfactory. The principal witness on behalf of the Petitioner is Mr. Prem Chand, P.W. 3 who stated that the deceased lady left her seat and asked the driver to stop the bus, but the driver did not stop the bus. After crossing the bus stop he slowed the bus down and when the lady reached the gate for alighting, the bus was accelerated with the result that the lady fell down. He claimed that the driver was not stopping the bus at regular bus stops. I think that even if this statement is accepted to be fully correct, there do not seem to be a plausible explanation as to how the lady happened to fall out of the bus. If the bus did not stop on the bus stop as alleged by the witness, it is quite possible that the lady jumped out of the bus when it was quite slow and slipped and fell down. On the other hand, some of the witnesses for the Respondents gave a somewhat different version of how the accident occurred. Mr. Ram Mehar, the conductor and

now Appellant, appeared as R.W. 2 and said that the bus did stop on the North Avenue bus stop and some passengers alighted and some got in the bus which then started off. It was at that stage that the passengers shouted that a woman had jumped from the moving bus. He stopped the bus by using the bell and found the woman lying with the face on the ground. At that time, the speed of the bus was quite slow. Mr. Harish Chander, R.W. 3 gave a similar statement. He said that the passengers were saying that a woman had jumped from the bus. Similarly, Mr. M. L. Kakkar R.W. 4 stated that the bus stopped on North Avenue bus stand and passengers alighted and then he heard passengers shouting "Mother what are you doing" and he had learnt that a woman had jumped out of the bus. The bus was stopped and the woman removed to the hospital. All these four witnesses did not actually see the jumping from the bus. Mr. Harbans Lal R.W. 5 stated that the bus stopped at the bus stand and started again when a woman came to the gate and jumped out of the bus inspite of shouts restraining her jumping from the moving bus. He said the bus had only moved a few feet at the time.

3. From this evidence, it is clear that the circumstances in which the accident took place were not fully realised by any of the passengers. The learned Counsel for the Respondents urges that this is a case in which the maxim *res ipsa loquitur* is applicable, and therefore, it should be concluded that there was negligence and the onus of disproving the same is on the Appellants, i.e., the driver, the conductor and the owners of the bus. I do not think that the maxim applies at all to this case, because the facts are clearly consistent with the negligence of the driver and the conductor as well as the negligence of the deceased lady. The maxim is really attracted when there are facts and circumstances which cannot be explained except by inferring negligence. In the present case, there are no such facts. The bus seems to have stopped at the bus stop and seems to have re-started. The bus driver has to driver the bus in accordance with the signal given to him by the conductor. If the conductor gives a bell, he has to stop the bus and if the conductor gives another bell he has to restart the bus. I do not see how the driver can be negligent if the conductor gives the signal. On the other hand the conductor is equally not negligent if all the passengers had alighted and new passengers had boarded at the North Avenue bus stop before the bus started. Therefore, if these are the circumstances, it would appear that there was no negligence at all, by either the driver or the conductor of the bus.

4. On the other hand, the learned Counsel for the Respondents, i.e., the legal representatives of the deceased urges that there is no explanation as to why the lady had fallen from the bus. He points out that she was not a young woman, but the mother of three children and normally, such ladies are not expected to jump out of the bus. In fact, I find that the deceased was 35 years old at the time of her fall. She was not an old woman and not a very young one. I, therefore, agree with the learned Counsel that she would not jump out of the moving bus as some young children or young students are liable to do. Even persons of fairly mature

age are known to have jumped off moving buses or tried to board them when then they are moving. This accident cannot easily be explained in terms of the lady jumping from the moving bus. The only possible explanation is that either the deceased was trying to get off the bus at the stop when the bus was suddenly accelerated, or she fell off from the bus by a sudden jolting. I have gone through the medical chart of the Willingdon Hospital which shows that the deceased had suffered a head injury and particularly, I notice that she was admitted on 14th February, 1966 at 2-30 p.m. and died on 15th February, 1966 at 5-40 a.m. It is also stated that her identity was unknown when her body was delivered to the Police Station Parliament Street at 3-15 p.m. on 15th February, 1966. The notes in the hospital show that she suffered injuries on the head in the occipital region and that an emergency operation was performed. After the operation, the blood pressure fell continuously till she died.

5. These facts would show that the deceased fell down from the bus and injured herself in the head by falling on the pavement. The question the Court has to decide is why she fell down from the bus. To my mind, the cause of the death seems to me that she either jumped from the bus after it had started from the North Avenue bus stop, or the bus accelerated when she was about to alight and she fell off the stair (sic. steps) on which she was standing. To my mind, the accident is probably the result not of negligence by the driver, but due to the conductor not observing that the deceased lady was about to get off the bus. Alternatively, the cause of the accident appears to be that the deceased thought the bus was going to stop, but instead of stopping, it accelerated and she fell out of the bus, when she was standing at the gate ready to alight. To my mind, it is a combination of circumstances which has led to the death of the deceased. But for one thing I am quite certain and that is that the driver of the bus has not been shown to be negligent.

6. Taking all the circumstances into consideration, I think, it is the duty of the conductor to see that the passengers do not try to alight from the moving bus and he should have also seen that passengers alight at the bus stop. According to the conductor himself he went to issue tickets to the new passengers who had boarded the bus at the North Avenue bus stop and he had not seen the accident. Thus, to my mind, the circumstances seem to indicate that the accident was caused by a combination of the negligence of the conductor and the contributory negligence of the deceased.

7. To clarify the situation, I am of the view that the accident was caused by the contributory negligence, of the deceased because she stood at the gate when the bus was in a moving state and did not care to wait till the bus stopped before she stood at the position from where she had to alight. The negligence of the conductor consisted in the fact that he did not take due care to see that the deceased did not stand at the gate when the bus had not stopped. He also should have seen that the bus did not accelerate till all passengers had fully alighted. In all probability, the accident took place when the bus was traveling at

a fairly slow speed. All the same, the bus driver and the conductor have a duty to take care that the passengers board the bus or alight from the same, properly. Thus, I am of the view that there has been negligence by the persons driving the bus, but particularly of the conductor. At the same time, the accident could not have been caused without the contributory negligence of the deceased. This means that the accident was caused partly by the negligence of the conductor and partly by the negligence of the deceased.

8. It is difficult to apportion the damages between the contributory negligence of the deceased and the negligence of the conductor. I think that in law the damages awarded should be reduced because of the contributory negligence of the deceased. There is one difficulty in applying the law in respect of contributory negligence. The common law doctrine was that if there was contributory negligence, then the Defendant was free from all liability. This law was amended as far as England was concerned by the Law Reform (Contributory Negligence) Act, 1945. Therefore, the question to be considered is whether the Indian law also allows for the apportionment or reduction of the damages in a case of contributory negligence. There is no Indian law corresponding to the legislation in England in 1945 and the question which I have to decide is whether the rule of reduction of damages applied by the Act of 1945 in England, can be applied as a rule of good conscience in India. I think, the answer to the problem is provided by the provisions of the Motor Vehicles Act, 1939, which permit the Court to award just compensation. Also, I must keep in mind that the negligence of the deceased seems to have been of a minor type. She stood at the door of the bus expecting the bus to stop, but instead of stopping, the bus accelerated as a result of which she was thrown off from the bus. To my mind, the effect of such negligence would only result in reducing the measure of damages as the accident was partly caused by the contributory negligence of the deceased, but the real cause of the accident was the negligence of the conductor in charge of the bus.

9. In the circumstances, I would reduce the amount of compensation to be awarded from Rs. 6,290/- to Rs. 5,000/-. As an example of the application of the rule of contributory negligence in India, I would cite *Union of India through General Manager, Bengal Nagpur Railway, Calcutta v. Lalman* AIR 1954 V.P. 17 as being a rule of good conscience, equity and justice.

10. Accordingly, this appeal succeeds partly to the extent that the damages awarded in favour of the Respondent are reduced from Rs. 6,290/- to 5,000/-. However, I do not make any order as to costs in this appeal and further direct that the costs.