
(1978) 01 CAL CK 0048
In the Calcutta High Court
Case No : F.M.A. No. 121 of 1972

Gobinda Prosad Mukherjee	Vs	APPELLANT
Sujit Bhowmick and Another		RESPONDENT

Date of Decision : 02-01-1978

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 95, 95(1), 95(2)

Citation : (1978) ACJ 160 : AIR 1978 Cal 109 : (1978) 1 ILR (Cal) 1

Hon'ble Judges : Murari Mohan Dutt, J;D.C. Chakravorti, J

Bench : Division Bench

Advocate : Nagendra Mohon Saha, for the Appellant; R.P. Bagchi and S.S. Ray, (for No. 1) and Biswajit Chowdhury, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—This appeal arises out of an award made by the Motor Accident Claims Tribunal, Calcutta and 24-Parganas on the application of the respondents Nos. 1 and 2 u/s 110-A of the Motor Vehicles Act, 1939.

2. The respondent Sujit Kumar Bhowmik was a minor school student and was about 14 years of age on April 18, 1959. On that date at about 4.30 P. M-, after the school hours, he tried to board a private bus bearing Registration No. WBS 2631 of Route No. 42 at the bus-stop opposite National High School on the Hazra Road, But before he could board the bus, it started moving on the signal of the conductor. He lost balance and fell down on the road and the rear wheel of the bus rolled over his right leg. He sustained severe injuries on this right leg and left thigh and other parts of the body. He was removed in an unconscious state to the Ramkrishna Mission Seva Pratisthan where he was under treatment as an indoor patient for about two months. He alleged that the accident was entirely due to the rash and negligent acts of the driver and the conductor of the said offending vehicle.

3. The appellant, who is the owner of the said vehicle and the insurer of the

vehicle, namely, the New India Assurance Company Limited, opposed the claim of the respondent by filing separate written statements. They denied that the driver and the conductor of the bus were negligent and responsible for the accident. Their case was that when the bus had left the bus-stop at Hazra Road near the National High School and gained speed, the respondent came running from behind and attempted to board the running bus negligently at the front entrance of the bus. The respondent, having failed to get hold of the metallic handle of the said entrance door, fell down and was run over by the rear left wheel of the bus. It was alleged that the accident was entirely due to the rash and negligent attempt of the respondent to board the running bus. It was contended by them that the claim was excessive. The further defence of the insurer was that in the event it was found liable, its maximum liability could not exceed Rupees 20,000/- under the terms of the policy.

4. The Claims Tribunal, after considering the evidence adduced in the case, came to the finding that the accident had happened due to the negligence on the part of the conductor of the bus. The Tribunal also found that the respondent was also negligent in trying to board the bus, which was already over-crowded, with one hand engaged in holding books. The Tribunal, accordingly, fixed the ratio of the negligence of the respondent and that of the conductor of the bus as 1: 2. The Tribunal found that there was loss of the skin in the lower part of right thigh and in front of the right knee of the respondent which necessitated skin grafting on two occasions. He had also to undergo a follow-up treatment at home for a considerable time. It has been found by the Tribunal that there has been permanent partial disablement of the knee of the respondent which cannot be fully bent and the respondent cannot squat on the floor in Indian style. Further it has been found that the respondent is unable to play outdoor games. After considering the nature of the injuries, the period of treatment, physical pain and suffering, the mental agony and the partial permanent disablement of the respondent, the Tribunal assessed the general damages at Rs. 10,000 and reasonable medical and incidental expenses at Rs. 1,000/-. After deducting 1/3rd from the total amount of compensation on account of the contributory negligence of the respondent, the Tribunal made an award of Rs. 7,334/- to the respondent. Out of the said amount of compensation the Tribunal directed that, in view of Section 95 (2) (b) of the Motor Vehicles Act, the insurer was liable for Rs. 2,000/- and the appellant for the balance amount of Rs. 5,334/-.

5. It is clear from the evidence of the respondent (P. W. 1) and his class-mate (P. W. 2) who was also present at the bus-stop that when the respondent tried to board the bus in question while it was standing at the bus-stop and just got hold of the handle of the front door, the conductor of the bus rang the bell whereupon the bus started moving and the respondent lost his balance and fell down and the rear wheel of the bus rolled over his right leg. We agree with the finding of the Tribunal that it was due to the negligence of the conductor of the bus as also the contributory negligence of the respondent in trying to board an overcrowded bus with books in one hand, that the accident had happened. In our view, the

Tribunal was justified in fixing the ratio of negligence of the respondent and that of the conductor of the bus as 1 : 2. It is contended on behalf of the appellant that the accident had happened solely on account of the negligence of the respondent in trying to board the bus while it had started moving. This contention does not at all find support from the evidence of any of the witnesses. We are, therefore, unable to accept the contention.

6. The principal contention of the appellant, however, is that the Tribunal should have held that the insurer was liable for the whole amount of compensation payable to the respondent. It is urged by Mr. Nagendra Mohon Saha, learned Advocate appearing on behalf of the appellant that the provision of Section 95 (2) (b) of the Motor Vehicles Act, 1939 is not applicable as the respondent who did not board the bus, but only made an attempt to board the same, could not be said to be a passenger within the meaning of the said provision. Section 95 (1) of the Act provides for the requirements of insurance policies and the limits of liability of the insurer. The proviso (ii) to Sub-section (1) of Section 95 is as follows:--

"Provided that a policy shall not be required-

(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."

Clause (b) of Sub-section (2) of Section 95 inter alia provides that subject to the proviso to Sub-section (1), 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, if the vehicle is registered to carry more than six passengers excluding the driver, a policy of insurance will cover any liability incurred in respect of any accident up to the limit of two thousand rupees in respect of individual passenger. In the instant case, there is no dispute that the vehicle in question is registered to carry more than six passengers excluding the driver. Even assuming that the respondent was not a passenger as he was only attempting to board the bus, still the limit of liability of the insurer would be in terms of Section 95. The proviso (ii) to Section 95 (1) which has been quoted above, clearly lays down that where the vehicle is a vehicle in which passengers are carried for hire or reward, as in the present case, policy of the insurer would cover the liability for death 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. Sub-section (2) having been made subject to the proviso to Sub-section (1), it covers the liability for death or bodily injury to persons caused in the circumstances stated above. The word "passengers" in Clause (b) of Sub-section (2) of Section 95 also includes within it any person meeting with death or bodily injury under the circumstances mentioned in the proviso (ii) to Sub-section (1) where the vehicle is one in which

passengers are carried for hire or reward or under a contract of employment. The limit of liability of the insurer will be as specified in Clause (b) of Sub-section (2). In our view, there is no substance in the contention of the appellant that the respondent was not a passenger as he had only attempted to board the bus at the time the accident happened and accordingly, the insurer should be held liable for the whole amount of compensation as awarded. As the vehicle is registered to carry more than six passengers excluding the driver, the Tribunal was perfectly justified in fixing the liability of the insurer at Rs. 2,000/- only in view of Clause (b) of Sub-section (2) of Section 95 of the Act. No other point has been urged in this appeal.

7. In the result, the appeal is dismissed, but in view of the facts and circumstances of the case, there will be no order for costs.

D.C. Chakravorti, J.

8. I agree.