
(1985) 04 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 19 and 21 of 1980

Makbool Ahmed and Others

APPELLANT

Vs

Bhura Lal and Others

RESPONDENT

Date of Decision : 02-04-1985

Acts Referred:

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

Citation : (1986) ACJ 219 : AIR 1986 Raj 177 : (1987) 62 CompCas 447 :
(1985) RLW 540 : (1985) 1 WLN 220

Hon'ble Judges : S.S. Byas, J

Bench : Single Bench

Advocate : N.M. Parekh, for Bhuralal, S.R. Bhandari and P.K. Bhansali, for the Appellant;

Judgement

S.S. Byas, J.—Since both these appeals u/s 110-D of the Motor Vehicles Act, 1939 ("the Act" hereinafter) arise out of one and the same award of the Claims Tribunal, Bhilwara dated Oct. 16, 1979, they were heard together and are decided by a single judgment. By the award aforesaid, the Tribunal directed the owner, driver, conductor and the insurer of the bus to pay a sum of Rs. 32,220/- to the claimants. The liability of the insurer for the payment of compensation was restricted to the statutory one of Rs. 5000/-. The claimants are the parents and widow of the deceased-victim Mustaq Ahmed. They presented a joint application u/s 110-A of the Act before the Tribunal claiming a sum of Rs. 80,000/- as compensation. The case set-up by them is that the deceased Mustaq Ahmed used to live with them in the town of Pur situate not far from the city of Bhilwara. There was a regular city-bus service plying between Pur and Bhilwara. Mustaq Ahmed was a student of First Year Commerce in the Government College, Bhilwara and used to come from Pur to Bhilwara in the city bus to attend the college. Around 9.15 A.M. on Feb. 19, 1977, Mustaq Ahmed came to the bus stand at Pur to board the city bus to go to Bhilwara to attend the college. On that day, the bus RJE 1107 was detailed in the city bus service. As soon as Mustaq Ahmed placed his one foot on the foot-board of the bus while the bus was

standing at the bus stand, Pur, the conductor of the bus blew the whistle and gave a signal to the driver to start it. The driver set the bus in motion. Mustaq Ahmed could not keep the balance and fell down from the foot board of the bus and was run over and crushed by its rear wheel. The bus even then did not stop and proceeded further. The body of Mustaq Ahmed was dragged a few feet by the bus and thereafter it was stopped by the driver. Mustaq Ahmed received multiple injuries, resulting in the complete crushing of his hip and waist bones. He was immediately taken to the Government Hospital, Bhilwara, where despite treatment he did not survive and passed away next day on Feb. 20, 1977. It was alleged that the accident had taken place and Mustaq Ahmed died on account of the rash and negligent driving of the bus by its driver. Mustaq Ahmed was a young boy of 18 years with perfect health and sound physique. He was a brilliant student and had secured first division in his Secondary and Higher Secondary Examinations. He was good in extra-curricular activities also and had won certificates of merit in debates and sports. He was expected to be a good-earning member of the family and was expected to remain alive up to the age of ninety years. He would have contributed at least Rs. 80,000/- during his lifetime to his parents and widow. It was further alleged that Bhuralal was the owner, Ladulal was the driver and Bhanwarlal was the conductor of bus RJE 1107 on the day the accident had taken place. It was insured with United India Fire and General Insurance Company Ltd. The application of claim was resisted by the owner, driver, conductor and the insurer of the bus. The owner, driver and conductor of the bus, in their written statement, admitted the accident but denied that it took place due to the rash and negligent driving of the bus by its driver Ladulal. It was alleged that when the bus was in motion, Mustaq Ahmed came running to board the bus with books in his one hand. Without the knowledge of the driver and conductor, he tried to enter the bus through the main gate, but could not keep balance and fell down and met the accident. Mustaq Ahmed, thus, died on account of his own rash and negligent act. The bus was then in slow motion. The quantum of compensation was challenged denying the material allegations of the deceased being good at studies and sports. It was further alleged that in case the claim was to be allowed, it was the insurer who was liable to pay the entire amount of compensation. The insurance company, in its written statement, raised the same pleas as regards the facts and the amount of compensation. It was further alleged that the deceased could not be taken to be a passenger of the bus. Even if he is taken to be a passenger, his status was that of a gratuitous passenger. As such, the liability of the insurance company could be only up to the extent of Rs. 5000/-. The Tribunal raised the necessary issues and recorded the evidence of the parties. Both the parties adduced evidence oral as well as documentary. On the conclusion of trial, the Tribunal recorded its findings as under : --

- 1) the death of Mustaq Ahmed had taken place on account of rash and negligent driving of bus RJE 1107 by its driver Ladulal;
- 2) the conductor Bhanwar Lal was equally liable for rash and negligent act

because he gave the signal to the driver to set the bus in motion while the deceased was still on the footboard of the bus;

3) the owner, driver, conductor and the insurance company were liable to pay a sum of Rs. 32,220/- as compensation to the claimants and

4) the liability of the insurance company was put to the extent of Rs. 5000/-.

The Tribunal accordingly made the award. Dissatisfied with the aforesaid award, both the parties have come up in appeal. The grievance of the owner, driver and conductor is that the claim was wrongly allowed while the grievance of the claimants is that the compensation has been quantified too low.

2. I have heard the learned counsel for the parties and perused the record carefully.

3. In assailing the award, Mr. Parekh learned counsel appearing for the owner, driver and conductor of the bus raised the following contentions :--

1) the finding of the Tribunal that Mustaq Ahmed died on account of rash and negligent driving of the bus by its driver is erroneous and is not based on a proper appraisal of the evidence adduced by the parties and the circumstances arising in the case;

2) the deceased could not be taken to be a passenger of the bus. In case he is not taken to be a passenger of the bus, the entire amount of compensation should be paid by the insurer. Inter alia, if he was taken to be a passenger, he was only a gratuitous passenger as he had not paid the fare. As such also, the entire amount of compensation assessed by the Tribunal must be paid by the insurer and

3) the compensation has been assessed very liberally rather extravagantly.

Re :1-- Rash and negligent driving : --

4. It was valiantly contended by Mr. Parekh that the finding of the Tribunal that the accident had taken place and Mustaq Ahmed had died on account of the rash and negligent driving of the bus, is wholly erroneous and unsustainable. The evidence of the parties was not properly appreciated, scanned and sifted by the Tribunal. Mustaq Ahmed had books in one hand and tried to board the running bus. Before he could board the bus, he could not keep balance and fell down. It was in this manner that the accident had taken place. It was, on the other hand, contended that there was overwhelming evidence on record to show that the bus was not in motion and was standing at the bus-stop when Mustaq Ahmed tried to board it. When he placed his one foot on the foot-board, the conductor gave the signal to the driver to start the bus. The driver set the bus in motion and naturally a man who could place only one foot on the foot-board of the bus, cannot maintain balance. Mustaq Ahmed, therefore, fell down and was run over and crushed by the rear wheel of the bus. I have taken the respective submissions into consideration. Since the contention relates to fact, it would be

proper to briefly read the evidence.

5. The claimants examined AW 2 Aziz Ahmed, AW 3 Anwar Hussain and AW 4 Babu Alam as ocular witnesses of the accident. AW 2 Aziz Ahmed and AW 4 Babu Alam were travelling in the bus and had boarded it at the was standing at the bus stand at the time of mishap. All of them stated that Mustaq Ahmed came to the bus stand to board the bus. The bus was not in motion at that time. As soon as Mustaq Ahmed placed his one foot on the foot-board, the bus started and he fell down as he could not maintain the balance. He was run over and crushed by the rear wheel of the bus. The driver did not stop the bus. The body of Mustaq Ahmed was dragged by the bus and the bus stopped after covering a distance of 20-25 paces. All these witnesses were cross-examined at length, but nothing could be elicited from them which may make their testimony unworthy of belief or credence. The Tribunal, after a thorough analysis of what these three witnesses, deposed, found their testimony reliable and dependable. Mr. Parekh could not show any cogent and. convincing reason as to why the testimony of these three ocular witnesses of the accident should not be accepted as true.

6. In rebuttal the opposite parties examined the driver Ladulal (DW 1), the conductor DW 2 Bhanwar Lal DW 3 Shyam Lal, DW 4 Kailash Chandra and DW 5 Bheru Lal. Out of them. Bherulal (DW 5) has been taken to be a thoroughly discredited witness by the Tribunal, on whom no reliance of whatsoever nature could be placed. The Tribunal as regards the remaining four witnesses, took a view that their evidence was not sufficient to show that the driver or the conductor was not negligent or rash in setting the bus in motion. DW 1 driver Ladulal deposed that when the conductor gave the signal and blew whistle, he set the bus in motion. In his examination-in-chief itself, he deposed as to how the deceased fell-down, was not in his personal knowledge. DW 2 conductor Bhanwar Lal deposed that he was issuing tickets in the bus standing near the seat of the driver. The cleaner gave the signal and the bus started. The cleaner again gave the whistle to stop the bus and the bus was stopped. Mustaq Ahmed was found lying on the ground. He did not state how Mustaq Ahmed fell down. DW 4 Kailash Chandra asserted himself to be the cleaner in the bus. He deposed that he blew the whistle and gave signal to the driver to start the bus on the directions of the conductor. In his cross-examination, he admitted very clearly that he neither saw Mustaq Ahmed boarding the bus nor falling him down. He went to the extent of body of the deceased and he (Mustaq Ahmed) did not fall down from it. DW 3 Shyam Lal alleged that he was travelling in the bus. He deposed that while the bus was in motion, the deceased came running with books in his one hand. He tried to board the bus but could not and fell down. He is also in the employment of the owner of the bus and as such absolute impartiality and independence cannot be expected from him. He did not offer himself as a witness before police during investigation of the criminal case arising out of this accident. No reliance can be placed on such a witness.

7. It has been admitted by all the witnesses of the opposite parties that the bus

was overcrowded so much so that some persons were standing even on the foot-boards of the bus. DW 1 Ladulal says that the bus was registered for 45 passengers, while at the time of the accident there were 60-70 passengers in it. DW 2 Bhanwar Lal also admitted the same fact that 70 passengers were there in the bus, some of which were standing on the foot-boards of the gates. He is a conductor of the bus and further admitted in his cross-examination that both the gates of the bus were open at the time of the mishap. Shyam Lal (DW 3) also admitted that the bus was over-crowded. The same fact was admitted by DW 4 Kailash Chandra. It is, thus, well established that the bus was over-crowded and many passengers were standing on the footboards of the gates of the bus as no space was there in the body of the bus for them. There is no acceptable evidence in rebuttal to show that Mustaq Ahmed tried to board the running bus.

8. The conductor is the person-in-charge of the bus. It is he who controls its movements. The driver stops the bus and sets it in motion on the signals of the conductor. When the bus stops on the road at stoppages, the duty of the conductor is to stand at the gate of the bus to see that the passengers who want to get down have got down and those who want to board it have boarded it. He should keep the bus stationary till every passenger has boarded the bus. It is thereafter only that he should give the signal to the driver to start the bus. If the conductor gives the signal when passengers are still on the foot-board, he is guilty of dereliction of his duty exhibiting rashness, and negligence on his part. In such circumstances if the bus moves on the conductor's signal, the conductor is liable for the rash and negligent driving of the bus.

9. Here in the instant case, the conductor instead of standing at the gate of the bus engaged himself in issuing tickets. This job of issuing tickets could be well performed later on by him in the running bus. He directed the cleaner to blow the whistle which was a signal to the driver to start the bus even when Mustaq Ahmed could place his only one foot on the foot-board of the bus. Both the conductor and the driver, in these circumstances, were guilty of driving the bus rashly and negligently. In *Mrs. Nanibai v. Dashrath Lal* 1977 ACJ 145, a Division Bench of the Madhya Pradesh High Court held the driver guilty of rash and negligent driving because he failed to keep the bus stationary till every passenger has boarded it.

10. The Tribunal, after a careful scrutiny of the evidence held that the accident had taken place and Mustaq Ahmed died on account of the rash and negligent driving of the bus by its driver and conductor. There are no cogent and convincing reasons to take a view different from that taken by the Tribunal. The first contention of Mr. Parekh, therefore, fails.

Re: 2 -- Whether the deceased was a passenger :--

11. The argument addressed by Mr. Parekh has two limbs. The first limb of the argument is that Mustaq Ahmed was wrongly taken as a passenger by the Tribunal. The second limb of the argument is that even if Mustaq Ahmed is taken

to be a passenger, he was only a gratuitous passenger. In both the cases whether Mustaq Ahmed is not taken to be a passenger or is taken to be a gratuitous passenger, the insurer is liable to pay compensation up to the extent of Rs. 50,000/- as per provisions of Section 95(2)(b)(i) of the Act. The argument is ingenuous and shrewd.

12. While developing the first limb of argument, two reasons were advanced by Mr. Parekh in his attempt to show that Mustaq Ahmed should not be taken as a passenger. Firstly, because Mustaq Ahmed could place only one foot on the foot-board of the bus. He could, thus, only attempt to board the bus Secondly, Mustaq Ahmed had not purchased the ticket. I have bestowed my thoughtful consideration to the contention and find it barren of substance.

13. It is true that Mustaq Ahmed could bus moved He fell down and was rolled over and crushed by the rear wheel of the bus. He, thus, attempted to board the bus. The clinching question is whether a person who attempts to board a bus should or should not be taken to be a passenger? The word "passenger" has not been defined in the Act. It, therefore, depends on the facts and circumstances of the case whether a person attempting to board the bus is a passenger or not? I have discussed above under point No. 1 that the driver and the conductor should keep the bus stationary till every passenger has boarded the bus. Therefore, if a person attempts to board the bus, he should be taken to be a passenger for all purposes. In Gobinda Prosad Mukherjee Vs. Sujit Bhowmick and Another, a situation very similar and analogous to that in the instant case arose. There a minor student Satish Kumar (14) attempted to board the bus. While he was on the foot-board, the bus moved. As a result, he lost balance and fell down on the road and the rear wheel of the bus rolled over his right leg. A contention was raised that Satish Kumar should not be taken to be a passenger. The learned Judges of the Calcutta High Court repelled the contention and observed : --

"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."

I find myself in complete agreement with the above view. Mustaq Ahmed was, thus, a passenger of the bus.

14 There is yet another reason to dismiss the contention of Mr. Parekh and the reason is contained in Proviso (ii) to Sub-section (1) of Section 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."

These provisions constitute an exception and are u 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 Sub-section (2)(b)(ii) of Section 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. In *Gobinda Prosad Mukherjee Vs. Sujit Bhowmick and Another*, this matter was examined at length and it was observed : --

"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)."

15. I fully subscribe to the view propounded above. Mustaq Ahmed, while attempting to board the bus should, therefore, be taken to be a passenger.

16. Coming to the question of not purchasing the ticket by Mustaq Ahmed, it in no way helps Mr. Parekh. It is true that Mustaq Ahmed had not purchased the ticket before attempting to board the bus. Now, the opposite parties have not alleged in their written statements that there is a booking office for issuing tickets at the bus stand where the accident had taken place. Therefore, there was no question of Mustaq Ahmed's purchasing the tickets before boarding the bus. The evidence of the opposite parties, on the contrary shows that the conductor was busy in issuing tickets to passengers who were already in the bus when the accident took place. The practice in the city bus service is that the

conductor issues the ticket to the passengers in the running bus. Moreover, this fact stands admitted by the conductor, driver and the cleaner in their cross-examination that the conductor was issuing the tickets while the bus was in motion. Mustaq Ahmed had, thus, no opportunity to purchase the ticket before boarding the bus. From where he was to purchase the ticket when there was no booking window at the bus stand where the mishap took place. The contention of Mr. Parekh thus, does not go down well. Mustaq Ahmed, in these circumstances, must be taken to be a passenger.

17. Pertaining to the second limb of the argument, it was strenuously contended by Mr. Parekh that if Mustaq Ahmed is taken to be a passenger, he was only a gratuitous passenger because he had not paid the bus fare. If he was taken to be a gratuitous passenger, the entire amount of compensation (if not above Rs. 50,000/-) should be paid by the insurer. Reliance in support of the contention was placed on *Assam Corporation v. Binu Rani* AIR 1975 Gauh 3 and *Mrs. Hira Devi v. Mrs. Bhaba Kantidas* AIR 1977 Gauh 31 (FB). In these two cases, the injured or the deceased were travelling in a private jeep or a private car, to whom lifts were given by the drivers or the owners of the jeep or die car. The insurer was held liable to pay compensation up to the extent of Rs. 50,000/-.

18. The clinching question here in the instant case is whether Mustaq Ahmed should be taken to be a gratuitous passenger. The word "gratuitous" has not been used in the Act and hence we find no definition of it there in the, Act. In the Webster's Third New International Dictionary, "gratuitous" means

"given freely or without recompense; granted without pay or without claim or merit; costing the recipient or participant nothing; FREE; not involving a return benefit, compensation or consideration opposed to onerous; not called for by the circumstances; adopted or asserted without good ground."

19. The word "gratuitous" implies that somebody is obliging the other. In the case of a gratuitous passenger in a motor vehicle, the gratuitous passenger is he who has been given a free lift by the owner or driver of the motor vehicle. The free lift may be due to a variety of reasons e.g. friendship, directions from the above, relationship, etc. In a case of taking a passenger gratuitously there is always an element of obligation on the person so carried free of fare.

20. In the instant case, it was not alleged nor proved by the opposite parties that Mustaq Ahmad was to be given a free lift in the bus. Mustaq Ahmed was not in a position to purchase the ticket before boarding the bus. There was no booking-office at the stoppage where Mustaq Ahmed was going to board the bus. The matter has already been discussed earlier. The evidence of the opposite parties shows that the conductor was issuing tickets to the passengers in the bus. Mustaq Ahmed would have, therefore, purchased "the ticket like other passengers in the running bus. I am, therefore, unable to accept the contention of Mr. Parekh that Mustaq Ahmad should be taken to be a gratuitous passenger in the bus. Since Mustaq Ahmed was not a gratuitous passenger, the view

expressed by the Gauhati High Court in the two decisions (AIR 1975 Gauh 3 and AIR 1977 Gauh 31 (FB) (supra), relied upon by Mr. Parekh, render no help to him.

Re. 3: Computation of compensation,

21. The deceased Mustaq Ahmed was brilliant in studies. He secured first division in his Secondary and Higher Secondary Examinations, vide Ex. 11, Ex. 12 and Ex. 13. He was equally good in extra-curricular activities. He won certificates of merit in sports and debates. Certificates Ex. 4, Ex. 5, Ex. 8, Ex. 9; Ex. 10, Ex. 14, Ex. 15, Ex. 16, Ex. 17 and Ex. 20 may be referred to in this connection. He was, thus, a promising youngman. The Tribunal took his earning capacity at Rs. 300/-per month, starting after eight years from the date of the accident. The Tribunal allowed a sum of Rs. 25/- per month to each parent for 22 years to the father and 24 years to the mother. Likewise, he allowed a sum of Rs. 50/-for 44 years to the deceased's widow Smt. Samim Bano.

22. The grievance of the owner, driverand the conductor is that the compensation has been assessed very liberally rather extravagantly. The contention of the claimant is that the compensation has been quantified very low. I have taken the respective submissions into consideration.

23. As regards the parents, the multiplier for calculation of the amount of compensation should be determined not on the basis of the expectancy of the life of deceased but of the parents. In the quinquennial 1970-80, the average span of life has been taken to be 65 years. In Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, their Lordships of the Supreme Court also accepted the normal span of life to be of 65 years. None of the parents was above forty years of age at the time of the accident They are normally expected to remain alive up to the age of 65 years. Thus, loss of dependency benefit at 25 years" purchase should be taken. But this is a very long period. It would be not improper if the loss of dependency benefit at 15 years" purchase is adopted.

24. As regards multiplicand of Rs. 25/-adopted by the Tribunal, it can be said at once that it is the modest rather nominal figure. According to the Tribunal, Mustaq Ahmed was to earn at least Rs. 300/- per month. Out of that he would have spent 1/3 on himself. Out of the remaining balance of Rs. 200/- he would have contributed at least a sum of Rs. 100/- per month to his parents, that is to say, Rs. 50/- to each parent. In my opinion, each parent should be allowed at least a sum of Rs. 50/- per month as the amount the deceased would have contributed to them. The multiplicand should, therefore, be Rs. 50/ per month, i.e. Rs. 600/-per annum. When this multiplicand is capitalised by 15 years" purchase, the amount comes to Rs. 9000/-. Each parent should, therefore, be allowed a sum of Rs. 9000/- as compensation. It is true that Mustaq Ahmed was not an earning member at the time of the accident. But it makes no difference. It is the potential capacity for earning which should be kept in view in assessing the compensation.

25. Mr. Parekh contends that deductions and discounts should be made for

imponderables and on account of payment of the compensation in lump-sum. I am unable to accept his contention for two reasons; firstly, the prospects of the deceased's improving his earnings are not being taken into consideration and secondly, the incessant and unabating rise in price index with no tendency of coming down.

26. Coming to the widow, an application was filed during the pendency of this appeal on Jan. 2, 1985 that the widow Mst. Samim Bano has contracted re-marriage on June 10, 1980. This fact has not been denied by Mr. Bhandari appearing for her. Now, if a widow remarriages after the death of her husband, her dependency ends and the amount of compensation is to be calculated only up to the date of her re-marriage. Compensation to Mst Samim Bano should, therefore be awarded covering the period prior to her re-marriage. A similar view was taken in *Siti Halijah Binti Yahya v. Hei Su Ha* 1977 ACJ 427 by the High Court of Malaya, where the parties were Mohammadans. The accident took place on Feb. 19, 1977 while the re-marriage of Mst Samim Bano took place on June 10, 1980. She is entitled to get compensation for the period from Feb. 19, 1977 to June 10, 1980, that is to say, for forty months. The Tribunal awarded the compensation for the loss of dependency benefit at the rate of Rs. 50/- per month. The amount is moderate and should not be disturbed. The compensation, thus, comes to Rs. 2000/- in all in respect of Mst Samim Bano.

27. Lastly, a very feeble and faint attempt was made by Mr. Parekh to make out a case of contributory negligence. It was argued that Mustaq Ahmad had books in his one hand and he tried to board the bus. Since his only one hand was free, it should be taken to be that he was also negligent and rash when he tried to board the bus. Reliance was placed on the observations made in *Gobinda Prasad Mukherjee Vs. Sujit Bhowmick and Another*, There is no force in the contention. A case of contributory negligence was not put forth in written statements by the owner, driver and conductor. Moreover, in *Govind Prasad's* case, the deceased tried to board a running bus. Here in the instant case, as discussed above, Mustaq Ahmad tried to board the stationary bus and not the running bus. No case of contributory negligence is, therefore, made out.

28. As a result of the aforesaid discussions the appeals are decided as under :

It the amount of compensation is scaled down from Rs. 32,220/- to Rs. 20,000/-. Out of that a sum of Rs. 2,000/- will be given to Mst. Samim Bano and a sum of Rs. 9,000/- to each parent;

2) the liability of the insurer for the payment of compensation will be the statutory one, that is to say, of Rs. 5000/-;

3) the parties will bear their own costs of this Court; and

4) the award of the Tribunal shall stand accordingly modified.

29. The appeals shall stand disposed of in the manner indicated above.