

(1987) 12 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 26 of 1985

Mangilal

APPELLANT

Vs

M.P.S.R.T.C.

RESPONDENT

Date of Decision : 07-12-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 110(1)

Citation : (1988) ACJ 460 : AIR 1988 MP 109 : (1990) 67 CompCas 191

Hon'ble Judges : R.K. Verma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : A.S. Kutumbale, for the Appellant; M.L. Dhupar, for the Respondent

Final Decision : Partly Allowed

Judgement

R.K. Varma, J.—This is an appeal filed by the claimant, son of the deceased against the award dl. 31-10-1984 passed by the Motor Accident Claims Tribunal, Shajapur in Claim Case No. 12/83 whereby the learned Tribunal has dismissed the claim petition.

2. The facts giving rise to this appeal, briefly stated, are as follows : --

On 20-10-1982 the deceased Bhojraj was intending to travel as a passenger in the Guna-Ujjain Passenger Bus bearing registration No. CPH-8594 belonging to the respondent MP State Road Transport Corporation and while the bus in question was standing at the bus-stand in village Moman-Badodiya which is on Guna-Ujjain route, the luggage of deceased Bhojraj was put on the top of the bus and in order to check that luggage the deceased Bhojraj climbed up the ladder affixed to the rear portion of the bus. While the deceased was so climbing up, the ladder gave way and the deceased fell down on the ground, sustaining serious injuries which ultimately resulted in his death in T. Choithram Hospital, Indore where he had been brought for treatment after having been treated at Moman-Badodiya Hospital and Shajapur Hospital. The claimant son of the deceased filed this claim petition against the respondent Corporation claiming

damages amounting to Rs. 1,00,000/-.

3. The learned Tribunal on appreciation of evidence adduced in the case came to the conclusion that the claimant was not entitled to any compensation and dismissed the claim petition. The learned Tribunal has held that it was not proved that the claimant was a passenger in the bus in question. This finding of the learned Tribunal is patently erroneous. The very fact that the luggage of the deceased was on the top of the bus shows that he intended to travel as a passenger in the bus in question.

4. Learned counsel for the Corporation has submitted that since the bus was stationary at the time the deceased fell down while climbing up the ladder attached to the bus, the death by accident of the deceased cannot be said to have arisen out of the use of Motor Vehicle and as such the claims Tribunal constituted u/s 110(1) of the Motor Vehicles Act "hereinafter referred to as "the Act") cannot award any compensation. According to the submission of the learned counsel "use of motor vehicle" implies that it should be in a state of motion.

5. The claims Tribunal is constituted u/s 110(1) of the Act for the purpose of adjudicating upon claims for compensation in respect of the accidents involving the death of, or bodily injury to, persons arising out of the use of Motor Vehicle, or damages to any property of a third party so arising or both.

6. The moot question to be considered for decision of this case, therefore, is whether the death of the deceased who died as a result of accident due to fall from the ladder attached to the bus while it was in a state of rest, could be said to be "arising out of the use of motor vehicle". The answer to this question depends on the interpretation of the word "use" in the expression "arising out of the use of motor vehicle". The meaning of the word "use" given in the compact Edition of the Oxford English Dictionary (Vol. II) reads as follows : --

"Act of using, or fact of being used; the act of employing the thing for any (especially a profitable) purpose; the fact, state or condition of being so employed; utilisation or employment for or with some aim or purpose, application or conversation to some (esp. good or useful) end."

In Webster's Unified Dictionary & Encyclopedia (Vol. 6) the word "use" means "State of being in employment as, the car is in constant use."

7. From the meaning of the word "use" extracted from the dictionaries aforesaid it is clear that a motor vehicle which is in a state of being in employment for any purpose can be said to be a motor vehicle in use. While the bus is in a state of motion it is employed in carrying passengers and while it is in a state of rest or stationary, it is still in the state of employment for enabling the passengers to alight from or board the bus or for loading and unloading the luggage. Indeed, a motor vehicle which is put on the road is in a state of being in employment or constant use and consequently any accident involving such a motor vehicle

causing death or bodily injury to any person is an accident arising out of the use of motor vehicle.

8. The provision of Section 95(l)(b) proviso (ii) of the Act requiring the Insurance Policy to cover liability of the owner of the passenger bus 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 the claim arises, contemplates that the insured owner in respect of the bus will be liable for the claim in respect of the death of or bodily injury arising out of the use of the vehicle in a public place in a stationary condition when a passenger is entering or mounting or alighting from the vehicle.

9. In the instant case the deceased died due to accident in the process of boarding the bus in question as a passenger when the bus was halting at the bus-stop of Moman Barodiya which was a mid-way halting station on the Guna-Ujjain route of the bus. The claim for compensation in respect of the said accident involving the death of the deceased. therefore, arises out of the use of motor vehicle and as such compensation is payable to the claimant.

10. Learned counsel for the appellant has also cited a decision of this Court in *New India Assurance Co. Vs. Smt. Phoolwati and Others*, in which, while considering the meaning of the word "use" in the expression "arising out of use of " occurring in Section 92-A of the Act, it has been observed thus :

"The word "used" has to be read in its context and setting and indeed, it is a part of the phrase "arising out of use of which would not exclude cases of stationary vehicles. The very fact that the vehicle was on the road would bring it within the mischief of the expression "arising out of use of. Putting a vehicle on the road for running it would indeed be using the vehicle; a vehicle parked will not be in motion, but it will still be "used"."

In the circumstances of this case the death of the deceased by accident has arisen out of the use of motor vehicle but as held by the learned Tribunal it has not been proved that the accident was due to negligence in proper upkeep and maintenance of the bus in question by its owner. The finding of the learned Tribunal appears reasonable in view of the evidence adduced in the case and must be upheld. This case will therefore, be covered u/s 92-A of the Act which provides for compensation on the principle of "no fault". Accordingly, the amount of compensation which shall be payable in respect of the death of the deceased shall be a fixed sum of Rs. 15,000/-. This amount of compensation shall carry interest at the rate of 9% per annum from the date of the claim petition till realisation,

11. In the result this appeal is partly allowed. The Award of the learned Tribunal dismissing the claim petition, is set aside. The claimant is held entitled to receive from the respondent Corporation a sum of Rs. 15,000/- as compensation together with interest at the rate of 9% per annum from the date of claim petition till realisation. There shall, however, be no order as to the costs of this

appeal.