
(2011) 11 DEL CK 0327
In the Delhi High Court
Case No : MAC App. 431 of 2009

Mohd. Shamim

APPELLANT

Vs

Sh. Ram Kishore Sharma and Another

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2011) 11 DEL CK 0327

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—By this common judgment both the aforesaid appeals are disposed of as they arise out of the same award dated 26th May, 2009 of Motor Accident Claims Tribunal ("The Tribunal", for short) arising out of the same accident which took place on 21.07.2006 and was caused by the offending bus No. DL-1PA-1092.

2. Vide these appeals the appellants have assailed the impugned award dated 26.05.2009 whereby their claim petitions seeking compensation on account of the injuries sustained in the said order were dismissed. The aforesaid bus No.DL-1PA-1092 was on route from Khajoori Khas bus stand to Mall Road. The bus was full of passengers. Both the appellants boarded the bus from the rear gate. Some of the passengers including appellants Hari Om Gupta were on the foot board. When the bus covered a little distance from Khajoori Khas bus stand, it allegedly struck from its left against a standing tempo and as a result of which the appellants fell down on the road and sustained injuries. A case FIR No.303/2006 U/s 279/337 IPC was registered at P.S. Khajoori Khas against the driver on the allegation that the accident was caused due to his rash and negligent driving.

3. The claim petitions of both the appellants were dismissed on the grounds that

(i) the appellants were on the foot board and there were more passengers behind them on the last step and the bus was jam-packed (ii) there was no damage noticed on both the vehicles alleged to be involved in the collision and (iii) it could not be proved that the accident was caused solely due to rash and negligent driving of the aforesaid bus by its driver. The tribunal has also recorded that on the contrary the negligence is the writ large on the part of the appellants themselves.

4. Both the appellants have assailed the impugned award on identical grounds alleging that the tribunal failed to appreciate that the appellants received injuries during the accident. It was alleged that the bus had moved a little from Khajoori bus stand and thereafter its rear portion struck against the stationery tempo as a result of which the passengers who had boarded from the rear portion fell down on the road and sustained serious injuries.

5. Since no one appeared for the parties from the last date, the matter was reserved for judgment with liberty to file written synopsis, if any, within three days. None has chosen to file any synopsis and considerable time has passed. Consequently, I proceed to dispose of the appeals on perusal of the record. The mere fact that FIR No.303/2006 u/S 279/337 IPC was registered against respondent No.1 i.e. the driver of the bus was itself not sufficient to conclude that the accident was caused due to his rash and negligent driving.

6. The petitioner examined themselves and tendered documents of their medical treatment and also copy of FIR and site plan before the tribunal. No counsel appeared for the parties to address the arguments and the Tribunal decided the claim petitions on the basis of material on record. The Tribunal noted as a matter of fact that the appellants boarded the bus when it was moving which would point out squarely towards negligence of the appellants in boarding the moving bus.

7. The tribunal also noted that the appellants were standing on the second foot step of the bus and since the bus was fully packed they continued to be there and that was another indicator of negligence of the appellants to remain standing at the foot steps in the moving bus. It is also noted that from the site plan prepared by the police it was evident that the spot of the incident was quite close to the bus stop may be at a distance of about 100 meters or so and if the bus was at a fast speed it would not have moved only this much of the distance in 4-5 minutes. It was observed that if the bus was moving at a fast speed as alleged it could have covered at least about 1 kilometer within 5 minutes.

8. It was also observed that if there was a collision of the magnitude as alleged, there would have been fresh damage on both the vehicles, but however on a mechanical inspection of the two vehicles there was no fresh damage noticed. Taking note of the intendment of the beneficial legislation of Section 140 of the Motor Vehicle Act, the tribunal observed that in any case in a petition for claim of compensation the appellants are still required to prove the ingredients of Section

166 of Motor Vehicle Act that they met with the injuries arising out of the motor accident and that the said injuries were caused due to rash and negligent driving or the use of vehicle and further that claimant was not responsible himself for the said injuries. This was of course subject to the exception where the circumstances found on the spot speak about the applicability of the principle of res ipso loquitor which would be available if the accident apparently seemed to have been caused due to rash and negligent driving of an offending vehicle. In the later case the burden was shifted upon the driver of the offending vehicle to show that as to how the accident was occurred if it was not because of his rash and negligent driving. Based on all these facts, the tribunal held that in the totality of the circumstances there was no applicability of the aforesaid principle of res ipso loquitor. But, on the contrary since the appellants had boarded already packed moving bus and continued to remain standing on the steps of the foot board without the knowledge of the driver/respondent No.1, no liability of causing the accident due to rash and negligent driving could be attributed to respondent No.1.

9. There are certain apparent infirmities which have been noticed in the findings recorded by learned Tribunal. The bus was fully jam-packed and because of this reason, the passengers boarding the bus kept standing on the steps of the footboard while the bus was moved by the driver. There was no doubt about the negligence on the part of the appellants to have boarded the bus and keep standing on the footsteps, but at the same time, there is nothing on record to see that this was not in the knowledge of the driver of the bus i.e. respondent no.1 that some passengers were standing on the footsteps. The learned Tribunal has recorded this to be not in the knowledge of the driver of the bus whereas there was nothing on record in this report. On the other hand, notice can be taken of the fact that there are always mirrors on both front sides of the bus to enable the driver to see the entire rear side of the bus. Further, it was also stated by the appellants that many passengers shouted not to drive the bus, but despite that the respondent no.1 continued to drive the bus without ensuring that the passengers had not got into the bus. When the learned Tribunal had itself recorded that it was due to the contributory negligence on the part of the appellant that the accident took place, she seems to have overlooked the contributory negligence of the respondent no.1 (driver of the bus) in driving the bus while the passengers were either in the process of moving inside the bus or were on the steps of the footboard of the bus. The driver (respondent no.1) was equally negligent in having driven the bus in such a situation. It is also gathered from the record that few more passengers also sustained the injuries in the accident and they also filed claim petitions before the Tribunal on similar grounds. Since the appellants and other passengers also sustained injuries in the same accident, the Tribunal ought to have looked into the evidence if any, led by other claimants as regard the accident. The strict rule of evidence would not be applicable in the case of claim petitions which are beneficial piece of legislation based on socio-economic justice.

10. Another aspect which was seriously taken note of by the learned Tribunal was that as per inspection report, there was no fresh damage on either of the two vehicles. On the said premise, she held that there was no collusion between the two vehicles. It has been seen that the learned tribunal herself at various places has recorded a finding of the accident due to the negligence of the appellants. Be that as it may, if there was a mention of no fresh damage in the inspection report, that would not be taken to be that there was no damage at all. Even otherwise, every accident does not involve damage of the vehicles. It may be that there was slight or negligible collision or impact of one vehicle with other and the person standing on the steps of the footboard may fall and sustain injuries. The police found the tempo on the spot in the accidental condition. If that was not so, there would not have been any occasion or reason for the passengers to be taken to the hospital and the FIR to be registered. No doubt should have been raised as regards the accident caused by the use of offending vehicle.

11. In view of my above discussion, I find that the accident was caused due to the contributory negligence of the appellants as well as respondent no.1(driver of the bus). The next question that arises for determination as to what amount of compensation could be awarded. Because of the dismissal of the claim petitions by the learned Tribunal, it had no occasion to go into this aspect of the matter. This aspect of the matter required appreciation of evidence which is available with the Tribunal, I, therefore, deem it appropriate and in the interest of justice to remit the cases back to the Tribunal to assess the amount of compensation that could be awarded to the appellants herein keeping in view the findings of this court as noted above.

12. Consequently, both the appeals are disposed of and remitted back to the Tribunal.