
(1989) 01 MAD CK 0077
In the Madras High Court
Case No : C.M.A. No. 108 of 1983

National Insurance Co. Ltd.	Vs	APPELLANT
V.K. Sundaravali and Others		RESPONDENT

Date of Decision : 13-01-1989

Acts Referred:

Citation : (1990) ACJ 821

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : K. Ranganathan, for the Appellant; R. Balachander and V.L. Narasimhan, for the Respondent

Final Decision : Dismissed

Judgement

Padmini Jesudurai, J.—The insurance company against which the Motor Accidents Claims Tribunal has passed an award has filed the present appeal contending that deceased was a passenger at the time of the accident and the Tribunal erred in holding him not to be a passenger and consequently placing the entire liability on the insurance company.

2. Facts briefly are: On 3.5.1980 the deceased V.K. Krishnan, who is the husband of the first respondent and the father of respondent Nos. 2 and 3, was travelling in a bus bearing registration No. TMY 1029 belonging to the fourth respondent and insured with the appellant. When the bus stopped at Srinivasanagar bus stop, the deceased, who was to get down at that bus stop, was descending down the steps. Before he could rest his foot on the ground, the driver of the bus moved the vehicle in a rash and negligent manner, as a result of which the deceased was thrown out and sustained serious injuries to which he succumbed later in the hospital. Respondent Nos. 1 to 3 filed O.P. No. 92 of 1982 before the Motor Accidents Claims Tribunal (V Additional Subordinate Judge, Tiruchirapalli) claiming a total compensation of Rs. 75,000/-. Respondent Nos. 5 and 6 are respectively the father and mother of the deceased, who were also entitled to compensation.

3. The fourth respondent resisted the claim alleging that the accident was not due to the rashness or negligence of his driver, but that it was the deceased who tried to get into the running bus, slipped and was killed. The claim was excessive. The appellant also contested the claim more or less on similar grounds.

4. Before the Tribunal, the first respondent examined herself as PW 1 and examined one Mani, an eye-witness to the occurrence as PW 2 and also examined one Srinivasan, a co-employee of the deceased as PW 3. Exh. P-1, the pay register, was marked on their side. On behalf of the appellant and the fourth respondent, Dhanapal, the conductor of the bus, was examined as RW 1. No documents were filed on their behalf.

5. The Tribunal, on the above evidence, held that, whether the deceased was trying to board the bus or whether he was alighting from the bus at the time of the accident, the accident was due to rash and negligent act of the driver of the bus in moving the vehicle. Compensation was assessed at Rs. 46,000/- and the Tribunal observing that there was no evidence to show that the deceased was a passenger and that therefore the deceased was only a third party, made the appellant liable to pay the entire amount. Aggrieved with the latter finding, the insurance company has filed this appeal.

6. The only contention that was urged before me by the learned Counsel for the appellant was that the deceased, even according to the claim petition, was shown as a passenger in the bus and was alighting from the bus at the time of the accident and should, therefore, have been treated as a passenger to whom the liability of the insurer was limited. Learned counsel placed reliance upon certain decisions of this court in support of this proposition.

7. The first question that arises for consideration is whether the deceased, who was getting down from the bus at the time of the accident, is to be treated as a passenger or as a third party?

8. This court, through several of its decisions, has held that one who is getting into a bus is not a passenger and has to be treated only as a third party. A Bench of this court consisting of Ramanujam and Nainar Sundaram, JJ., in *Damodaran v. Santhanam* AA.O. No. 558 of 1979; decided on 28.7.1981, has held that the deceased, who was actually trying to get into a moving bus and was pushed down and run over cannot be construed as a passenger in the bus and is only a third party to it. The court observed:

Therefore, we can safely say that a person attempting to get into the bus but who did not succeed in getting entry into the bus, cannot be taken to be a passenger in the bus.

9. In *Southern Motors v. C. Sivajothiammal* 1982 ACJ (Supp) 85 a Bench of this court consisting of Ramanujam & Sethuraman, JJ. also held that the deceased who was bound from Usilampatti to Bathalagundu had got down from the bus at Bathalagundu in order to give way to other persons to get down from the bus

and after they had got down had attempted to get into the bus, which had started moving and at that stage had fallen down, cannot be treated as a passenger since the deceased had not secured entry into the bus for further journey from Bathalagundu to Palani. The court observed- A person who did not get entry into the bus and failed in his attempt to get into the bus cannot be said to be in any sense a passenger in the bus in the second stage of the journey between Bathalagundu and Palani.

10. Following this decision, Shanmukham, J., of this court in Uvaraja Vs. Parvathi Ammal and Others, held that the deceased, who was about to get into the moving bus and had slipped and fallen down in that process, was not a passenger in the bus and Section 95(2)(b)(ii)(4) of the Act was not available to the insurance company. Similarly, Ratnam, J., of this court in New India Assurance Co. Ltd. v. Subramani C.M.A. No. 120 of 1988; decided on 8.7.1988, also held that where the deceased was trying to get into the bus and had fallen down and was run over, he could not be treated as a passenger to restrict the liability of the insurance company.

11. No doubt, all these decisions deal with persons who were attempting to get into the bus and the present case deals with the deceased, who was getting down from the bus. Following the principles laid down by this court in Southern Motors v. C. Sivajothiammal 1982 ACJ (Supp) 85 S.A. Kader, I, in United India Ins. Co. Ltd. v. A.R. Sundari C.M.A. No. 55 of 1981; decided on 24.12.1986, held that the deceased in that case, who was alighting from the bus and had set one foot on the ground when the bus moved and he fell down to be run over by the rear wheels, was not a passenger at the time of the accident. Learned Judge held that his case was on a better footing than the case in Southern Motors v. C. Sivajothiammal 1982 ACJ (Supp) 85 .

12. No doubt, learned Counsel for the appellant brought to my notice a later judgment rendered by another single Judge of this court in Venkataswami Motor Service P.N. Palayam Vs. C.K. Chinnaswamy and Others, wherein the learned Judge held that the deceased, who was getting down from the bus, was killed since the driver moved the vehicle before she could safely get down, was to be treated as a passenger, though some of the decisions of this court and some decisions of other courts holding a person getting inside a vehicle as a third party, had been placed before the learned Judge. The decision referred to by me in the preceding paragraph, rendered by S.A. Kader, J., in United India Ins. Co. Ltd. v. A.R. Sundari C.M.A. No. 55 of 1981; decided on 24.12.1986, had not been placed before the learned single Judge. Learned Judge, therefore, without any further discussion observed that the facts and circumstances of the case before him were different from the facts and circumstances of the cases cited before him.

13. The Shorter Oxford English Dictionary, Third Edition, gives the meaning of the word "passenger" as hereunder:

Passenger. One who travels in some vessel or vehicle, esp. on board ship or in a ferry or passage-boat; later applied also to travellers by any public conveyance entered by fare or contract.

14. The paramount idea conveyed by the term "passenger" is that a passenger travels. A passenger, therefore, is one who travels.

15. The Act, as well as the Rules framed by the State Government thereunder, give an indication regarding the mode by which one would travel in vehicles. Suffice it to refer to the relevant provisions dealing with the mode of travel in public conveyance carrying travel passes and travelling in the seating accommodation provided in the vehicle. Section 70(2)(b) of the Act enables the State Government to make Rules relating to the seating arrangement in public service vehicles and protection of passengers against the weather. Rule 360 of the Tamil Nadu Motor Vehicles Rules, 1940 and the subsequent rules prescribe the manner in which seating accommodation is to be provided for the passengers who travel in the vehicle. For each passenger a reasonably comfortable seating space of not less than 38 cm. square measured on straight lines along and at right angles to the front of each seat with a distance of 135 cm. from the backs of the seats on the other side is to be provided. Detailed rules have been framed regarding the alignment of seats in different types of stage carriages, body-built of stage carriages and other matters. Travel, therefore, is only by remaining seated in the accommodation provided. Rule 363 (2) provides an exception to this mode of travel, wherein the Transport Authority could permit travel by standing, except when the stage carriage is running as express service or running on that roads (Sic). Total passenger-capacity of each vehicle is fixed with reference to the seating accommodation available within the body of the bus. Similarly, the number of passengers who could be permitted to travel by standing is also fixed with reference to the space available in the bus. For passengers who are permitted to travel by standing grab-rails are being provided to ensure safe travel.

16. Rule 368 provides that in every public service vehicle, other than a motor car, there shall be on the left side of the vehicle an entrance in the rear or rear overhang and an exit in the front, each having a width of not less than A combined 53 cm. and of sufficient height. Rule 370 regulates the measurement of entrance or exit passage in the bus. The top of the tread of the lowest step shall not be more than 45 cm. or less than 25 cm. above the ground and the steps shall not be less than 23 cm. wide and should be with non-slip treads.

17. A combined reading of these provisions clearly show that one could travel in a passenger vehicle only in two ways, viz., either by remaining seated in the seating accommodation provided or by standing in vehicles where travel by standing is specially permitted. The steps that are provided in the vehicle for the purpose of entry or exit are for entry and exit. They are not meant for travel. When, therefore, one is actually using the exit or entry passage, at that point of time, one cannot be said to be travelling. Such a person, therefore, cannot be

considered a passenger. He is using the entry passage for the purpose of commencing or continuing his travel and he is using the exit passage for the purpose of getting down from the vehicle, either after completing the travel or for any other reason. It, therefore, follows that one who is either getting into the vehicle or is getting down from the vehicle cannot be said to travel at that point of time. Such a person is not a passenger. The Act, as well as the Rules, do not permit of any other interpretation.

18. In the instant case, though the Tribunal has not been in a position to give a positive finding as to whether the deceased was getting into the bus, as contended by the fourth respondent or whether he was getting down from the bus as contended by respondent Nos. 1 to 3 at the time when the accident occurred, the Tribunal had given a finding that the accident was due to the rash and negligent moving of the bus. In view of the several decisions referred to above, it is clear that one who is getting into the bus or one who is getting down from the bus cannot be treated as a passenger and has to be treated as only third party. The appellant, therefore, will be liable to pay the entire amount awarded.