
(1994) 05 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 337 of 1990

New India Assurance Co. Ltd.

APPELLANT

Vs

Jagdish Prasad and Others

RESPONDENT

Date of Decision : 18-05-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b)(ii)(4)

Citation : (1995) ACJ 1059 : (1994) 1 RLW 423 : (1994) 2 WLC 427 : (1994) 2 WLN 241

Hon'ble Judges : R.S. Verma, J

Bench : Single Bench

Advocate : S.C. Srivastava, for the Appellant; S.N. Kumawat, for the Respondent

Final Decision : Allowed

Judgement

R.S. Verma, J.—This miscellaneous appeal has been filed u/s 110-D of the Motor Vehicles Act, 1939 ("the Act" hereinafter). The case of the respondent Jagdish Prasad is that on 16.9.1982 at about 10 a.m. he tried to board the mini bus RNB 242 on the Jhotwara Road. The driver of the bus gave a race and started the bus, with the result that Jagdish Prasad was thrown down resulting in serious injuries to his person. The bus was owned by Mumtazuddin and the driver of the bus was Kuldeep Singh. The case of the respondent was that due to rash and negligent driving of Kuldeep Singh, the accident took place causing serious injuries to the respondent.

2. Respondent Jagdish Prasad filed a claim before the Motor Accidents Claims Tribunal, Jaipur, for a sum of Rs. 96,625. It was alleged that the bus was insured by New India Assurance Co. Ltd., Sansar Chandra Road, Jaipur. It appears that the claim was resisted by New India Assurance Co. Ltd. The owner Mumtazuddin appeared but did not file any reply. Driver Kuldeep Singh was dropped by the respondent-claimant before the learned Claims Tribunal.

3. The sole ground of contest on behalf of the insurance company was that the

petitioner was a passenger and the liability of the insurance company was limited to a sum of Rs. 5,000/- in accordance with the terms of the insurance contract which was in accordance with the provisions of Section 95 (2) (b) (ii) (4) of the Motor Vehicles Act.

4. The learned Judge of the Claims Tribunal framed an issue on this aspect and on the basis of the evidence adduced before him, he arrived at a conclusion that since ticket had not been issued to the claimant-respondent, he could not be treated as a passenger of the bus. In this connection, he placed reliance on *Ram Saroop v. Balbir Singh* 1988 ACJ 500 (Delhi). Thus, the learned Judge of the Claims Tribunal did not agree with the insurance company that the respondent-claimant was a passenger of the bus. It, therefore, passed an award for a sum of Rs. 90,000/- payable by Mumtazuddin and New India Assurance Co. Ltd. However, it added that the liability of the insurance company was confined to a sum of Rs. 50,000/- and interest thereon. The remaining sum of Rs. 40,000/- was held to be payable by the owner alone.

5. Aggrieved, insurance company has filed this appeal.

6. Mr. S.C. Srivastava, appearing on behalf of the insurance company, has urged that the learned Judge of the Claims Tribunal erred in holding that claimant-respondent was not a passenger in the bus. It is urged that when the claimant-respondent boarded the bus, he became the passenger even though no ticket had been purchased by him, because it was a public bus and, as such, the liability of the insurance company was restricted only to a sum of Rs. 5,000/-.

7. Learned counsel for the claimant-respondent supports the award passed by the learned Judge of the Claims Tribunal and submits that the learned Judge of the Claims Tribunal was right in holding that claimant-respondent was not a passenger and was a third party.

8. It may be stated that driver Kuldeep Singh and owner Mumtazuddin could not be served in the usual manner and substituted service was effected upon them and they have not cared to put in appearance and the appeal has been heard in their absence.

9. The short question is whether in the facts and circumstances of the case claimant-respondent was a passenger in the mini bus, or not?

10. In the claim petition, the claimant-respondent averred that when he was boarding the bus, the driver started it all of a sudden and gave race to the vehicle with the result that claimant-respondent fell down. But, in his sworn testimony before the learned Judge, he admitted in cross-examination that he had boarded the bus (omitted). He reiterated it in further cross-examination by saying (omitted). This statement of the claimant goes to show that he had already boarded the bus when the accident took place. This is true that the claimant had not purchased a ticket, but to my mind, purchase of a ticket was not material because admittedly the bus in question was a public bus. In *Gobinda*

Prosad Mukherjee v. Sujit Bhowmick 1978 ACJ 160 (Calcutta), a boy made an attempt to board a crowded bus and conductor gave whistle to move bus with the result that driver started the bus and the boy fell down and sustained severe injuries. The boy was held to be a .passenger of the bus and it was held that the liability of the insurance company was restricted by virtue of the provisions of Clause (b) of Sub-section (2) of Section 95 of the Act. This judgment was followed by a judgment of our High Court in Makbool Ahmed v. Bhura Lal 1986 ACJ 219 (Rajasthan). In that case the passenger came to the bus stand, he placed his one foot on the footboard of stationary bus while the bus was standing at the bus-stand. The conductor of the bus blew the whistle and gave signal to the driver of the bus to start. The driver set the bus in motion. The passenger could not keep the balance and fell down from the footboard of the bus and was run over by the rear wheel. The bus did not stop even then and proceeded further. In that case also ticket had not been purchased and a contention was raised that deceased passenger could not be taken to be a passenger of the bus. In the alternative, it was urged that even if he was taken to be a passenger of the bus he was only a gratuitous passenger of the bus, as he had not paid the fare. These contentions were negatived and it was held that by boarding the bus Mustaq Ahmed had become a passenger. It was further observed that it was not alleged that there was a booking-office at the stoppage for issuing tickets where the incident had taken place, therefore, there was no question of Mustaq Ahmed purchasing a ticket before boarding the bus. Mustaq Ahmed had, thus, no opportunity to purchase the ticket before boarding the bus. On this count this limb of the contention was negatived.

11. In Commissioner, Jamnagar Municipal Corporation, Jamnagar and Another Vs. Vijaykumar Bhagwanji and Another, precisely identical questions came to be considered by their Lordships of the Gujarat High Court. A Division Bench concurring with Maqbool Ahmed's case 1986 ACJ 219 (Rajasthan), held that a person attempting to board a public transport bus at a bus-stop is passenger. It further held:

In case of public buses there is always an open offer to the members of the public to travel by the bus. The members of the public by their conduct accept the offer when they board or try to board the bus. On the part of the public conveyance, when there is no restriction whatsoever for any member of the public to board the conveyance, and when a member of public boards the conveyance, the relationship of passenger and public carrier comes into existence. Thus, by necessary implication there is a contract between the two...

It was further observed:

It is the common practice of almost all the city buses to allow the passengers to board the bus without ticket. Tickets are being issued to the passengers after they enter the bus and while the bus is moving. This is so because at each and every bus-stop there is no booking-office. It may be that at the terminal point sometimes the conductor might be standing at the door of the bus and allowing

the passengers to board the bus only after they purchase tickets. This is usually not done at the intermittent bus-stops. It is not even the case of the appellants that the conductor had refused the injured to enter the bus without purchasing the ticket. Therefore, the contention that the injured had not purchased ticket and, therefore, he is not a passenger has no merit.

12. In the present case also there is neither plea nor contention that the conductor of the bus had refused to issue a bus ticket to the claimant-respondent. There is no plea or averment on behalf of the claimant-respondent that there was a booking-office at the stand and he had purchased the ticket from the booking-office. The usual practice in Jaipur and other cities of Rajasthan is also the same as was obtaining in Gujarat and I can take judicial notice of the fact that in a city bus, a passenger is issued a ticket in the bus itself.

13. Learned counsel for the claimant-respondent gave an ingenious argument that in the present case the driver had started the bus even though the conductor had not given signal for bus to start and, therefore, it cannot be said that the bus had commenced the journey. The argument deserves to be noticed for the sake of rejection only and has no substance because contract of transporter and passenger came into being as soon as the claimant-respondent had boarded the bus. It is not his case that he was refused permission to board the bus and yet he had boarded the bus. To my mind, to all intents and purposes, claimant-respondent was a passenger in the bus and it ill lies in his mouth to contend that he was not a passenger and he was a third party.

14. Learned counsel for the claimant-respondent cited *New India Assurance Co. Ltd. Vs. Omprakash and Others*, In that case the passenger had completed his journey and was alighting from the bus at the bus-stop when the driver moved the bus and the person came beneath the wheel and was injured. It was held that after the journey was over the passenger ceased to be a passenger and was a third party. This ruling is of no assistance to the respondent-claimant.

15. The other ruling which has been cited by the learned counsel for the claimant-respondent is *S.M. Rai & Co. v. New India Assurance Co. Ltd. (Delhi)*. In that case also the bus had reached the destination and the deceased was in the process of alighting when the bus suddenly started which resulted in fatal injuries to the deceased. It was held after reviewing the case-law on this subject, that the deceased ceased to be a passenger of the bus at the time when the accident took place. In my opinion, this ruling is also of no assistance to the claimant-respondent. I need not encumber this judgment by citing all those rulings which have been referred to in this judgment of the Delhi High Court because all the rulings discussed in the said precedent relate to cases where the passenger was in process of alighting from the vehicle after it had reached the destination.

16. No other point was urged before me.

17. In view of what I have stated above, this appeal succeeds and the award

passed by the learned Claims Tribunal is modified to the extent that the liability of the appellant insurance company shall be restricted to a sum of Rs. 5,000/- and interest payable thereon. In the circumstances of the case, the parties shall bear their own costs.