
(1994) 06 KL CK 0015
In the High Court Of Kerala
Case No : M.F.A. No. 243 of 1987

O. Mammachan

APPELLANT

Vs

Kerala State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 28-06-1994

Acts Referred:

Citation : (1994) 2 ACC 476 : (1994) ACJ 1262 : (1994) 3 ILR (Ker) 683 : (1994) 2 KLJ 355

Hon'ble Judges : K.P. Balanarayana Marar, J;K.K. Usha, J

Bench : Division Bench

Advocate : P.S. Krishna Pillai, for the Appellant; N. James Koshy, for the Respondent

Final Decision : Allowed

Judgement

K.P. Balanarayana Marar, J.—Does the placing of elbow on the window-sill by the passenger while the bus is in motion amount to an act of negligence? If in an accident the elbow of such a passenger is injured, can contributory negligence be attributed to him? These are the aspects which require consideration in this appeal.

2. The appeal is directed against the award of Motor Accidents Claims Tribunal in O.P. (MV) No. 601 of 1985. Claimant is the appellant.

3. Claimant sustained injuries in a motor accident which occurred on 12.9.1985. He was a passenger in bus KLX 1461 owned by the Kerala State Road Transport Corporation, 1st respondent herein and driven by 2nd respondent. He was seated on the left side of the bus near the window. The bus is alleged to have been driven in a rash and negligent manner. While the bus was crossing another bus coming from the opposite direction, the left hand of appellant which was kept on the window-sill hit against an electric post where by he sustained injuries. He had to undergo continuous treatment for the injuries. A sum of Rs. 50,000/- was claimed as compensation.

4. Respondents disclaimed liability for the reason that there was no negligence on the part of the driver. They attributed contributory negligence on the part of appellant in keeping his hand outside the safety bars of the body of the bus.

5. Petitioner was examined as PW 1 and documents were also produced on his side. No evidence was adduced on the side of respondents. The Tribunal on an appreciation of the evidence found the driver of the bus to be negligent. The compensation was estimated at Rs. 30,000/-. Only one-half of that amount was awarded as compensation holding that appellant also has contributed to the accident by keeping his hand on the window-sill. Aggrieved by that award, the claimant has come up in appeal.

6. Heard counsel.

7. The main point argued by learned counsel for appellant is that the driver of the bus alone should have been held to be responsible for the accident and that contributory negligence cannot be attributed to the appellant. It cannot be disputed that 2nd respondent owes a duty of care for the safety of passengers travelling in the bus. He has a duty to see that the passengers do not receive any injuries during the course of the journey. To achieve this object he has to look out for any possible obstruction on the road and to take reasonable steps to avoid obstruction without causing any injury to the passengers. While overtaking a moving vehicle or crossing another vehicle, the driver has to leave sufficient space in order to see that there was no likelihood of the passengers' arms being injured. He should have foreseen the possibility of passengers resting their elbows on the window-sill. In the process of crossing or overtaking another bus, he must not only avoid contact with the body of the bus but also avoid the elbow of any passenger resting on the window-sill coming into contact with the oncoming bus or the bus which he is overtaking. Precautions are, therefore, to be taken by him to leave sufficient gap for preventing any mishap. From the evidence in this case it is clear that the 2nd respondent has not taken such precautions. The Tribunal has found him to be negligent in driving the bus and in crossing the bus coming from the opposite direction. That finding is not challenged in appeal.

8. The only question to be considered in this appeal is whether the appellant has contributed to the accident by keeping his elbow on the window-sill. It is common knowledge that passengers travel in buses with their elbows resting on the window-sill. This has been held to be not a negligent act. As early as 1960 the Punjab High Court in *State of Punjab v. Guranwanti* 1965 ACJ 110, observed that it is well-known that often passengers travel with their elbow resting on the window of the car. There is no prohibition against it. It was further observed that the plaintiff at that time of the morning considering the state of traffic cannot be said to have failed to use reasonable care for her safety by resting her elbow on the window.

9. On contributory negligence, Halsbury's Laws of England, 3rd Edn., Vol. 28, p.

90, states thus:

A person is guilty of contributory negligence if he ought reasonably to have foreseen, if he did not act as a reasonable prudent man, he might hurt himself. The plaintiff is not usually bound to foresee that another person may be negligent unless experience shows a particular form of negligence to be common in the circumstances. If negligence on the part of the defendant is proved and contributory negligence by the plaintiff is at best a matter of doubt, the defendant alone is liable.

10. The standard of care expected of a person in such circumstances is what a reasonable man would have done. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man, he might hurt himself, in doing a particular act.

11. House of Lords while considering the question of reasonable care held in *A.C. Billings and Sons Ltd. v. Riden* (1958) AC 240, thus:

But in considering what a reasonable person would realise or would do in a particular situation, we must have regard to human nature as we know it, and if one thinks that in a particular situation the great majority of people would have behaved in one way, it would not be right to say that a reasonable man would or should have behaved in a different way. A "reasonable man" does not mean a paragon of circumspection.

12. Applying the principles laid down by House of Lords it follows that appellant has behaved in a manner like most of the other passengers. It cannot be said that he has behaved in a negligent manner. The injuries noticed by the medical officer were on the left humerus. It is thus clear that appellant had not stretched his arm outside the bus window whereas he had only placed his elbow on the window-sill for a comfortable sitting. In the circumstances it cannot be said that appellant was negligent. The plea of contributory negligence has to be considered on the facts and circumstances of each case. Negligence could have been attributed provided a passenger has outstretched his arm while the bus was in motion and the arm has come into contact with another bus or any other object. The accident in this case happened while the bus was crossing another bus. The injuries were sustained by the elbow hitting against an electric post on the left side of the road. It is thus evident that there was no sufficient gap between the body of the bus and the electric post. In other words, the bus was taken along the extreme left side too close to the electric post. The driver has not bestowed sufficient care to see that the bus is not taken to the extreme left side. He should have foreseen the possibility of the elbow of a passenger sitting on the left side being hit by contact with the electric post. The finding of the Tribunal that the claimant was guilty of contributory negligence is, therefore, unsustainable.

13. Regarding the quantum of compensation estimated we see no reason to

interfere. The Tribunal has awarded reasonable compensation for the injuries sustained. In view of our finding that appellant is not guilty of contributory negligence, he will be entitled to get the entire compensation estimated by the Tribunal. In other words, appellant will be entitled to get Rs. 15,000/-more.

14. For the reasons stated above, the appeal is allowed and in modification of the award of the Claims Tribunal we direct the respondents to pay a further sum of Rs. 15,000/- together with interest at 10 per cent from date of petition till date of realisation. No. costs.