

(1994) 07 BOM CK 0033

In the Bombay High Court

Case No : First Appeal No's. 94 of 1988 and 134 of 1989

Oriental Insurance Co. Ltd. and Another

APPELLANT

Vs

Edward D'Cruz and Others

RESPONDENT

Date of Decision : 27-07-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 82A, 82B, 95(1)

Citation : (1995) 2 ACC 159 : (1995) ACJ 1106 : (1995) 3 BomCR 295 : (1995) 97 BOMLR 771

Hon'ble Judges : G.D. Kamat, J;A.A. Halbe, J

Bench : Division Bench

Advocate : II.R. Bharne, for the Appellant; S.G. Desai and S.G. Bhobe for the respondent Nos. 3 and 4, in F.A. 134 of 1989, for the Respondent

Judgement

A.A. Halbe, J.—Both these appeals are disposed of by the common judgment as they arise out of one and single accident, dated 27-1-1985. First Appeal No. 94 of 1988 is preferred by the Insurance Company against the finding of the Motor Accidents Claims Tribunal in Claim Petition No. 65 of 1985 that the liability of the Insurance Company is Rs. 50,000/- as against the contention raised on behalf of the insurers that the liability of the Insurance Company is Rs. 15,000/-. First Appeal No. 134 of 1989 is by appellant/original respondent No. 2 Kadamba Transport Corporation on the ground that the Compensation of Rs. 1,00,000/- awarded in respect of the deceased lady aged about 65 years was disproportionately high and that it needed to be scaled down to a level which should represent the just and reasonable compensation which in turn has to be worked out on the basis of the number of years of service the deceased would have rendered to the family. There is also one ground raised in the appeal by Kadamba Transport Corporation that the fixation of liability of the insurance Company at Rs. 50,000/- may not also be proper.

2. In order to understand the controversy involved in both the appeals, few facts shall have to be elucidated.

The deceased - Nasimtente Rodrigues was travelling by the transport bus belonging to Kadamba Transport on 27-1-1985. The bus was proceeding from Benaulim to Orlim and it is claimed by the claimants that the bus reached at Varca at about 7.45 p.m. and stopped at a bus stop which was about 20 metres away from the house of the deceased. In this regard, it will have to be stated that the claimants are the son and the daughter of the deceased and that they were all staying together at the above residence. The further facts are that the bus was halted for enabling the passengers to get down and accordingly the deceased got one foot down on the road whereas her another foot was on the foot-board of the bus. She was about to alight from the bus, but unfortunately the bus started suddenly and picked up the motion as a result of which the deceased fell down and came beneath the rear wheel of the bus and sustained injuries to which she later on succumbed. The claimants put forth the claim of Rs. 1,85,000/- under various heads.

3. This claim was resisted on behalf of the respondents and the common contention was that the negligence was on the part of the deceased passenger and that the same cannot be attributed to the driver and owner. The insurers contended that their liability was of Rs. 15,000/- in regard to the passenger carried in the bus.

4. The learned member of the Tribunal, after recording the evidence, awarded the compensation of Rs. 1,00,000/- with 12 per cent interest thereon plus costs of Rs. 3,000/- and the said amount was payable by respondent Nos. 1 and 2, viz., the driver and the owner of the bus, whereas the liability of the insurers - respondent No. 3 was fixed at Rs. 50,000/-. The amount paid under no fault liability was ordered to be deducted from the amount of the award.

5. Being aggrieved by the quantum of Rs. 1,00,000/- awarded in respect of the old lady, Kadamba Transport Corporation preferred Appeal No. 134/89, inter alia, contending that this compensation was not at all warranted in view of the advanced age of the deceased. She was the mother of 2 major son and daughter. There was nothing to indicate that the son or daughter were dependent on her and there was, therefore, no justification to award the total compensation of Rs. 1,00,000/-. The insurer - Oriental Insurance Company Limited, in First Appeal No. 94/1988 has assailed the award on the ground that their statutory liability is to the extent of Rs. 15,000/- per passenger and not Rs. 50,000/- and the same finding should, therefore, be corrected in this appeal.

6. This case raises one important question as to whether the deceased was the passenger or a third party vis-a-vis the offending bus when the accident took place. The learned Advocate for the Insurance Company has vehemently urged that even if all the facts are taken into consideration and are found to be true, on no reckoning the deceased can be said to be a third party. The deceased was a passenger till she fully got down from the bus. The admitted facts are that one foot of the deceased was on the footboard of the bus and in that light she was a passenger as contemplated u/s 95(1) proviso (H), which relates to the liability of

the Insurance Company in respect of the passengers carried in the passenger vehicle. It is pointed out that the wording of the proviso is very explicit and clear and calls for no further interpretation. The passenger remains to be passenger even while alighting from the vehicle at the time of the occurrence of the accident. The wording used in the above sub-clause is to the effect that, "except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment to cover liability 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 a claim arises". Reliance in support of the interpretation is sought from AIR 1978 Cal 1809, in the case of Govind Prosad v. Sujit Bhowmick and another, wherein this aspect has been dealt with and the Court, according to the learned Advocate, did find that the passenger either boarding or alighting remained to be passenger covered under the above sub-clause. The liability, therefore, extends to Rs. 15.000/- and nothing more. This is a Division Bench judgment.

7. As against this, the learned Advocate for the Kadamba Transport Corporation cited Transport and Accident Cases, 1994 1 214, in the case of, M/s. S.M. Rai and Co. v. New India Assurance Co. Ltd. The said judgment is rendered by the Single Judge of Delhi High Court, and according to the learned Advocate for the Transport Corporation, here is a case, which is on all fours" with the facts of the appeal before this Court. In that case also the passenger was about to alight but had not completely alighted from the bus, but at the same time that was the terminus of his journey and the Court held that the passenger ceased to be a passenger and became a third party vis-a-vis Insurance Company. He has also drawn our attention to another case wherein the passenger did not get down at his destination but was over carried and came to be involved in the accident. The Court found that the contract of carriage of passenger came to an end with the bus passing by the terminus station and in that event also the Court held that the passenger although in the bus was not a passenger but a third party vis-a-vis Insurance Company.

8. Both these parallel views call for the close scrutiny of the evidence on record. There are examined as many as about ten witnesses on behalf of the claimants but for the purposes of the above question, the evidence of few witnesses is relevant.

9. Claimants witness - Edward Rodrigues has deposed that at the time of the accident, the bus came to an halt near the bus stop, which was about 10 to 13 mtrs. away from the house of the claimants. Edward seems to be the son of the deceased and he has deposed that his mother started alighting from the bus and in that process she had put her one foot down and before she could put another foot down, the bus started. In consequence, mother fell down and came beneath the rear wheel of the bus. The brief cross-examination does not dislodge the credibility of this witness.

10. The other witness - Carlota Rodrigues has also deposed likewise that her mother-in-law put her one foot down and was about to put her another foot down, but meanwhile the bus picked up the motion. The mother lost balance and came to be involved in the accident as indicated herebefore.

11. There is another witness- Laurence Mondes, who happens to be the neighbour and he spotted one lady alighting from the said bus. He also described the manner in which the accident took place, and according to him, the lady had put her one foot out of the bus and the bus started. The lady, therefore, fell down and lost consciousness.

12. Lucy Rodrigues the daughter of the deceased also was in the house, which as stated above was near the bus stand. She also deposed that she was present and she saw the lady putting out one foot on the ground and in her attempt to put another foot out of the bus, the bus started and there occurred the accident as stated above.

13. One Rita Pereira, who was working as servant with the deceased has also likewise deposed about the manner in which the accident took place.

14. As against this, the evidence of driver - Rama Balu Kankonkar does not throw much light in the manner in which the accident took place. He has deposed that he brought the bus to halt at the above bus stop. The time was about 7.45 p.m. He also submitted that one lady wanted to alight, and according to him, the lady got down and conductor gave the whistle and he, therefore, started the bus. However, again conductor blew the whistle and the bus came to be stopped only to find that the deceased had fallen near the rear wheel of the bus. In the cross-examination, he has tried to suggest that he started the bus only after the lady completely alighted from the bus.

15. Now, this was the evidence before the Tribunal.

16. The Tribunal, in its award, in para 38, clearly observed that the accident occurred after the deceased alighted from the bus in which she was travelling as a passenger. Being so, there was no question the deceased being treated as a passenger. She had become a pedestrian when the accident occurred, and in that light, the Tribunal proceeded to award Rs. 50,000/- payable by the Insurance Company.

17. The facts which are clearly established from the evidence of aforesaid witnesses are that the deceased had partly come out from the bus because that was her destination. She had put her one foot down and was desirous of putting another foot down when the bus started suddenly. The deceased, therefore, fell down and came beneath the rear wheel.

18. The learned Counsel for the Insurance Company, as indicated, has relied on the wording of section 95(1) proviso (ii) of the Motor Vehicles Act, 1939. The accident is dated 27-1-1985. According to him, although the deceased was alighting from the bus she was covered as a passenger and in that background,

the liability was limited to Rs. 15,000/-. He has, therefore, relied on Gobinda Prasad Mukherjee Vs. Sujit Bhowmick and Another, , in Govind Prasad's case (cited supra). In that case, the facts were somewhat different. In that case, the passenger was about to board the bus. He attempted to board the bus at the time of the accident and the Court held that when he was about to board he could not be a third party vis-a-vis a passenger. The observation of the Court can be noted as below.

"In our view, there is no substance in the contention of the appellant that the respondent was not a passenger as he had only attempted to board the bus at the time the accident happened and accordingly the insurer should be held liable....."

Now here is the case where the facts are little different from the facts in this matter. The respondent-Sujit Bhowmick, aged about 14 years, was a school student on the date of the accident. He tried to board a private bus at a bus stop opposite his school. But before he could board the bus it started moving on the signal of the conductor. Bhowmick lost the balance and came beneath the wheel of the bus. It would be, therefore, evident that injured was about to board the bus. The evidence in this behalf was led and this was the finding which Court recorded. Here is a case, where the passenger was about to board the bus and an attempt was made in that direction and accordingly the Court observed as above. Now, in this case, we clearly find that the terminus of the journey of the deceased had come and the deceased was about to alight from the bus. Here is a clear case where contract of carriage of the passenger had come to an end. There did not exist any contract of carriage of the deceased thereafter and in that light the observations of Delhi High Court need be followed. These observations are based on the previous judgment, and one judgment which needs to be recorded is the judgment in the case of Pandit Ram Saroop & another v. Balbir Singh & others, reported in 1987 2 A&CC 358. The deceased was holding a bus for going to ordinance Depot, Shakurbasti from General Stores bus stop. The bus instead of stopping at the above destination had proceeded further and the accident had occurred causing injuries to the deceased. It was held that the deceased ceased to be a passenger soon the bus had reached the destination and the mere fact that the deceased, had not alighted from the bus would not mean that he continued to be a passenger when the bus, after reaching the destination, without stopping at terminus, had proceeded further. That was a case of over-carriage for which the passenger was not responsible. In this case, we clearly find that in pursuance of the contract on payment of hire the bus was stopped at the destination, meaning thereby that the contract of carriage had come to an end. It is in furtherance of this that the deceased wanted to alight and she partly came out from the bus, but could not succeed in putting out her another leg and in that background, the deceased came to be involved in the accident. These eloquent facts would persuade us to hold that here is the case where the passenger had ceased to be a passenger. The contract of carries had come to an end and this is also seen from the bus coming to an

halt. The driver had halted the bus and, therefore, we are of the view that the deceased had ceased to be a passenger. It would be seen from the evidence of the driver that the deceased had already got down. Even if we ignore this clear cut admission, the above facts clearly establish that the deceased had ceased to be a passenger and had become a third party vis-a-vis the offending bus. In that light of the matter, we are of the view that the liability of the Insurance Company is coextensive with that of the owner and to that extent, we would agree with the submission made on behalf of the Transport Corporation.

19. The contract of carriage is discharged as soon as the transport vehicle reaches the destination of the passenger. Alighting from the bus is an ancillary process incidental to the contract of carriage. At the terminus, nothing remains to be enforced against either the vehicle driver or owner or the passenger. The passenger cannot be called passenger as the hire charges stand exhausted on arrival at the destination. Hence the provision of section 95(1) proviso (ii) will have to be construed in that light Alighting process by the passenger is incidental to reaching the destination. Passenger has no option left but to get down. It is, therefore, felt that view of the Calcutta High Court in the case of Govind Prosad (supra) is applicable to the facts of that case and would not be available to the respondent Corporation. We are, therefore, respectfully unable to accede to the view in Govind Prosad's case in this case.

20. Now, on the question of quantum, the facts are that the deceased was around 65 years of age. It is nowhere shown that she was serving anywhere. She was presumably performing the role of the mother. The claimants are the son and daughter, who are major. So if the question of compensation has to be considered, it shall have to be in the background of household chores performed by the deceased. It can be legitimately assumed that she must be looking after the household affairs for the claimants, and that can be quantified at Rs. 500/- per month. That would be the amount payable to the servant to attend to household chores in absence of mother. The compensation would, therefore, come to Rs. 6,000/- per annum. Taking a multiplier of 5 at the most the total compensation would work out at Rs. 30,000/-. We are, therefore, unable to agree with the amount of Rs. 1,00,000/- awarded by the Tribunal and amount has to be scaled down at Rs. 30,000/-. Since the liability of the Insurance Company is to the extent of Rs. 50,000/- we hold that both respondents Corporation and Insurance Company would be jointly and severally liable to satisfy the award.

21. Accordingly the following order.

The appeals are partly allowed. The appellants - original respondent Nos. 2 and 3 shall pay Rs. 30,000/- with 12 per cent interest thereon from the date of application till actual payment. The order as to costs is, however, confirmed. The amount deposited by the appellants in the Court shall be adjusted towards the payment. In these terms, the appeals are disposed of.