

(1989) 01 BOM CK 0011
In the Bombay High Court

Shaik Haroon

APPELLANT

Vs

Anand Mahadev Naik and Others

RESPONDENT

Date of Decision : 12-01-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1989) 1 ACC 509 : (1989) ACJ 945

Hon'ble Judges : G.F. Couto, J

Bench : Single Bench

Judgement

G.F. Couto, J.—This appeal is directed against the Judgment dated 31st January, 1985, whereby the learned Presiding officer of the Motor Accident Claims Tribunal, Margao, dismissed the application for compensation filed u/s 110-A of the Motor Vehicles Act by the appellant.

2. On 30th June, 1982, an accident took place on the Margao-Vasco road. The appellant sustained injuries in that accident. He was travelling on that particular date in the bus GOT-2366 and proceeding from Margao to Vasco, when the vehicle reached Senaulim and at the turn of a road, pick-up bearing registration No. GDZ 5447 came in opposite direction. The appellant was sitting on the driver's side and on the last seat at the rear of the bus. It appears that, at the time of crossing each other, the vehicles were too near to one another, and therefore, there was an impact between the rear part of the bus and the body of the pick up, and in the process, the appellant got some injuries to his right arm which resulted after the treatment, in weakness of the right upper limb, limitation of elbow, wrist and finger movements, flexion deformity at the wrist joint and diminished sensation over ulnar aspect of the lower half of fore arm and hand.

3. As a result of this accident, the appellant had to undergo three operations, in addition to some skin grafting. He filed, therefore, an application for compensation under the provisions of Section 110-A of the Motor Vehicles Act and claimed a compensation of Rs. 50,000/- which he broke up in the following

manners: as special damages Rs. 35,000/- and general damages Rs. 11,000/- plus Rs. 4,000/- for additional future expenses.

4. The respondents took the defence that no accident has taken place and that the appellant had sustained the injuries for his own fault as he was travelling in the bus by keeping his arm outside it, on the sill of the window.

5. This defence was accepted by the learned Presiding Officer of the Claims Tribunal, and consequently, dismissed the application for compensation. The learned Judge held the view that the evidence adduced by the appellant was not satisfactory and that it was disclosing on the contrary, that the accident had taken place due to the exclusive fault of the appellant. He observed that the cardinal principle in matters of the kind of petitions as the one before him, is that the applicant should make a case of rash and negligent driving on the part of the respondents either through direct evidence or by the principle of *res ipsa loquitur*. He held the view that in the present case, the appellant had not stated in his examination-in-chief that the accident had occurred due to the rash and negligent driving of the vehicles by the respective owners. He, therefore, held the view that the petition was to be dismissed.

6. I am afraid that this kind of reasoning is unacceptable. The learned Judge while addressing himself to the evidence adduced by the parties, failed to appreciate that the appellant was travelling and sitting in the bus involved in the accident when he sustained the injuries. Although CW 5 Gaonkar, who happens to be the police officer who investigated the case, stated that his investigation has not disclosed any accident, the fact remains that there are other pieces of evidence that the learned Judge ought to have considered before recording his findings. In the first place, there is the evidence of the appellant himself, according to which, he was sitting in the rear of the bus on the side of the driver, when the accident took place. He said that the turn of the road at Sanaulim, the pick-up CDZ-5447 crossed the bus and the rear portion of the bus and the body of the pick-up came in contact. Similar statement was given by CW 3 Shaik Mamlekar, who at the time of the accident, was also travelling in the bus. Then, there is the evidence of CW 4 Saudagar. No doubt, from this evidence it becomes evident that there was no head-on collision, but it becomes clear that the two vehicles had moved so close to each other that they brushed one against the other, and in the process, an injury was caused to the appellant, who, in all probability, as alleged by defence, was resting his arm on the sill of the window existing by the side of his seat. The learned Judge did not consider this evidence in proper perspective, for otherwise, he ought to have realised that the arm of a person is not so long as to make the elbow protruding far away from the body of the vehicle where such person travels. If the injury was caused, it shows that the vehicle which crossed the bus was too close to the same bus, and this closeness is by itself a strong evidence and proof of rash and negligent driving of the vehicle. Rashness does not consist only in high speed, but consists also in not keeping in mind the rules of safety and prudence. When two heavy vehicles cross

each other, they should naturally keep a safe distance between themselves, for otherwise, there is all the likelihood of an accident. That apart, there is the evidence of Dr. Nachinolcar, which clearly shows that there was a touching of the vehicles. He stated that the type of injury sustained by the appellant, is classified in the medical literature as typical side swipe injury which is caused by an elbow which is flexed and resting on a vehicular window when an incoming vehicle brushed the elbow. He further stated that such type of injuries cannot be caused if the hand is projected out of the body of the vehicle. In addition to this, there is another curious piece of evidence and that manifestly, escaped the mind of the learned Judge. That is the evidence of Rama Dessai, the driver of the pick-up. While denying that there was any collision of the vehicles, he added that he came to know about the accident only when a cyclist who was following his pick-up made him to stop after the bus went away. He stopped and was told that one passenger of the bus had been injured, because the pick-up had dashed against him. He also added that he went near the bus, after getting this information. If there was no collision of the vehicle, one fails to understand why Ram Dessai did not immediately tell the said cyclist that there was no collision between the two vehicles and that he was not involved at all in the accident. Secondly, it is difficult to believe that a cyclist was able to reach" a pick-up which was moving at the speed of about 40 kilometres per hour. Thirdly, if no collision took place, one fails to understand why the bus stopped and there was a talk that a passenger of the bus had sustained an injury in an accident involving the bus and the pick-up. All this evidence taken together with the evidence adduced by the appellant, conclusively establishes that there was an accident, and as a result of such accident, the appellant sustained the injuries described by Dr. Nschinolcar. I already said that the facts by themselves clearly show rashness and negligence of the drivers of both the vehicles while driving them at the relevant time of the accident. Whether the appellant was resting his elbow or arm on the sill of the window or not is irrelevant, but in any event, it may be mentioned here that it is common knowledge that people who travel by buses, normally keep their arms resting on the sills of the windows, especially because, unfortunately, the buses are always over-crowded. This being so, it is manifest and clear that the impugned Judgment cannot be allowed to stand and is liable to be set aside.

7. The question that now rises is that related to the quantum of the compensation to be granted to the appellant. It is unfortunate that the learned Presiding Officer of the Claims Tribunal has not given his findings its respect of the relevant issues in that connection, and in view of his finding, that the appellant has failed to prove the rash and negligent driving of the vehicles, held that the other issues were not arising. This approach of the learned Judge is entirely incorrect and he ought to have given a finding in respect of the quantum of the compensation. By failing to do so, he deprived the Appellate Court of the benefit of his discussion and its appraisal of the evidence in that respect.

8. The medical evidence of Dr. Machinolcar discloses that the appellant had to be

operated three times and a skin grafting had to be done. He was in the hospital for more than one month, and at the end of the treatment, he still had weakness of the right upper limb, limitation of the elbow, wrist and finger movements, flexion deformity at the wrist joint and diminished sensation over ulnar aspect of the lower half of forearm and hand. The appellant was 35 years old at the time of the accident and he, admittedly, was working as an accounts clerk in a hospital. He had suffered a permanent disability which will definitely reduce his aptitude to work. He manifestly, suffered shock with the accident and his prospects in life are, naturally, reduced on account of the aforesaid disability. He claimed a compensation of Rs. 50,000/- but unfortunately, he did not adduce sufficient evidence as to determine whether such compensation is justified and proper. Thus, considering the meagre evidence on record, and most particularly, the disability, in my considered view, the ends of justice will be satisfied if a compensation of Rs. 25,000/- is awarded to him.

9. Mr. Mulgonkar, the learned Counsel appearing for the Insurance Company, states that the same Company had insured both the vehicles. He submits that the liability of the Company as regards the passenger of the bus is however restricted to Rs. 5,000/- only, whereas is unlimited as regards the pick-up.

10. The result, therefore, is that this appeal succeeds and is consequently allowed. The respondents are jointly and severally ordered to pay to the appellant a compensation of Rs. 23,000/- only plus interest thereon at the rate of 12 per cent per annum from the date of the accident till the payment. Costs by the respondents.