SUPREME COURT OF INDIA

Tmt. Noorjahan.

Vs.

Tmt. Sultan Rajia Alias Thaju

(S.C. Sen J.)

05.11.1996

JUDGMENT

AHMADI, CJI

Special leave granted.

Syed Abu Thakir on 3.8.1982 suffered injuries while alighting from the bus belonging to the appellant and died on the way to the hospital. The respondent No.1 is the widow and the respondent No.2, the minor son of the deceased while the respondents 3 & 4 are his father & mother respectively. The respondent No.5 was the insurer of the vehicle while the respondent No.6 was the driver of the bus at the relevant time. The respondents 1 to 4 filed a claim for compensation against the appellant and the respondents 5 and 6. The District Judge, Madurai, acting as a Tribunal under the Motor Vehicles Act, 1939, hereinafter called 'the Act', awarded compensation of Rs.92,000/- and held that since the deceased was a "passenger" at the time of the accident the liability of the Insurance Company was limited to Rs.10,000/- only. The appellant filed an appeal contending that the Insurance Company was liable to pay the entire compensation. The respondents 1 to 4 also filed an appeal. The High Court dismissed both the a also Hence this appeal by special leave.

The sole question that arises for consideration is whether the victim was a "passenger" within the meaning of Section 95(2)(b)(ii) of the Act. The findings of the District Judge, Madurai and that of the High Court are that the victim fell down from the bus while alighting therefrom due to the rash and negligent act of the driver in starting the bus before he had got down. Both the Courts rejected the plea of contributory negligence on the part of the deceased. The quantum of compensation, i.e., Rs.92,000/-, is not chalIenged before us.

The plea of the Insurance Company is that the deceased was a passenger in the bus and therefore its liability was limited to Rs.10,000/- as per the provisions of Section 95 of the Act. The plea of the appellant on the other hand is that the victim/deceased was a 'third party' and hence the Insurance Company was liable to meet the entire claim. The High Court, after examining the provisions and case law on the subject, observed that there was a divergence of opinion on the question whether in a situation as the present one, the deceased could be said to be a 'passenger' in the bus. Examining the provisions of Section 95(1) of the Act, the High Court observed that the liability arising out of an event leading to injury or death of a person alighting from a bus, as in the present case, was necessarily to be covered by the insurance policy, the victims of such accidents were passengers for

whom the liability of the Insurance Company at the relevant time was limited to only Rs.10,000/-.

It will be proper here to extract the relevant part of Section 95(1) of the Act :

"95. Requirements of policies and limits of liability. -- (1) In order to comply with the requirements of this Chapter, a policy of insurance must he a policy which –

(a) ... ...

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) –

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury toany passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place, Provided that a policy shall not be required

(i) ... ...

(ii) 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, or

(iii) ... ..."..

The High Court rightly interpreted the proviso (ii) extracted above to mean that the liability in respect of death or injury to persons alighting from the vehicle at the time of the accident need not be covered except where the vehicle is a vehicle in which the passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. In other words, where the vehicle is a vehicle in which the passengers are carried for hire or reward or by reason of or pursuant to a contract of employment, giving rise to the above liability arising out of an accident, the vehicle has necessarily to be covered. It can be seen that the proviso is an exception to Section 95(1). As per sub-section (b) the insurance policy must insure the persons specified in the policy against (i) any liability to person or property of a third party, and (ii) against death or personal injury to any passenger of a public service vehicle. The liability in respect of those suffering personal injury while getting into or alighting from the vehicle need not be covered if the vehicle is not one in which the passengers are carried for hire reward. But as in the present case, the vehicle is one that carries passengers for hire or reward, the liability for personal injury or death caused while getting into or alighting from the vehicle would be required to be covered by the policy. In other words, such people who suffer injury or die while alighting from the vehicle are to be covered by the general rule that the insurance policy for a public service vehicle should cover the liability against the death of or bodily injury to any passenger of such a vehicle. It is clear that the legislature intended that such persons, viz., passengers who are in the process of alighting from a public service vehicle, should be covered by the policy of insurance, which requirement is mandatory under Section 95(1)(b)(ii) of the Act. Further, once such persons, viz., those who are entering or alighting

from the vehicle are treated as passengers, the limit of liability of the insurance company has to be located in clause (ii) of Section 95(2)(b) of the Act. The limit at the relevant time was Rs.1O,OOO/-. The High Court has referred to a few decisions of the very same court wherein contradictory views have been expressed. We do not consider it necessary to restate those cases because in our view the language of the statute is clear. Section 95(1)(b) makes it clear that a policy of insurance shall not be required to cover liability in respect of death or bodily injury to persons boarding or alighting from a motor vehicle but clause (ii) of the proviso thereto engrafts an exception and says that where the vehicle is one in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, it shall be necessary to cover liability in relation to persons carried in or upon such vehicle which would include cases of death or bodily injury caused while entering or mounting or alighting from such vehicle. The words 'alighting from the vehicle' are plain and simple and clearly mean 'while getting down from the vehicle'. Therefore, if a person is still in the process of boarding or alighting from the vehicle, such person would be entitled to the coverage, no doubt within the limit of liability fixed under the statute at the relevant point of time. It must be remembered that this was a beneficial provision engrafted by way of an exception to provide an insurance cover to passengers.

It is interesting to observe that in the new Motor Vehicles Act, 1988, the proviso on which our interpretation rests has been omitted. For our purpose, since the accident took place in 1982, the old Act has to be applied. The appellant, being the owner of the bus is vicariously liable for the acts of the driver, the respondent No.6 and is liable for the compensation for the death of Syed Abu Thakir. The insurer, the respondent No.5, is liable only to the extent of Rs.10,000/-. The appeals are accordingly dismissed. No costs.