

ALLAHABAD HIGH COURT

Jaddoo Singh

Vs.

Malti Devi

F.A.F.O. Nos. 493 and 512 of 1976

(K.N. Singh and K.M. Dayal, JJ.)

26.07.1982

JUDGEMENT

K.N. Singh and K. M. Dayal, JJ.

1. These first appeals from order arise out of proceedings in Motor Accidents Claims Petition under Section 110-A of the Motor Vehicles Act.
2. One Chintamani was killed in an accident with a bus. The descendants of the deceased filed a Claim Petition and the Tribunal has awarded a sum of Rs.. 78,000/- with costs and interest at the rate of 9% per annum against the owner and the driver of the bus and the Insurance Company.
3. Two appeals have been filed, Appeal No. 512 of 1976 has been filed by the New India Assurance Co. Ltd., the Insurer. Appeal No. 493 of 1976 has been filed by the alleged driver and the owner.
4. We have heard the learned Counsel for the parties at some length. The case of the claimants was that on 19th May 1973 the deceased was going on his motor cycle from Ghiror to Mainpuri on Agra-Mainpuri Road, when he reached a place near Auren Mandai about 4 kms. from Mainpuri, at about 5 P.M. Bus No. P.N.Q. 2687 coming from the side of Mainpuri, dashed against the motor cycle, as a result of which he fell down and became unconscious. The bus did not stop and speeded away. Another bus No. U.P.B. 3103 was coming from the side of Ghiror, picked up the injured in an unconscious state and took him to District Hospital, Mainpuri. The injured succumbed to the injuries at 5.55 P.M. the same day.

5. The claim petition was filed against the Insurance Company and three others. Soney Singh, Jaddoo Singh and Shyam Baboo mentioned as owners. Soney Singh claimed that he had transferred the bus to Shyam Babu Gupta earlier and he had no concern with the bus, at the time of the accident. Jaddoo Singh was alleged to be the driver. Shyam Babu admitted that he was the owner of the bus, but the bus was being driven by another driver, Vidya Ram, and not Jaddoo Singh. He also claimed that he was sitting in the bus at the alleged time of occurrence and no accident took place with it. Jaddoo Singh alias Jagvir Singh denied that he was driving the bus, but admitted that a case under Section 304-A of the Indian Penal Code was going on against him for the said occurrence.

6. The Insurance Company claimed that it was not liable to pay any compensation to the claimants. No notice of the accident was served on any opposite party. The bus was being driven very cautiously and slowly. The accident was due to lack of proper care and caution on the part of the deceased motor cyclist himself. The motor cycle was being driven rashly and negligently and the deceased had no licence to drive the motor cycle. At the time of accident the registered owner of the bus was Mr. Soney Singh and not Shyam Babu. The bus was being driven against the provisions of policy without consent and authority of the owner by a person who was not having a valid driving licence and was not under the employment of the Insured owner. The Tribunal framed four issues which are as under.

1. If the death of the deceased was caused due to accident arising out of the use of bus No. P. N. Q. 2687 ? If so, was the bus being driven rashly and negligently : Or if the death of the deceased was caused due to his own rashness and negligence ?
2. If at the time of the accident, the bus under reference was being driven against the provisions of the policy and permit without the authority of the insured by a person not holding a licence of driving and the Insurance Co. is accordingly absolved of its liability under the policy ?
3. If the insured owner had transferred the bus to Soney Lal and Jaddoo Singh and the Insurance Co. was accordingly absolved of its liability. ?

4. For what amount of compensation and against whom is the applicant entitled ?

Issues Nos 3 and 4 were wrongly numbered as issues Nos. 4 and 5.

7. On issues Nos. 1 and 2 the Tribunal came to a finding that the accident took place with the bus in question. That it was being driven by Jaddoo Singh, rashly and negligently. That Jaddoo Sigh, who was driving the bus, had a valid driving licence and consequently the Insurance Company was liable. Under issue No. 3 it gave a finding that the insurance Company was liable in spite of the transfer of the bus to Shyam Babu. Shyam Babu got the policy in question on 16th May 1973. His name was recorded in the records of the Regional Transport office on 18th May 1973. The policy, though issued on 23rd May, 1973, mentioned that it was effective from 16th May, 1973 i.e. the date of the proposal. The accident took place on 19th Nov. 1973. Consequently the vehicle was covered with the Insurance Co. on that date and the Insurance Company was liable. Under issue No. 4, it came to a finding that the claimants were entitled to a sum of Rs. 78,000 as compensation from the alleged driver Jaddoo Singh, owner Shyam Babu and the Insurance Co. –

8. In F. A. F. O. No. 493 of 1973 the learned Counsel for Jaddoo Singh and Shyam Babu raised the following points. Firstly that no accident ever took place with their Bus No. PNQ 2687; secondly that Jaddoo Singh has not been proved to be the driver of the aforesaid bus and he could not be held to be liable.

9. The learned Counsel for the Insurance Company raised the following points in F. A. F. O. No. 512 of 1976. Firstly that no accident took place with the bus insured by them and secondly that Jaddoo Singh was not a licensed and authorized driver and consequently the Insurance Company was absolved from its liability. The most serious argument of the learned Counsel for the Insurance Company was that the policy of the insurance was void as it was got issued on 16th May 1973 by Shyam Babu though he was not the owner of the vehicle on that date. His name was not recorded in the Regional Transport Office on 18th May, 1973. Thus the policy was not binding.

Point No. 1:

10. Point No. 1 raised by learned Counsel for Jaddoo Singh and Shyam Babu in their Appeal No. 493 of 1976 related to the factum of accident. After perusing the evidence we are unable to accept the contention of the learned Counsel. There are two important witnesses on the point. The first is Daya Shanker P.W. 3 who had seen the Bus No. PNQ 2687 hitting the deceased. He stated that he was coming on a bicycle. The bus was going at a very fast speed and there was a motor cycle coming from Ghiror. The motor cycle was on the right of the bus just adjoining the Kachchi Patri. Bus did not give any horn, hit the motor cycle and then speeded away. The motor cycle dashed on the right side of the bus. The witness shouted to stop the bus but the bus did not stop. The bus was red in color with yellow wheels. Subsequently another bus came. He stopped that bus and placed the injured therein. The witness has been cross-examined at length but nothing material could be elicited. The learned Counsel for the appellant relied upon a portion in the cross-examination of the witness where he had stated that impact took place with the left portion of the bus and the bus was on its right side. The accident took place in the year 1973 whereas the statement was being recorded in the year 1976. Further that appears to be result of some confusion. The fact that he stopped the other bus, placed the victim therein and saw the bus and noted the number of the bus which hit the victim cannot be disputed. There is another important witness on the point i.e. P.W. 4, Ram Das. Ram Das was travelling in the same bus which hit the deceased. He was sitting on the front seat just near the driver. He deposed that he asked the driver to stop the bus after the accident but the driver did not stop. The bus did not stop even at Ghiror. The appellant's Counsel argued that Shyam Babu himself was sitting in the bus. He has deposed that no accident took place at the alleged place and time nor Jaddu Singh was driving the bus. We are not prepared to accept the most interested testimony of Shyam Babu or Jaddu Singh on that point. After the accident the bus disappeared for sometime. Ultimately it could be traced and taken into custody in December, 1973. There was no reason for the disappearance of the bus if it was not involved in the accident. We accordingly hold that the accident did take place with the bus No. PNQ 2687 as alleged.

11. The second point of argument by the learned Counsel for Jaddu Singh and Shyam Babu appears to have some weight. The learned Counsel argued that Jaddu Singh has not been proved to be the driver of the bus at the time of accident. The learned Counsel referred to the statements of D.W. 1 Babu Ram.

D.W. 2, Ram Prakash, and D.W. 3 Shyam Babu. All these witnesses have stated that the bus was being driven by driver Vidya Ram and not by Jaddoo Singh. The learned Counsel for the claimant respondent argued that P.W. 5 Mahesh Chand has stated that he got the information of the accident through Ram Das, Nankoo Singh and Indra Chandra. They had told the name of the driver as Jaddoo Singh. P.W. 5 was not an eye witness. He derived his information from the witness mentioned above. Of these persons only Ram Das has been examined as D.W. 4. We do not find the name of Jaddoo Singh, the alleged driver, in his entire statement. According to him he was sitting besides the driver in the front seat but he did not name the driver, Under the circumstances the only evidence about Jaddoo Singh driving the bus is statement of Mahesh Chand P.W. 5 but he has himself not seen Jaddoo Singh driving the bus. He was told by others that Jaddoo Singh was driving the bus. His statement is inadmissible in evidence and cannot be looked into. Section 60 of the Evidence Act provides that oral evidence must be direct. No witness has stated that he had seen Jaddoo Singh driving the bus. Under the circumstances we hold that it has not been proved from the evidence

on record that Jaddoo Singh was driving the bus at the time of accident.

12. Coming to the liability of Shyam Babu as owner we find that he was liable. He has accepted the ownership of the bus in his statement and the accident having been proved to have been caused by the bus he must be liable. He has not pleaded that the bus was being driven by some unauthorized person without his consent or permission. On the other hand he stated on oath that he was sitting in the bus at the alleged time. Under the circumstances it is not open to him to argue that the bus was being driven without his consent or permission. Whosoever was driving whether Jaddoo Singh or Vidya Ram both were duly licensed drivers. Shyam Babu thus cannot escape the liability.

13. Coming to appeal No.512 of 1976 filed by the Insurance Company, the first point argued by the learned Counsel that no accident took place with the bus in question cannot be accepted, as discussed above.

14. The second argument of the appellant that the bus was not being driven by a duly licensed driver has no merits. Jaddoo Singh has been examined as D.W. 6. He denied that he was driving the bus at the time of accident. He admitted that

he had a license for driving the vehicle and produced the driving license before the court. Under the circumstances, it was amply proved that if Jaddoo Singh was driving the bus he was duly licensed and entitled to drive the bus. If we accept the case of Shyam Babu that the bus was being driven by Vidya Ram, he is also a regular driver. He has stated that Vidya Ram was the driver of the bus. His statement was not challenged by the Insurance Company nor it was suggested that Vidya Ram was not a licensed and authorized driver. This point consequently fails. We hold that the bus No. PNQ 2687 was being driven by a licensed driver authorized by the owner Shyam Babu.

15. The third contention of the Insurance Company also has no force. According to the Insurance Company Shyam Babu could not have obtained the policy on 16th May, 1973 when he gave the proposal. He was entered as the owner in the records of the Regional Transport Office only on 18th May, 1973. In our opinion that does not invalidate or render the Policy void. The Insurance Company accepted the proposal on 23rd May 1973 retrospectively with effect from 16-5-1973. As Shyam Babu was recorded as owner on 18th May 1973 the acceptance of his proposal on 23rd May 1973 by the Insurance Company was not unlawful and there was no invalidity in it. The learned Counsel for the Insurance Company could not point out it there was any provision under which such a policy would be void. The accident took place on 19th November, 1973 when the policy was very much in force. Under the circumstances the insurer would be liable to indemnify the owner to the extent of Rs. 50,000/- i.e. the risk covered by the policy. The remaining amount may be realized from the owner.

16. In the result F. A. F. O. No. 493 of 1976 is partly allowed to the extent that the award against Jaddoo Singh is set aside, but the award against Shyam Babu is confirmed with a modification that interest would be payable at the rate of 6% per annum instead of 9% against Shyam Babu Gupta, the owner of the vehicle.

17. F. A. F. O. No. 512 of 1976 filed by the New India Assurance Co. Ltd. is also partly allowed only in so far as the rate of interest on the compensation is concerned. It is reduced from 9% to 6% per annum. The rest of appeal is dismissed. The award made by the Court below is confirmed and the Assurance Company is liable to indemnify the owner Shyam Babu Gupta to the extent of Rs. 50,000/- with pendent lite and future interest at the rate of 6% Per annum.

The parties are directed to bear their own costs in this Court.

Appeal partly allowed.