

ALLAHABAD HIGH COURT

Raghib Nasim

Vs.

Naseem Ahmad

First Appeal From Order No. 576 of 1980 connected with 490 of 1980

(K.C. Agrawal and A.P. Misra, JJ.)

17.04.1985

JUDGMENT

K.C. Agarwal, J.

1. These two first appeals from order have been preferred under Section 110D of the Motor Vehicles Act, 1939. Appeal No. 490 has been filed by the New India Assurance Co. Ltd., whereas Appeal No. 576 has been preferred by Raghib Nasim and Smt. Zaheet Fatima, who were the owners of bus No. USP-2788. By the judgment impugned in these appeals, the Motor Accidents Claims Tribunal, Muzaffarnagar (hereinafter referred to as " the Claims Tribunal"), allowed the claim of respondents Nos. 1 to 9, who are the claimants, and awarded a sum of Rs, 22,275 as compensation along with interest at 6 per cent. per annum from the date of giving of the judgment up to the date of payment.

2. The claim of respondents Nos. 1 to 9 was that Fazal Haq, father of respondents Nos. 1 to 8 and husband of respondent No. 9, was travelling by private bus No. USP-2788 on August 15, 1977, when at about 8-30 a.m. ' near the block office of village Baghra, Police Station Titavi, district Muzaffarnagar, it collided with bus No. HRM-7370 of Haryana Road Transport Corporation coming from the opposite direction. According to the claimants, Fazal Haq (deceased) was sitting on the seat behind the driver and as a result of a collision he received several injuries and died instantaneously. The claimants asserted that the accident took place due to negligence of the bus drivers of the two vehicles, referred to above, and, as such, they were entitled to compensation from both of them amounting to Rs. 74,920.

3. The claim was contested by the Haryana Road Transport Corporation as well

as the owners of bus No. USP-2788. In their written statement, the owners of bus USP-2788 claimed that the accident took place due to the rash and negligent driving of bus No. HRM-7370, and not on account of negligence of the driver of bus No. USP-2788. In the written statement filed on behalf of the Haryana Road Transport Corporation, the liability for compensation was denied on the ground that bus No. HRM-7370 was being driven by its driver at a slow speed and when the accident occurred, it was towards the extreme left. According to the Haryana Road Transport Corporation, bus No. USP-2788 was solely and exclusively responsible for the accident. The New India Assurance Co. Ltd. also filed a written statement.

4. Respondents Nos. 1 to 9 produced Naseem as P. W. 2 who was travelling by the same bus which met with the accident resulting in the death of Fazal Haq. He stated that Fazal Haq was sitting on the seat behind the driver and the bus, of which he was the passenger, as well as the bus of the Haryana Road Transport Corporation were running at a high speed. On account of the speed, the two buses collided resulting in causing injuries to Fazal Haq (deceased) who died instantaneously. He estimated the speed of bus No. HRM-7370 to be 60 km. per hour. P. W. 1 was Naseem Ahmad, one of the claimants himself. He did not, admittedly, have any knowledge of the accident as he had not seen the same. His statement is relevant with regard to the quantum of compensation.

5. On behalf of Haryana Road Transport Corporation, the witness produced was Kishan Singh (D. W. 1) who was the driver of the bus with which the accident took place. He stated that after leaving some of the passengers at Baghra, he had started from the station and was driving the bus at a speed of 10-15 km., per hour when the accident occurred. He further stated that two buses were coming from the opposite direction and bus No. USP-2788 tried to overtake the other bus and in that attempt it collided with bus No. HRM-7370 of the Haryana Road Transport Corporation. Ehasanul Haq had been examined on behalf of the appellants .as D. W. 2. He stated that he was going to his field when he witnessed the incident. He stated that private bus No. USP-2788 was slow and the accident took place due to rash and negligent driving of the driver of bus No. HRM-7370 of the Haryana Road Transport Corporation.

6. On the evidence of the parties, the Claims Tribunal held that the accident

occurred due to rash and negligent driving of Bus No. USP-2788.

7. We have examined the statements of the witnesses produced by the parties mentioned above. After consideration of their statements, we find that Kishan Singh (DW 1), who was driving the bus of the Haryana Road Transport Corporation, has given a detailed description of the accident. The witness produced from the side of the claimants was "Naseem (P. W. 2). He was travelling in the same bus. He stated that bus USP-2788 was being driven by its driver at a high speed. So far as Ehasanul Haq (D.W. 2) is concerned, his presence at the spot when the accident occurred is of grave doubt. A reading of his statement would show that he reached the spot after the accident had taken place. He claimed to have lodged the first information report himself. The version given by him in the first information report is materially different from what was stated by him in the court. He could not tell the exact place where the accident occurred. He stated that at the time of the accident, the bus of the Haryana Road Transport Corporation was in the north of the road. This is against the report of the local inspection made by the police, which has been filed in the criminal case. Admittedly, the site was inspected by the police which prepared the site plan, which is paper No. 46-O. There was no dispute between the parties about the correctness of the site plan and, in fact, from the judgment of the trial court it appears that the counsel appearing for the owners of bus No. USP-2788 admitted its correctness and did not call the Investigating Officer for cross-examination. From a look of the site plan it would be found that bus No. HRM-7370 was on its extreme left. Ehasanul Haq (DW 2) admitted that when the police inspected the spot, the scene of the accident, the position of the bus remained unchanged. This site plan establishes the correctness of the statement of DW 1, Kishan Singh, who stated that he was on the extreme left having taken the bus to the kachcha side of the patri.

8. For what we have said above, we find, in agreement with the Claims Tribunal, that the accident had occurred due to the negligence and rash driving of bus No. USP-2788.

9. In this background, the argument of the learned counsel for the . appellants in Appeal No. 576 that the accident occurred due to rashness of both the buses could not be accepted. From the evidence it appears to us that in case the driver

of bus USP-2788 had not been rash and not driving the bus at a speed which was beyond his control, the accident could not have taken place.

10. Counsel for the appellants contended that as bus No. HRM-7370 of the Haryana Road Transport Corporation had contributed to the accident in which the death of Fazal Haq took place, the Claims Tribunal should have apportioned the compensation between the appellants and Haryana Road Transport Corporation, and the Tribunal committed an error in absolving the Haryana Road Transport Corporation completely. We have found above that the accident had occurred due to the negligence of the driver of bus No. USP-2788 and on that ground the Haryana Road Transport Corporation could not be said to have contributed to the negligence.

11. When a person is injured without any negligence on his part, but as a result of negligence on the part of another person or due to the combined negligence of two persons, it is not a case of contributory negligence. The question of "contributory negligence" arises in a case where the injured or the deceased had contributed to the accident. In a case of composite negligence, the person wronged has a choice of proceeding against all or any one or more than one of the wrongdoers. Every wrongdoer is liable for the whole damages if it is otherwise made out. The law in this regard has been laid down by Pollock on Torts, Fifteenth Edition, as under :

"Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analysis to find out whom he can sue. He is entitled of course, within the limits set out by the general rules as to remoteness of damage, to sue all or any one of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between these persons though in any case he cannot recover in the whole more than his whole damage."

12. It is true that the Claims Tribunal committed an error in applying the principle of *res ipsa loquitur* in the present case, inasmuch as this principle applies when there is no evidence to lead a court to the conclusion with regard to the incident for the purposes of fastening the liability and finding as to who is

the defaulting party. In the present case evidence had been led by the parties. This error of the Claims Tribunal is of a trivial nature as it does not affect the result of the appeal at all.

13. The second argument of the appellants' counsel was that under Clause (b) of Section 95(2), the liability of the insurance company was up to Rs. 20,000, and, as such, the Tribunal should have held that the said amount was payable by the insurance company and the balance by the appellants. He contended that for finding the total liability of the insurance company, the number of persons who die in an accident is immaterial. The maximum liability is Rs. 20,000 and, therefore, the entire sum should have been held payable by the insurance company for indemnifying the appellants.

14. For this submission, counsel relied upon a decision of a single judge in *New India Assurance Co. Ltd. v. Mahmood Ahmed*,¹ In this case, the learned single judge found that (at p. 296 of 59 Comp Cas):

"Reading Sub-clause (b) in this light would show that as regards passengers who are being carried for hire or reward, the overall limit of liability undertaken by the insurance policy must vary from Rs. 50,000 to Rs. 1 lakh depending upon its registered capacity and Rs. 5,000 for each individual passenger...The expression 'subject to the aforesaid limits ' as occurring in Sub-clause (4) of Clause (b) only refers to the overall limit prescribed for passenger vehicles of various capacities in Sub-clauses (1), (2) and (3) of Clause (b) (ii) and the reference to Rs. 5,000 for each individual passenger would apply only in those cases where more than one passenger have either lost their lives or have been injured or both. Where in any one accident, only one person has either died or been injured, the limit of Rs. 5,000 would not apply in view of the overall limit prescribed in Sub-clauses (1), (2) and (3)."

15. For the view taken, the learned single judge relied upon a decision of the Supreme Court in *Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi*,² This decision of the Supreme Court was a case of Clause (a) of Sub-section (2) of Section 95, which is meant to cover a case of carriage of goods. In the case of a passenger bus, Clause (a) is not applicable. The Supreme Court itself

pointed out in paragraph 10 of this judgment that it was concerned only with Clause (a) of Section 95(2), and that too as it existed on February 1, 1966. The interpretation of Clause (a) of Section 95(2) made by the Supreme Court in this case cannot be considered to have a bearing on Section 95(2)(b). The Supreme Court made a distinction between Clauses (a) and (b) and observed in that connection (at p. 468 of 52 Comp Cas) :

"In view of the limit on the insurer's liability in respect of each passenger, the argument on the construction of the words ' any one accident ' had to relevance and was, therefore, neither made nor considered by the court. Different considerations may arise under Clause (b), as amended by Act 56 of 1969, but we do not propose to make any observations on . that aspect of the matter, since it does not directly arise before us."

16. This controversy was considered by a Division Bench of this court in *Noor Mohammad v. Phoola Rani*,³ The Division Bench found, with which we respectfully agree, that the upper limit of liability of insurance company could not be more than Rs. 5,000 for each individual passenger. The facts of this case indicate that Badri Prasad was the unfortunate victim of the accident of bus No. USU-518, Other passengers did receive injuries, but the claim had been filed by the dependants of Badri Prasad. The view taken by the Division Bench was that the liability of the insurance company in respect of an individual passenger was Rs. 5,000 and only that much amount could be awarded against it. This decision is contrary to the view taken in *New India Assurance Co. Ltd. v. Mahmood Ahmed*,⁴

17. In *Sheikhupura Transport Co. Ltd. v. Northern India Transporters' Insurance Co. Ltd.*⁵ the Supreme Court considered a similar controversy. In that case, a passenger bus, while travelling from Ludhiana to Raikot, met with an accident at 9.00 a.m. on February 11, 1959. As a result of this accident, two passengers died on the spot and some others received minor injuries. In that connection, the Supreme Court considered Section 95(2) and found (at p, 1627 of AIR 1971 SC) :

"The opening words of this clause 'subject to the limit of liability of the company ' evidently refer to the limit prescribed under Section 95(2)(b)

of the Motor Vehicles Act. No clause in the insurance policy specifically providing for the payment of any amount higher than that fixed under Section 95(2)(b) was brought to our notice. The clause dealing with avoidance of certain terms and the right of recovery reads :'Nothing in this policy or any endorsement thereon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96 '."

18. At the time when this case was decided by the Supreme Court, the statutory liability of the insurer extended up to Rs. 2,000 for each individual passenger. The Supreme Court held that the liability of the insurance company to indemnify the insured was as prescribed in Section 95(2), and hence in its conclusion, the liability of the insurer could extend up to that amount only.

19. In *Jyoti Prasad Dixit v. Smt. Bitan Dem*,⁶ this court differed from the decision in *New India Assurance Co. Ltd. v. Mahmood Ahmed*,⁷ and found that since the decision of the Supreme Court in *Sheikhupura Transport Co. Ltd. v. Northern India Transporters' Insurance Co. Ltd.*⁸ was not cited, the learned single judge in Mahmood Ahmed's case, AIR 1984 Allahabad 183 ; [1986] 56 Comp Cas 291, held that the liability of the insurance company was for payment of Rs. 20,000. With this view we find ourselves in agreement. The learned single judge in *Jyoti Prasad Dixit v. Smt. Bitan Devi*,⁹ rightly held that the limit of liability for each individual passenger was Rs. 5,000 only.

20. A distinction had been drawn by the learned single judge in Mahmood Ahmed's case, AIR 1984 Allahabad 183 ; [1986] 56 Comp Cas 291, by saying that where the victim is only one passenger, he would be entitled to get the entire amount up to which the liability of the insurance company can be extended. On the language used in Section 95(2)(b)(4), this interpretation does not appear to be sound. The liability qua each individual passenger is up to Rs. 5,000 and the maximum liability is of Rs. 20,000. Whether one individual dies or several die, is not material for interpreting Section 95(2)(b). We may note that recently by Act No. 47 of 1982, Section 95(2) of the Motor Vehicles Act has been amended. The provisions for compensation now made are different from what they were at the time when the accident in question occurred. We are

not called upon to interpret the amended provision.

21. For what we have said above, we do not find any merit in the submission of the appellants' counsel. Learned counsel had referred to a decision of the Patna High Court also, but as we are bound by the decision of the Division Bench of our High Court and are also in agreement with the same, we are not required to deal with the Patna case. The second argument of the learned counsel also fails.

22. For these reasons, both the appeals fail and are dismissed with costs.

Cases Referred.

1. AIR 1984 All 183; [1986] 59 Comp Cas 291 (All)
2. AIR 1981 SC 2059; [1982] 52 Comp Cas 454 (SC)
3. AIR 1984 A11317; [1986] 59 Comp Cas 306 (All)
4. AIR 1984 All 183; [1986] 59 Comp Cas 291
5. [1971] ACJ 206; AIR 1971 SC 1624
6. AIR 1985 All 32; [1986] 59 Comp. Cas 348
7. AIR 1984 AH 183; [1986] 56 Comp Cas 291
8. [1971] ACJ 206; AIR 1971 SC 1624
9. AIR 1985 All 32; [1986] 59 Comp Cas 348