

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 7th December, 2012

+ **MAC. APP. No.645/2005**

RAJASTHAN ROADWAYS, ALWAR Appellant
Through: Mr.Ms.Ritu Bhardwaj, Advocate.

Versus

BHAGWAN SINGH & ANR. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Rajasthan Roadways impugns a judgment dated 30.10.2004 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹ 65,600/- was awarded in favour of the First Respondent for having suffered injuries in a motor vehicle accident which took place on 24.07.2000 involving the Appellant's bus No.RJ-02P-0940.
2. As per the case set up by the First Respondent, on 24.07.2000 at about 9.15 am he was travelling in the earlier said bus. When the bus reached in the area of PS Kishangarh, the bus hit a tractor which was going ahead of it. There was a big noise and all of sudden he found his left arm sustained a massive hit. He suffered multiple fractures on his left arm. He was removed to the hospital by the bus driver.

3. On appreciation of evidence, the Claims Tribunal relied on *Pepsu Road Transport Corporation v. Qimat Raj Jain*, 1985 ACJ 16 and held that having regards to the dismal state of Indian roads that are very narrow and single, it was expected that the driver of the passenger bus must avoid contact with the body of other vehicles which pass in same direction or opposite direction so as to avoid injuries to the passengers who may be resting their elbow on the window. The Claims Tribunal held that there was culpable negligence on the part of the driver.
4. The compensation of ₹ 65,600/- awarded by the Claims Tribunal is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical reimbursement/ Conveyance / Special Diet	₹ 5,000/-
2.	Pain & Suffering	₹ 40,000/-
3.	Loss of Amenities	₹ 15,000/-
4.	Loss of Incime	₹ 5,600/-
	Total	₹ 65,600/-

5. The following contentions are raised on behalf of the Appellant Rajasthan Roadways:
 - (i) The manner of the accident, or in any case negligence on the part of the Appellant's driver in driving the bus is not established; it is, therefore, not liable to pay any compensation.
 - (ii) The compensation awarded is on the higher side.

NEGLIGENCE:

6. The First Respondent was cross-examined with regard to the manner of the accident. He denied that he held out his left arm outside the window while travelling in the bus. He stated that he explained the manner of the accident to the police. He stated that no other passenger sustained any injury. He admitted that he was sitting adjacent to the window. He denied the suggestion that he was negligent in keeping his forearm outside the window.
7. The Appellant Rajasthan Roadways produced its driver Bhopal Singh as RW1 who deposed that the First Respondent (Claimant) was travelling and held out his left arm outside of the bus. He stated that he warned the Claimant several times to keep his arm inside. In cross-examination, RW1 admitted that he did not stop the bus when the First Respondent was noticed keeping his elbow on the window. He admitted that he did not ask the First Respondent to change the seat.
8. Thus, at the most what can be inferred from the evidence led by the parties is that the First Respondent resting his elbow on the window sill. In inter state travelling, the passengers usually rest their arm on the window sill. In *Uttanchal Transport Corporation v. Navneet Jerath*, MAC APP. 264/2005 (reported), this Court dealt with a similar issue where the victim was travelling with his left elbow on the window sill.
9. This Court relied on a judgment in *Delhi Transport Undertaking v. Krishnawanti*, 1972 ACJ 423, *The State of Punjab & Anr. v. Guranwanti*, 1960 PLR 571, *Ramesh Kumar Awasthi v. The Collector, Saharanpur & Ors.*, AIR 1982 Allahabad 425 and held that the driver of the bus carrying

passengers on long journey is expected to have knowledge of the fact that the passengers sitting near the window rest their hand on the window sill. This Court held that the drivers of the passenger vehicle are bound to take precaution against the possibility that while over taking or crossing other vehicles it should not graze each other.

10. Paras 9 to 13 of the report in Navneet Jirat are extracted hereunder:-

“9. As far as the First Respondent’s plea of placing his arm / elbow on window sill is concerned, it is important to note that the Appellant Corporation’s bus was running on night service. It is no where the Appellant’s case that First Respondent had flung his arm outside the window. Most of the passengers do sleep while travelling in a bus running in the dead of night. It was Appellant’s duty to ensure that the passengers are carried to their destination with adequate care and safety. It was expected of the Appellant’s driver to have taken care that his bus would not come too close to any vehicle coming from the opposite direction in order to avoid any danger to the safety of the passengers in which the Appellant’s driver utterly failed.

10. In Delhi Transport Undertaking v. Krishnawanti, 1972 ACJ 423, an accident took place while a passenger was travelling in a bus resting her elbow on the window. The driver suddenly overtook a cart carrying logs of wood which were protruding. A passenger’s elbow struck against a log and she was injured. This Court held that there was no contributory negligence on the part of the passenger and the accident took place because of the negligent driving of the bus driver. Para 10 of the report is extracted hereunder:-

. “10. It is the duty of the driver of the public buses to take all steps, which a person of ordinary prudence would take, to ensure the safety of the passengers. The driver of the bus in question cannot be said to be unaware of the fact that the passengers were in the habit of putting their hands outside the bus. He could thus foresee that while overtaking a moving cart if he would not leave sufficient space between the cart and the bus, there was a likelihood

of the passengers' arms being injured. The respondent had elbow on the window while sitting in the bus. This cannot be said to be negligent way of sitting. On the other hand it may be called a slightly more comfortable way of sitting. The driver having noted the protruding wooden logs should have ensured a sufficient space between the bus and the cart while overtaking it. In case, he found that the oncoming traffic did not permit him of that much space, it was his duty not to risk overtaking the cart. The driver thus was rightly held negligent in overtaking the cart which resulted in injuries to the respondent."

11. *The Delhi High Court in Krishnawanti (supra) relied on a judgment of Punjab High Court in The State of Punjab & Anr. v. Guranwanti, 1960 PLR 571, where it was held as under:-*

"It is well known that often passengers travel with their elbows resting on the window of the car. There is no prohibition against it. The plaintiff at that time of the morning considering the state of traffic cannot be said to have failed to use reasonable care for her safety by resting her below on the window."

12. *In Ramesh Kumar Awasthi v. The Collector, Saharanpur & Ors., AIR 1982 Allahabad 425, a similar question came before the Division Bench of Allahabad High Court. The Division Bench relied on Krishnawanti (supra) and held as under:-*

"6. On the perusal of the evidence we are satisfied that the appellant had kept his elbow on the window sill when the accident occurred. It was the duty of both the drivers to ensure safety of the passengers and for that purpose they should have taken care to leave sufficient space between the two vehicles at the time of crossing each other. The story introduced by Satvir Singh (DW2) that the accident occurred as the driver of the bus coming from the opposite direction wanted to save a cow is a cock and bull story. No evidence has been produced to prove that story. The driver's evidence would have been the best evidence to prove the circumstances which led to the accident but he was not produced. The drivers of the two buses were employees of the Corporation and they were best persons to state the

truth about the accident but they were not produced for the reasons best known to the Corporation. The two drivers had special knowledge of the manner in which the accident took place and the reason for the two buses crossing each other with such closeness as to cause the accident. The Corporation did not produce them. Consequently, the irresistible conclusion is that if they had been produced their testimony would have gone against the case set up by the Corporation. It is well settled that if a witness having special knowledge of the facts is withheld it is legitimate to draw an adverse inference against that party. In our opinion, the two drivers were best persons to explain the circumstances which led to the accident and since the Corporation did not produce them we have to proceed on the assumption that the accident occurred on account of their negligence. Moreover, the fact that the two buses plying on a wide road, crossed each other so closely without there being any justification for the same itself proves the negligence of the two drivers.

9. It is a matter of common knowledge that passengers sitting near the window rest their hand on the window sill specially when on a long journey in the country-side. The driver of a bus carrying passengers on long journeys is expected to have knowledge of this fact. The drivers of the two buses were bound to take precaution against the possibility that while grazing each other some person might be placing his hand or elbow on the window sill. Since the two vehicles came too close to each other resulting into accident without there being justification for the same it has to be presumed that the drivers had failed to take reasonable care for the safety of passengers and therefore they were negligent. In Jamnagar Motor Transport Union v. Gokaldas Pitambar's L.Rs. (1966 ACJ 42) the Supreme Court in a similar situation where the two buses grazed while crossing each other held that both the drivers were negligent. The view that we are taking has been taken by various High Courts in a number of cases. Reference may be made to State of Punjab v. Smt. Guranwanti (AIR 1960 Punj.490), Sushma Mitra v. M.P.S.R.T.C. (1974 ACJ 87), Delhi Transport Undertaking v. Krishnawanti (1972 ACJ

423) and *General Manager State Road Transport Corpn. v. Krishnan* (1981 ACJ 273).

10. We are then faced with the question as to whether the appellant was guilty of contributory negligence as his right hand elbow was protruding out of the bus and for that reason he was not entitled to any compensation. On the evidence on record it is well established that the appellant was resting his right elbow on the window sill at the time when the accident occurred. Bool Chand, Conductor of the bus has stated that a portion of 2 1/2" of the appellant's right elbow was protruding outside the bus. His statement thus makes it amply clear that the appellant had not taken his arm out of the window, in-stead while resting his hand on the window sill a small portion of his hand 2 1/2" was protruding out of the bus. This is a normal for a passenger who sits on the seat near the window to rest his hand on the window sill. There is no law prohibiting resting of hand on the window sill or protruding small part of the body outside the bus. There is further no evidence on record to show that any signboard was placed in the bus warning the passengers from placing their elbows or hands on the window sill. The conductor also did not state that on seeing the bus coming from the opposite direction he had warned the appellant to keep his elbow inside the bus. In *Sushma Mitra v. M. P. State Road Transport Corporation* (1974 ACJ 87) it was held that the appellant was not guilty of contributory negligence in keeping his elbow on the window sill because it is common practice for the passengers who sit near the window to rest their arm on the window and there was no evidence that the passengers were cautioned not to do so. The Court held that the passenger was not guilty of any contributory negligence. We would like to emphasize that the evidence on record shows that the place where the accident occurred was outside the town and the traffic was not heavy and there was ample space for the two vehicles to pass each other without coming close. If the drivers had taken adequate care for the safety of the passengers the accident could not have occurred in the manner it has happened in the present case. There is also no evidence that the bus coming from the opposite direction

blew its horn or that the appellant was cautioned by the conductor or the driver on seeing the bus coming from the opposite direction to remove his hand from the window sill. The appellant was going on a long journey from Meerut to Rishikesh and in that" process it was quite natural for him to rest his hand on the window sill. It appears that two vehicles were being driven with excessive speed as merely by the impact the appellant's fore-arm was slit and severed instantaneously leaving no time for the appellant to withdraw his hand. These circumstances show that the appellant was not guilty of negligence by placing his elbow on the window sill."

13. Simply because the First Respondent was resting the elbow on window sill and even if his elbow was protruding by a few inches, it was the duty of Appellant's driver to drive the bus in such a manner that there is safe distance between the two vehicles. That having not been done, it has to be held that the accident took place on account of rash and negligent driving of driver of bus number UP-02B-6972 owned by the Appellant."

12. Thus, the Appellant Rajasthan Roadways cannot disown the negligence of its driver if a passenger travelling in the bus suffered injuries only because of the fact that he was keeping his arm on the window sill. In my view, the culpable negligence on the part of the Appellant's driver is sufficiently established.

QUANTUM OF COMPENSATION:

13. Immediately after the accident, the First Respondent (Claimant) was removed to the Lok Nayak Hospital where he remains admitted from 24.07.2000 to 31.07.2000. He suffered compound fracture of both bones left forearm and fracture of left humerus. The First Respondent (Claimant) was operated upon in Lok Nayak Hospital and was a case of

non-union humerus. The document Ex.PW1/1 to PW1/5 shows that the First Respondent remained an outdoor patient upto January, 2001.

14. The overall compensation of ₹ 65,600/- cannot be said to be excessive or exorbitant.
15. The Appeal is devoid of any merit; the same is accordingly dismissed.
16. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 07, 2012

v