

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.2355 of 2007

B.Suresh

.. Appellant/Petitioner

Versus

The Managing Director
The Metropolitan Transport Corporation Limited,
Division - I, Pallavan House,
Pallanvan Salai, Chennai - 2

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to set aside the award passed in the above MCOP.No.434 of 1999 dated 25.07.2002 on the file of the Additional District Judge, Chengalpattu (Fast Track Court-V) at Tiruvallur/Motor Accident Claims Tribunal, Tiruvallur.

For Appellant : Mr.S.Anand and Suryas

For Respondents : Mr.S.S.Swaminathan

J U D G M E N T

The civil miscellaneous appeal has been preferred against the Judgment and decree passed in MCOP No.434/1999.

The brief facts leading to the filing of the claim application is as follows:-

2. On 25.02.1999 by 9.15 hours, when the petitioner was travelling in the respondent's bus as a passenger in the stage carriage MTC bus bearing registration No.TN-01-N-3148, proceeding from Thirumangalam to MMDA, Arumbakkam, since there was heavy crowd in the bus, the petitioner was forced to travel on the foot board and on nearing Koyambedu at 100 feet road, the said bus was driven by its driver in a rash and negligent manner endangering the human safety and tried to overtake a tricycle. In that process, a part of the body of the petitioner was hit on the tricycle and as a result, the petitioner sustained grievous

and multiple injuries all over the body due to the fault of the driver of the bus. Hence, the claimant have claimed a sum of Rs.1,00,000/- as compensation.

3. The respondent in the counter statement denied the negligence on the part of the driver of the bus and stated that it is the petitioner, who travelled in the rear foot board in a overhanging manner, grazed at the tricycle which was proceeding on the left side of the bus. It is also further stated that the petitioner himself admits the fact that he was travelling in the foot board stretching his body outside the bus and hence the respondent is not liable to pay compensation to the petitioner.

4. The Tribunal after analyzing the evidence and documents placed before it by taking into consideration the documents, evidence and all facts, has given a finding that the petitioner and conductor of the concerned bus are equally responsible for the accident and as such the accident had occurred due to the contributory negligence on the part of the above said persons. The Tribunal has also awarded a sum of Rs.83,698/-, by taking half of the compensation amount from the respondent, the claimant was entitled to get a sum of Rs.41,849/-. Aggrieved against the said liability the claimant has preferred this appeal.

5. The appellant has stated that the Tribunal has grossly erred by coming to the conclusion that the accident had occurred due to the contributory negligence on the part of the appellant. Hence, in that way reducing 50% of the compensation on the part of the appellant is not justified. Merely because the appellant travelled in the foot board at the time of accident and there was no damage to the bus in the accident, it cannot be said that the driver of the bus was not responsible for the accident. The Tribunal had failed to notice that the conductor of the bus has failed to warn the passengers, who were travelling in the foot board was held to be responsible. Hence, there is a negligence on the part of the driver by driving the bus by rash and negligent manner endangering the safety of the passengers, who were travelling in the foot board because of the heavy crowd in the bus.

6. The other ground raised by the appellant is that the Tribunal without any guidelines has determined the sum for permanent disability which is very meager. The further grievance raised by the appellant is that the compensation awarded under the head pain and suffering, he has stated that when the appellant had undergone two surgeries the Tribunal ought to have considered properly the pain and suffering undergone by the claimant, but the Tribunal without considering the same, awarded Rs.5,000/- which is also very meager.

7. On a perusal of the records, it is observed that the petitioner was travelling as a passenger in the respondent bus on the foot board. Ex.P3 is the copy of FIR which shows that one Thiru.Ganesh has lodged a complaint with the Koyambedu police station and the Station House Officer of the said police station has registered the case in Crime No.117/99 under Section 279 and 338 of Indian Penal Code against the driver of Tamil Naud Government bus bearing registration No.TN-01-N-3148. In the said complaint, the complainant has clearly stated that he was travelling in the foot board and the bus was hit against the tricycle, which was carrying vegetables. Hence, from the contents of the FIR and also from the evidence of PW-1, it can very well be observed by the Tribunal that except the petitioner, no other passengers in the said bus sustained injury and there is also no damage to the bus, in which the claimant was travelling as passenger in the foot board.

8. The arguments advanced on the side of the appellant is that the driver of the bus should be more careful in driving the vehicle after watching any of the person, who is travelling in the foot board and he has to warn everyone to avoid such travelling. It is also the argument on the side of the appellant that the conductor was also not very much alert in warning the passengers not to travel in the foot board. Hence, it is the negligence on the part of the conductor and also on the part of the driver who had driven the said vehicle in a rash and negligent manner and allowed the petitioner to hit against the tricycle which was also proceeding in that side.

9. On the other hand, it is argued by the respondent that in spite of warning by the conductor as well as the driver, the passenger travelled in the foot board ignoring the advise and warning of the conductor and hence finding of the Tribunal is proper, it is for the appellant who has to avoid himself travelling in the foot board when the bus was over crowded. In spite of over crowdedness, the appellant was travelling in the foot board. The contents in the FIR and the evidence by the appellant before the Tribunal clearly proves that he travelled in the bus in the foot board. Apart from that there is no damage caused to the bus by hitting against the tricycle.

10. It is the argument of the appellant that the petitioner was forced to travel in the foot board because of his journey to his office at the busy hours. Hence, it is the driver, who has to be more careful in driving the bus by seeing either side without hitting any of the vehicle and it is the responsibility of the driver to take care of the passengers' safety and security.

11. On a perusal of evidence and documents, it is well observed that the petitioner alone had sustained injury, even if we take it for granted the argument that the driver of the bus should be more careful, when there is crowd in the bus as well as in the foot board, but, only the petitioner alone sustained injury which clearly shows that, he himself invited the accident.

12. On the side of the appellant it is argued by quoting the case law in Delhi Transport Undertaking and another Vs. Smt. Krishna Wanti and another reported in 1973 AIR (Delhi) 196, where it is discussed about the Motor Vehicles Act, 1939, Section 110-A - putting elbow on the window while sitting in a bus is not a negligent way of sitting but only a slightly more comfortable way of sitting - A driver of the bus must ensure sufficient gap between his bus and the vehicle he intends to overtake or cross, failing which he will be held negligent. In which it has been stated as follows:-

14. It is the duty of the driver of the public buses to taken 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 the bus, there was a likelihood of the passengers' arms being injured. The respondent had put her elbow on the window while sitting in the bus. This cannot be said to be a 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 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 no to risk overtaking the cart. The driver thus was rightly held negligent in overtaking the cart which resulted in injuries to the respondent.

It is also observed as follows:-

"At the time of the accident the plaintiff was traveling in the bus as a passenger. She had a right to expect to be carried safely to her destination. If the

driver had been careful then in the ordinary course of things he would not have taken the bus to the extreme right of the road even to avoid a rickshaw. It is not usual for a bus to travel on the extreme right of the road. In the present case the driver has done so. It is, therefore, for him to give a reasonable explanation of the occurrence otherwise it must be held that he was guilty of negligence vide *Austin v. Great Western Railway*. (1867) 16 Lt 320. approved in *Halliwell v. Venables*, (1930) 143 Lt 215. There is no such explanation forthcoming on this record. It was the duty of the defendants to take reasonable care that the passengers travelling in the bus do not receive injuries during the journey. To achieve this object it is necessary for the driver to be on the look out of any possible obstruction on the road or even in the air and to take reasonable steps to avoid the obstruction without causing any injury to the passengers (vide *Radley v. London Passenger Transport Board*. (1942) 1 All Er 433). In my opinion, the defendants in the present case failed to take this care, and, therefore, it must be held that there was negligence".

13. But in this case it is the own admission of the petitioner that he travelled in the foot board in the respondent's vehicle and he alone sustained injury. Hence, the Tribunal had discussed on the aspect of negligence that the claimant has not proved that the driver of the bus had driven in a rash and negligent manner. If the argument of the petitioner is taken for consideration then the driver of the said bus had driven in a rash and negligent manner, all the passengers who were travelling in the foot board would have met with an accident and the said respondent vehicle also would have got damaged. Whereas it is observed that the appellant alone sustained injury and there is no damage to the bus also. Hence, the rash and negligent driving on the part of the driver cannot be taken as a very good argument.

14. As per the own version of the appellant and his own evidence that he alone sustained injury, except himself nobody sustained injury, the finding of the Tribunal by fixing contributory negligence on the part of the driver does not require any interference because, the person who travel in the bus should take care of themselves because the driver and the

conductor of the bus only can give a warning and they cannot stop anyone from getting into the bus. Hence, the contributory negligence fixed on the appellant does not require any interference.

15. In fine, this civil miscellaneous appeal is dismissed.
No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dsa/smv

To

1.The Additional District Judge,Chengalpattu
The Motor Accident Claims Tribunal,
Fast Track Court - V,
Tiruvallur.

2. The Section Officer,
V.R. Section,
High Court,
Madras - 104.(2copies)

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.70806

C.M.A. No.2355 of 2007

RSI(CO)
GSP(17/12/2018)

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