

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2018

PRONOUNCED ON : 20.12.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1661 of 2004

Kumaraswamy Gounder

...Appellant/Respondent/
Plaintiff

Vs

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Villupuram Division - I,
Villupuram.

... Respondent/Respondent/
Defendant

Prayer:-

Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree of the learned Second Additional Subordinate Judge, Villupuram dated 27.02.2004 and made in A.S.No.148 of 2003 modifying the judgment and decree of the learned Additional District Munsif, Villupuram dated 28.02.2002 made in O.S.No.334 of 1999.

For Appellant : Mr.T.Dhanyakumar

For Respondent : Mr.A.Antony Arockiyaraja

JUDGMENT

The plaintiff is the appellant herein. The case of the plaintiff is that, he and his personal aid one T.Ranganathan boarded the transport Bus of the defendant Corporation from Villupuram to Cuddalore on 05.12.1998 to consult his Lawyer at Cuddalore. When he tendered Rs.50/- for the fare for two passengers, the Conductor of the Bus gave him two tickets of Rs.7.75/- each. Instead of returning the balance, he made an entry on the back of the original tickets as Rs.34.50/- and told that he will pay the balance at the point of termination.

However, when the Bus reached Cuddalore, the road was muddy and was in semi solid condition on the upper surface due to rain. So, the Conductor requested all the passengers to get down from the Bus at the Northern entrance of the bus stand.

2.The plaintiff, rushed to the Conductor to get back the balance amount of Rs.34.50/- due to him but, the Conductor suddenly signaled the Driver to take the Bus and proceed inside the bus stand. The plaintiff with much difficulty entered the Bus stand and enquired the Officer at the enquiry office. Since, the conductor has left the bus stand to proceed towards Villupuram for the second trip, the plaintiff was not able to collect the money.

3.It is contended by the plaintiff that the conduct of the Conductor reveals and reflects his intention and motive to cheat and misappropriate the amount due to the plaintiff. At the enquiry office, he was informed that the Conductor will again come to Cuddalore Depot at 6.40 pm. Therefore, he waited in the bus stand at the enquiry office till 8.00 pm on 05.12.1998 without money to return to his native Village. The Conductor did not turn up. Therefore, he and his personal aid were compelled to return to their native village, by walk.

4.They reached the village at 6.00 am on 06.12.1998 covering the distance of 40 kilo meters. Due to long walk at the old age of 70 years, the plaintiff was put to suffering hardship and ordeal. As a result, the plaintiff has developed pain in the heart, lungs and in the other vital parts of the body. He underwent treatment for various ailments including pain in the kidney. The said sufferings of the plaintiff were all due to the negligent act of the Conductor.

5.Since, the Conductor was working under the defendant Corporation, the defendant Corporation is vicariously liable for the tort committed by its employee. It is further averred in the plaint that being an active agriculturist and President of Pudukuppam Village Co-operative Bank, he was not able to discharge his responsibilities due to the ailments caused on the account of the Conductor's negligence. Hence, he has claimed Rs.6,000/- as general damage for pain and suffering, hardship and ordeal and Rs.500/- as special damage which he spent towards medical expense besides the refund of Rs.34.50/-.

6.In the written statement, the defendant Corporation has denied all the averments made in the plaint and submitted that the passengers are expected to tender exact fare. If any necessity to give change, the Conductor will give if he is in possession of required change, or he will note the balance change on the back of the ticket and request the passenger to

collect the same before alighting the Bus. In this case, the plaintiff has failed to ask the Conductor for balance amount but alighted the bus without requesting the balance money of Rs.34.50/-.

7.The allegation of misappropriation, cheating made against the Conductor denied in the written statement. Further, the claim of special damage of Rs.500/- and general damage of Rs.6,000/- are denied as baseless and unsustainable. It is specifically contended in the written statement that when notice from the plaintiff through his Advocate dated 07.12.1998, received by the defendant corporation, they sent a letter on 11.01.1999, 09.02.1999, 02.03.1999 and 03.04.1999 calling upon the plaintiff to send the original tickets for verification. In spite of repeated reminders, the plaintiff did not send the original tickets which is required to refund the excess money collected. Having failed to submit that original tickets, the plaintiff cannot blame the defendant corporation for not refunding the balance amount and in the absence of documentary proof for damages or special damages, the plaintiff is not entitled for any claim towards damages.

8.It is also contended in the written statement that after filing of the suit, on verifying the Court records, regarding the genuineness of the claim, the balance sum of Rs.34.50/- was sent by money order by the defendant corporation to the plaintiff, which the plaintiff refused to receive.

9.Based on the above said pleadings, the trial Court has framed the following issues:-

"(i)Whether the defendant has sent letter to the plaintiff calling upon him to send the original tickets for verification ?

(ii)Whether the plaintiff is entitled to the decree prayed for ? And

(iii)To what relief the plaintiff is entitled to".

10.To prove the case, the plaintiff and his personal aid Ranganathan were examined as P.W.1 and P.W.2 respectively. Notice sent by the plaintiff through his Lawyer marked as Ex.A.1. Two tickets purchased by the plaintiff to travel from Villupuram to Cuddalore for P.Ws.1 and 2 were marked as Ex.A.2 and Ex.A.3. The letter sent by the defendant Corporation to the plaintiff seeking the original tickets to refund the excess money are marked as Exs.A.4 to A.8. On behalf of the defendant

corporation, two witnesses were examined. D.W.1 is the Junior Assistant attached to the defendant Corporation. D.W.2 is the Conductor.

11.The trial Court after appreciating the evidence on either side, has decreed the suit awarding Rs.500/- towards special damages and Rs.500/- towards general damages besides the refund of the excess amount of Rs.34.50/- collected from the plaintiff.

12.Aggrieved by that, the defendant Corporation has filed an appeal in A.S.No.148 of 2003 on the file of the learned Second Additional Subordinate Judge, Villupuram. The First Appellate Court on considering the grounds of appeal, has held that the plaintiff has proved the fact that he has tendered Rs.50/- for purchase of two tickets to travel from Villupuram to Cuddalore. The fare for two tickets is Rs.15.50/- and the balance of Rs.34.50/- not paid to him but, the Conductor - D.W.2 has made an endorsement on the back of the ticket that sum of Rs.34.50/- has to be refunded/returned. This amount not paid to the plaintiff either on the date of issuance of the ticket and travelling i.e., on 05.12.1998 or after receipt of the legal notice Ex.A.1.

13.The defendant corporation have asked the plaintiff to forward the original tickets for further action. However, the plaintiff has not forwarded the same but has initiated the suit claiming Rs.6,000/- towards special damages Rs.500/- as general damages pointing out that the Conductor (D.W.2) has taken away balance amount with an intention to cheat the plaintiff. But, the Conductor (D.W.2) has remitted the excess amount of Rs.34.50/- on the same day to the defendant corporation and it is reflected in the trip sheets and statement of accounts produced by him. Further, pointing out that though the defendant corporation had repeatedly asked the plaintiff to produce original tickets, the plaintiff has not produced the original tickets to get the refund. His reasoning for not producing the original tickets, apprehending that the defendant corporation will destroy the original tickets, was not found convincing by the First Appellate Court.

14.Regarding the general damage awarded by the trial Court, the First Appellate Court has held that the plaintiff himself at fault for not collecting the balance amount from the Conductor and not producing the original tickets in spite of requesting the plaintiff to produce it. Contrarily, the defendant has proved that this Conductor had no intention to cheat the plaintiff. The averment that the plaintiff was cheated by the Conductor (D.W.2) and was forced to walk 40 kilometers resulting in body pain, chest pain, kidney pain and other ailments and pain on the other vital parts all over the body was not accepted

by the First Appellate Court. Hence, the First Appellate Court partially allowed the appeal. While confirming the judgment of the trial Court regarding the refund of balance amount of Rs.34.50/- it set aside the order of the trial Court in respect of the general damages of Rs.500/- and special damages of Rs.500/- to the plaintiff.

15.In the second appeal, the learned counsel for the appellant/ plaintiff has pointed out that when the trial Court has appreciated the evidence in a proper perspective and awarded Rs.500/- towards special damages and Rs.500/- as general damages, the First Appellate Court has erred in declining the above damages on the ground that there is no special pleading claiming damages.

16.This Court, while admitting the Second Appeal, has framed the following substantial question of law:-

"Whether the lower appellate court is right in holding that for claiming damages special pleadings are required."

17.The fact that the plaintiff travelled in the defendant Corporation Bus between Villupuram to Cuddalore on 05.12.1998, is not in dispute. He has purchased two tickets one for himself and another for his aid Ranganathan who was examined as P.W.2. The fare for two tickets is Rs.15.50/-. The Conductor - D.W.2 admits that the passengers (plaintiff) tendered Rs.50/- to purchase two tickets for their travel from Villupuram to Cuddalore. Since, he had not adequate change, at that time, he wrote Rs.34.50/-, on the back of the ticket, indicating that he is entitled to get the balance amount before alighting from the Bus. When the Bus came to Cuddalore, he enquired the passengers as to 'whether he has to pay any change to anybody'. There was no response from the plaintiff. Due to rain, the bus stand was not accessible. Therefore, for the convenience of the passengers, he has requested the passengers to get down at the Northern entrance of the bus stand.

18.From Ex.B.2, we could find that the Conductor has remitted Rs.34.50/- in the office, as excess. Thus, it is very clear that, on the day of the trip itself, he has remitted the excess amount as unclaimed. It clearly indicates that he had never had the intention of cheating or misappropriation of any money from the plaintiff, as averred in the plaint.

19.Regarding the contention of the plaintiff that they waited till 8.00 pm on 05.12.1998, but, the Conductor did not turn is also falsify by Ex.B.3 which is the time chart of the vehicle in which, D.W.2 was working as Conductor on the date of

incident i.e., on 05.12.1998. From the time chart and the evidence of D.W.1, we could find that the Conductor of Route 155B has come to Cuddalore bus stand at 6.40 pm on 05.12.1998. Had really the plaintiff was waiting in the enquiry office or time keeper office, he would have met the Conductor to collect the money which he did not done.

20.The letters sent by the defendant in response to the reply to the plaintiff's Advocate notice are marked as Ex.A.4 to A.8. In these letters, the defendant corporation has requested the plaintiff to forward the original tickets to take further action. Admittedly, the plaintiff has not forwarded the original tickets. His apprehension that they will destroy the only piece of evidence is totally unfounded when the plaintiff has already resorted to send legal notice through his Lawyer and as administrative procedure, the respondent has asked the original ticket since money can be refunded only on the production of original tickets. There is no element of cheating or dereliction of duty on the part of the Conductor - D.W.2 or the respondent.

21.The only point regarding the entitlement of the plaintiff is 'whether the defendant has tendered the money at any point of time even after receipt of the notice ?'. It is contended in the written statement and in the evidence of D.W.1 that after filing the suit, money was sent through money order but the plaintiff has refused to receive the same. However, there is no evidence let in by the defendant to that effect. Therefore, the First Appellate Court has rightly held that the plaintiff is entitled for his money i.e., Rs.34.50/-. As far as damages both general as well as special are concerned, the trial Court has awarded Rs.500/- under each heads without any material evidence, but, accepting the pleading of the plaintiff that for want of money, he and his aid were forced to walk all along for 40 kilometers and thereby the plaintiff developed health issues and spent Rs.500/- for medicine, contrarily, the First Appellate Court has rightly declined to award the damages for want of material proof.

22.It is to be pointed out that to walk from Cuddalore to Pudukuppam village, was one of the option before the plaintiff on that day but not the only option. The First Appellate Court has rightly pointed out that even if the plaintiff had no money with him, walking all along to his village along with his aid was not the only option. Therefore, the plaintiff himself has taken a decision to walk instead of borrowing money from known persons at Cuddalore more particularly, his own Advocate whom he came to meet on that day. Further, there is no material to show that the plaintiff has sustained various illness due to his long walk on that day. There is not even a piece of evidence to show that he underwent any medical treatment. It is in P.W.2's

evidence who say the plaintiff was admitted in the hospital as inpatient. There is no evidence to support his oral testimony. While so, the First Appellate Court has rightly held that for want of proof, the claim of damages have to be rejected.

23. Mere pleading and claiming damages either special and general without a prima facie material to probablise that the plaintiff has sustained some damages is not sufficient to award damages. Mere for asking damages cannot be awarded the plea should be supported by material evidence. The point to be considered is 'whether the plaintiff was deprived of the balance amount by the Conductor - D.W.2 wantonly, deliberately and with some ulterior intention either to misappropriate the same or to put the plaintiff in inconvenience ?' and as a consequence the plaintiff sustained any injury which has to be compensated by awarding damages.

24. This Court finds no material to infer any one of the above fact. While so, just because the plaintiff and his aid walked about 40 kilometers, it does not mean that the Conductor of the defendant Corporation is liable to pay and compensate.

25. This Court finds that the plaintiff has made a very scandalous allegation against the Conductor - D.W.2 that he has taken away the balance amount with an intention to cheat the plaintiff but, the records reveal that the Conductor honestly deposited the excess money on the very same day to the defendant corporation. The plaintiff has issued legal notice on 07.12.1998 whereas, the defendant corporation has issued reply on 09.12.1998. Immediately after the receipt of the notice, the defendant corporation has requested the plaintiff to produce the original tickets for further course of action. The plaintiff seems to have not properly understood the tenor of the letters and the subsequent reminders sent by the defendant corporation.

26. In his deposition, the plaintiff admits that he did not respond to the letters of the defendant which are marked as Exs.A.3 to A.8. He has stated in the witness box that he apprehended that if he sent the original tickets to the defendant corporation, they will destroy it. This apprehension and anticipation about the respondent corporation also totally unfounded. Without producing the original ticket and see for any action to be taken by the defendant corporation and without even responding to the reply notice to be sent by the defendant corporation, the plaintiff has straight away approached the trial Court with the present suit.

27. In view of the above fact, the plaintiff has lost his right to sustain a suit against the defendant Corporation, seeking special and general damages and what he is entitled is

only the return of the balance amount. The First Appellate Court has rightly applied the law to the facts in hand and same is bound to be confirmed.

28.In the result, the second appeal is dismissed as devoid on merits. The judgment and decree passed by the First Appellate Court in A.S.No.148 of 2003 dated 27.02.2004 is confirmed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Second Additional Subordinate Judge,
Villupuram.
2. The Additional District Munsif,
Villupuram.

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.

Second Appeal No.1661 of 2004

MR(CO)
CS/04/02/2019

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