
(24) Thus, even the second question is answered against the appellants.

(25) In view of the above, all the three appeals are dismissed. No costs.

R.N.R.

Before Jawahar Lal Gupta, J.

GURPAL SINGH AND ANOTHER,—Appellants

versus

JAGAN NATH AND OTHERS,—Respondents

F.A.O. No. 1730 of 1995

25th January, 1999

Motor Vehicles Act, 1988—Bus over-loaded—Passenger pushed out of the bus by the conductor—Negligence of the owner—Liability of the Insurance Company.

Held, that merely because the bus was over-loaded, the Tribunal was not entitled to absolve the Insurance Company of its liability. It is only when the owner or his representative is negligent that the third party's right to claim compensation arises. Once the negligence is established, the Insurer's liability follows. In the present case, it is clear that the passenger had died as the conductor had pushed him out of the bus. There was an act of negligence on the part of the employee of the owner. For this, the owner was liable to pay the compensation. Since the owner was duly insured, the insurer cannot be absolved of its liability merely because a few extra passengers were alleged to have boarded the bus.

(Para 8)

P.S. Dhaliwal, Advocate, *for the Appellants*

H.S. Giani, Advocate, *for respondent No. 9*

JUDGMENT

Jawahar Lal Gupta, J (O)

(1) On 1st August, 1989, Dharam Pal along with his wife Smt. Krishna Devi boarded bus No. PUC-4717. He was to travel from village

Malsinghwal to Budhlada. On reaching the destination, he requested the conductor to stop the bus. The conductor blew the whistle. The driver stopped the bus. The conductor pushed Dharam Pal out. He fell down. Smt. Krishna Devi raised hue and cry. The bus which had started moving, was stopped. Dharam Pal was removed to the hospital. He was found to have fractured lumber vertebra 1. Both his lower limbs were paralysed. He died on 6th September, 1989.

(2) The widow alongwith her four minor children and parents-in-law filed a petition for the grant of compensation. The owner, the insurer, the driver and the conductor were impleaded as parties.

The respondents contested the claim.

The Tribunal framed the following issues :—

1. Whether death of Dharam Pal was caused in a bus accident (No. PUC-4717) driven rashly and negligently by Ujagar Singh, driver—respondent No. 2 ?
2. Whether claimants are the legal representatives/dependents of said Dharam Pal deceased ?
3. Whether the claimants are entitled to compensation amount, if so, how much and from which of the respondents ?
4. Whether the petition is bad for non-joinder of necessary parties ?
5. Whether the respondent No. 2 Ujagar Singh was holding a valid driving licence at the time of the accident ?
6. Whether bus No. 4717 PUC was having no valid bus route permit and fitness certificate at the time of the accident in question ?
7. Relief

(3) The Tribunal found that Dharam Pal had died on account of the act of the conductor. The deceased was earning Rs. 900 per month. After allowing one-third for his personal expenses, the monthly dependency was fixed at Rs. 600. On the basis of annual dependency of Rs. 7200, the Tribunal awarded a total compensation of Rs. 86,400 by applying a multiplier of 12. It further held that the bus was overloaded in as much as the number of passengers had exceeded 52. Thus,

the terms of the contract/policy having been violated, the owner was liable and not the Insurance Company.

(4) Aggrieved by the award of the Tribunal, the claimants as well as the owner etc. have filed these two appeals.

(5) On behalf of the claimants, it has been contended by Mr. Daldeep Singh that the monthly income has been wrongly assessed. The multiplier has not been correctly applied. Thus, the compensation awarded is grossly inadequate.

(6) Mr. Dhaliwal, learned counsel for the owner, has contended that the terms of the policy had not been violated. In any event, these terms have to be liberally construed. Judged by that standard, the Insurance Company could not have been absolved of its liability. On behalf of the insurer, Mr. Harinder Singh Giani has contended that the bus was fully packed. In this situation, the terms of the insurance policy had been violated. That being so, no liability could be fastened on the insurer.

(7) Admittedly, the deceased was 35 years of age. Though, his wife Smt. Krishna Devi who has appeared as AW-2, claims that he was earning Rs. 4000 per month, yet, the fact remains that he was not an income tax assessee. His income has been fixed at Rs. 900 per month. The annual dependency was fixed at Rs. 7200. However, it appears that the multiplier of 12 was not correctly fixed. In the circumstances of the case, it should be 16. By this method, the compensation payable shall work out to be Rs. 1,15,000.

(8) It also appears that merely because the bus was over-loaded, the Tribunal was not entitled to absolve the Insurance Company of its liability. It is only when the owner or his representative is negligent that the third party's right to claim compensation arises. Once the negligence is established, the Insurer's liability follows. In the present case, it is clear that the passenger had died as the conductor had pushed him out of the bus. There was an act of negligence on the part of the employee of the owner. For this, the owner was liable to pay the compensation. Since the owner was duly insured, the insurer can't be absolved of its liability merely because a few extra passengers were alleged to have boarded the bus.

(9) Resultantly, the appeals are allowed. It is held that the Insurance Company shall be liable to pay a compensation of Rs. 1,15,000 along with interest as awarded by the Tribunal to the claimants. In the circumstances, there will be no order as to costs.

S.C.K.