
N.K.S.

Before S. S. Sodhi, J.

PEPSU ROAD TRANSPORT CORPORATION,—Appellant.

versus

SHRI QIMAT RAI JAIN AND OTHERS,—Respondents.

F.A.O. No. 149 of 1979.

April 30, 1984.

Motor Vehicles Act (IV of 1939)—Sections 110-B and 110-D—Passenger travelling in a bus with his arm projecting from the window—Truck coming from opposite direction grazed against the bus causing serious injury to the arm of the passenger—Contributory negligence—Whether could be attributed to the passenger.

Held, that the driver of a bus while overtaking or crossing another vehicle must keep in mind the normal tendency of a passenger sitting near a window to have his arm resting on it and may be even protruding out a little and he must, therefore, take care to leave sufficient space between his vehicle and the other so that no harm or injury is caused to such passenger. A passenger travelling in a bus with his arm projecting outside the body of the bus, while resting it on the window thereof cannot be denied compensation for the injuries caused to such arm by the bus not leaving sufficient space

Pepsu Road Transport Corporation v. Shri Qimat Rai Jain and others (S. S. Sodhi, J.)

while crossing or going past a vehicle or building and the accident in such a case must be attributed wholly to the rash and negligent driving of the bus driver and no contributory negligence can be attributed to the passenger.

(Para 3)

First Appeal from the order of Shri S. S. Grewal, Motor Accident Claim Tribunal, Kapurthala, dated 30th November, 1978 accepting the petition and awarding compensation to the extent of Rs. 34,000 to the claimant in all, for the injuries sustained by Qimat Rai claimant in the accident. Out of the said amount Rs. 17,000 would be paid individually or collectively by respondent Tarlok Singh and Pepsu Road Transport Corporation respondent No. 4 and the remaining amount of Rs. 17,000 would be paid individually or collectively by Dial Singh respondent No. 2, Bishamber Singh respondent No. 3 and M/s New India Assurance Co. Ltd., G.T. Road, Jullundur, respondent No. 5. In case the respondents fail to make the payments within one month from the date of this award, the claimant shall further be entitled to get interest at the rate of 6 per cent per annum from the date of award till the payment of the amount of compensation, awarded against the respondents, and the claimant would also be entitled to get the amount by taking the execution of the award treating it as decree.

Cross Objection No. 32-CII of 1979 :

Cross objection under Order 41 Rule 22 of the Code of Civil Procedure on behalf of the Shri Qimat Rai Jain, respondent No. 1 praying that the compensation awarded may kindly be enhanced taking into view the facts of the case so that the respondent does not suffer in his life economically.

A. S. Cheema Advocate with Baljinder Singh Advocate.

J. S. Virk Advocate, for respondent No.1.

L. M. Suri, Advocate, for respondents Nos. 3 and 4.

JUDGMENT

S. S. Sodhi, J.

(1) Two passengers Qimat Rai Jain and Parshotam Dass Jindal, while travelling in the bus PUV-2102 had their right arms completely cut off, when the truck PUJ-6628 coming from the opposite direction, grazed against the right side of the bus while passing it. Both these passengers were sitting near one of the windows of the bus on the right, with their right arms resting on it. This happened

on the Grand Trunk Road near village Chachoki in the area of Police Station Phagwara on May 5, 1974.

(2) The Tribunal held this to be a case of contributory negligence with all the parties involved therein namely the drivers of the bus and the truck as also the two claimants being equally to blame. After making due allowance on this account, a sum of Rs. 34,000 was awarded as compensation to Qimat Rai Jain and Rs. 23,500 to Parshotam Dass Jindal.

(3) The Tribunal clearly fell in error in imputing contributory negligence to the claimants. It is now well settled that the driver of a bus while over-taking or crossing another vehicle must keep in mind the normal tendency of a passenger sitting near a window to have his arm resting on it and may be even protruding out a little and he must, therefore, take care to leave sufficient space between his vehicle and the other so that no harm or injury is caused to such passenger. A precedent for this is provided by my judgment in *Prem Devi v. Harbhajan Singh and others* (1), which was a similar case of a claimant losing her arm protruding out of the window of the bus she was travelling in, when the bus while passing a stationery bus struck against it. The question posed was "is a passenger travelling in a bus with his/her arm projecting outside the body of the bus, while resting it on the window thereof to be denied compensation for the injuries caused to such arm by the bus not leaving sufficient space while crossing or going past a vehicle or building." Following *Sushma Mitra v. M. P. State Road Transport Corporation* (2) and *Chaturji Amarji and others v. Ahmad Rahimbux and others* (3), it was held that the accident in such a case must be attributed wholly to the rash and negligent driving of the bus driver. It follows, therefore, that no contributory negligence can be attributed to the claimants here.

(4) As regards the drivers of the bus and the truck, there can be no manner of doubt that they were both rash and negligent and that too equally so.

(1) F.A.O. 292 of 1977, decided on 25th October, 1983.

(2) 1974 A.C.J. 87.

(3) 1980 A.C.J. 368.

Pepsu Road Transport Corporation v. Shri Qimat Rai Jain and others (S. S. Sodhi, J.)

(5) Both the bus driver as also the driver of the truck blamed each other for the accident. According to the bus driver, the truck had come on to the wrong side of the road when it hit into the bus; whereas the truck driver stated that the bus was trying to over-take a cart when it came and hit into the truck. Neither of these versions is supported by either the claimants or the other witnesses examined by the claimants. The story of the truck driver regarding the cart which, it is said, the bus was trying to over-take is also clearly an after-thought in that no mention of it was made in the written statement.

(6) The witnesses examined by the claimants in both these cases testified to the rash and negligent manner in which both the bus and the truck were being driven at the time of the accident. They denied the suggestion that there was any cart which the bus was trying to over-take or that the truck had come on to the wrong side and hit into the bus. The circumstances in which, the accident occurred, in the light of the evidence on record, leads to the irresistible conclusion that the accident here took place due to the negligence of the two drivers and consequently both the driver of the bus as also that of the truck must be held equally liable.

(7) Next to consider is the compensation payable to the claimants for the injuries suffered by them. Both the claimants suffered a similar injury namely, amputation of their right arm. Loss of the right arm would indeed be a severe handicap both to the daily life of the claimants as also in their respective careers. The statement of the claimant Parshotam Dass Jindal that on account of this loss he was handicapped in the discharge of his duties cannot, therefore, be questioned. Now with this limitation, he would obviously feel difficulty in writing by having to learn to write with his left hand and as for things like driving a scooter or a car that must clearly be out of question. In such circumstances this injury must inevitably adversely effect his career.

(8) There can be no precise or exact measure of the amount which can really compensate the claimants for the disability, loss of amenities and pain and sufferings such an injury must result in. The guide lines in such matters are usually provided by the amounts awarded as compensation for similar injuries. A relevant precedent here is the judgment of the High Court of Andhra Pradesh in *A.P.*

State Road Transport Corporation v. Dodda Somayajulu Sitaramamurty, (4). This was a case of amputation of the right hand. The injured was an Assistant Engineer, aged 56 years, who was drawing a salary of over Rs. 1,300 per month. A sum of Rs. 45,000 was awarded to him as compensation for the handicap caused thereby in his day-to-day life and work, for loss of earning capacity, medical expenses and pain and sufferings.

(9) Keeping in view the comparatively younger age of the claimant here, a somewhat larger amount deserves to be awarded to the claimant Parshotam Dass Jindal. An award of Rs. 50,000 would thus be just and reasonable.

(10) As regards Qimat Rai Jain, it has come on record that as a result of the injury suffered by him in the accident, his services as a Manager of the firm he was working with were terminated. He was being paid a salary of Rs. 400 per month as Manager and now he was working on a lower post, where his salary was only Rs. 150 per month. In other words, there is definite evidence here of loss of earning besides the other disabilities of the same nature as in the case of the other claimant Parshotam Dass Jindal. Qimat Rai Jain was 35 years of age at the time of the accident. Considering the circumstances of this claimant, he too deserves to be awarded a similar amount as compensation.

(11) In the result, both the claimants Qimat Rai Jain and Parshotam Dass Jindal are hereby awarded a sum of Rs. 50,000 each as compensation which they shall be entitled to along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded. The liability for the amount awarded shall be joint and several of all respondents including the respondent Insurance Company.

(12) Both the appeals are consequently hereby dismissed; while the cross-objections are accepted to the extent indicated above. The claimants shall be entitled to their costs in these proceedings. Counsel's fee Rs. 300 in each case.

N.K.S.