

(13) In view of the aforesaid observations and discussion, we find no merit and the petition is hereby dismissed. The parties shall bear their own costs.

S.C.K.

Before : S. S. Sodhi, J.

VIJAY SINGH,—Appellant.

versus

HARYANA ROADWAYS AND ANOTHER,—Respondents.

First Appeal from Order No. 541 of 1984.

14th July, 1989.

Motor Vehicles Act, 1939 (Act IV of 1939)—S. 110-A—Accident caused by over hanging electric wires—Passenger travelling on roof of bus injured—Contributory negligence—Such passenger whether liable—Duty of bus driver stated.

Held, that there is a duty of care that rests upon the driver of bus towards all persons travelling in it which covers not only those in it, but extends also to passengers travelling on the roof of it, even though it may not have been permissible in law for them to be there. When there are passengers on the roof, *extra-caution* is imperative.
(Para 6)

Held, that no contributory negligence can be fastened upon a passenger travelling on the roof of a bus, who sustains injuries on account of the negligent driving of the bus-driver, merely on the ground that he had been travelling on the roof of the bus and not inside it.
(Para 7)

First Appeal from the Order of the Court of Shri Shiv Dass Tyagi, Motor Accident Claims Tribunal, Hissar dated 1st March, 1984 granting an awarded of Rs. 4,000 to the petitioner with costs against the respondents.

Claim :—*Claim petition u/s 110-A of Motor Vehicles Act.*

Claim in Appeal:—*For reversal of the order of the lower Court.*

R. A. Yadav, Advocate, S. V. Rathee, Advocate, for the Appellant
Madan Dev, Advocate, for A.G. Haryana.

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JUDGMENT

(1) Travelling on the roof of the bus, does it *per se* constitute contributory negligence on the part of such passenger if due to the negligence of the bus driver injury is caused to him? Here lies the significant point in issue in this appeal.

(2) On June 30, 1983, the claimant—Vijay Singh boarded Haryana Roadways Bus HRF-5190 at Fatehabad on his way home at village Bhadolan Wali on the Fatehabad—Thedi—Hanspur Road. As the bus was full to capacity, the claimant got on to the roof of the bus. When this bus reached near village Thedi, there were over-head electric wires hanging across the road. According to the claimant, he got entangled with one of these wires and was thrown off the bus as a result of which he sustained serious injuries. Compensation was asked for by him in respect of these injuries.

(3) According to the respondents, that is, the bus-driver and the General Manager of the Haryana Roadways, the claimant had climbed on to the roof of the bus despite the express warning against it given to him by the driver and the conductor of the bus and he did not get down and come into the bus even at the next bus stand when there were seats available inside the bus. Further, it was their case that the claimant had jumped down from the roof of the bus when the hanging electric wires were 100 yards away. In other words, it was denied that he was thrown off the bus by getting entangled with the hanging electric wires.

(4) The Tribunal after taking into account the evidence on record came to the conclusion that the claimant had fallen from the roof of the bus after being hit by the suspended electric wires, but at the same time also held him guilty of contributory negligence on the ground that he "ought to have known that travelling on a roof of the bus is hazardous and having this knowledge, he placed himself in such a position and just travelled by sitting on the roof of the bus. He has, therefore, equally contributed towards the taking place of the injuries to himself." A sum of Rs. 4,000 only was thus awarded as compensation.

(5) No exception can be taken to the finding of the Tribunal that the claimant had been thrown off the roof of the bus when the hanging electric wires hit into him. This stands established by the testimony of P.W.2 Kishan Lal and P.W.5 Partap Singh, both passengers travelling on the same bus, besides the testimony of the claimant himself, P.W. 3—Vijay Singh. The bus driver, R.W.1

Tulsi Dass admits to there being hanging electric wires, through, of course, he denied that the claimant had sustained injuries except by jumping from the roof of the bus. Situated as the bus-driver was, it was clearly not possible for him to have seen how the claimant fell from the bus. No occasion is thus provided for holding otherwise than as the Tribunal, that the claimant fell when he was hit by the electric wires.

(6) There is a duty of care that rests upon the driver of a bus towards all persons travelling on it which covers not only those in it, but extends also to passengers travelling on the roof of it, even though it may not have been permissible in law for them to be there. Breach of any rule or instruction prohibiting travel on the roof of a bus cannot be construed as a licence to the bus-driver to drive the bus but without due regard to the care and safety of all passengers including those on the roof. Rather, when there are passengers on the roof, extra-caution is imperative. These observations are, of course, not to be taken as approving or permitting travel on the roof of a bus. It is clearly incumbent upon the authorities concerned to ensure that travel on the roof of a bus is not only banned, but does not in fact take place as a risk of serious injury, is so obviously inherent in such travel.

(7) Seen in this light, no contributory negligence can be fastened upon a passenger travelling on the roof of a bus, who sustains injuries on account of the negligent driving of the bus-driver, merely on the ground that he had been travelling on the roof of the bus and not inside it. In this view of the matter, the finding of contributory negligence recorded against the claimant cannot be sustained and is thus set aside.

(8) As regards the bus-driver, there can be no escape from the conclusion that he was indeed negligent in not taking due care to safeguard the safety of persons travelling even on the roof of his bus. The over-head hanging wires were clearly visible to him and having seen them, it was not only possible but incumbent upon him to see to it that no harm was caused by them to any person in the bus. Breach of this duty of care on the part of the bus-driver is thus writ large. The accident must accordingly be held to have been caused wholly and entirely due to the negligence of the bus-driver.

(9) Turning now to the quantum of compensation payable to the claimant, a reference to the evidence on record would show that he

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suffered compound fracture of both bones of the left leg with loss of bonny fragments and he has now been with a permanent disability, namely; shortening of the left leg by $1\frac{1}{2}$ ". This disability has been assessed by P.W.4, Dr. M. R. Sapra to be to the extent of 35 per cent. According to the testimony of this witness, the claimant remained admitted in the hospital for over three weeks.

(10) The claimant here was only 22 years of age at the time of the accident and by profession, he is a tailor. According to the medical evidence, he can work as tailor with a hand-machine, but not a foot machine.

(11) Besides the pain and suffering that the claimant must undoubtedly have undergone on account of the injuries sustained by him and the permanent disability, he is now left, with, he also incurred medical expenses. The hospital charges during the period that he remained admitted in the hospital were over Rs. 1,800. Besides this, he must undoubtedly have spent some amount on medicines and special diet. In addition, there is also the aspect of loss of earnings during this period. There can, of course, be no precise measure for the compensation to be awarded in such cases of personal injury. Precedents of awards in similar cases however, clearly provide a safe-guide. Counsel for the claimant here adverted to *Avtar Singh v. Akal Bus and Transport Co. (P) Ltd. and others* (1), were in the case of shortening of the right lower limb to the extent of $1\frac{1}{2}$ " and limitation of movement of the right hip which constituted a permanent disability to the extent of 30 per cent, Rs. 30,000 was awarded as compensation for loss of enjoyment and amenities of life, permanent disability and the pain and agony caused to the claimant by his injuries. A similar amount clearly deserves to be awarded to the claimant here too.

(12) Further, as regards medical expenses and loss of earnings, a sum of Rs. 5,000 would clearly meet the ends of justice.

(13) The compensation awarded to the claimant is accordingly hereby enhanced to Rs. 35,000 which he 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 payment of the amount awarded. This appeal is consequently hereby accepted with costs. Counsel fee Rs. 500.

P.C.G.

(1) 1985 A.C.J. 568.