

SAMIR CHANDA
v.
MANAGING DIRECTOR, ASSAM STATE TPT. CORPN.

SEPTEMBER 1, 1998

[K. VENKATASWAMY AND A.P. MISRA, JJ.]

Motor Vehicles Act 1939 :

Sections 92-A, 110—Claim for compensation—Explosion inside the bus while appellant alighting from the bus—Assam agitation in full swing—Trial court awarding compensation based on plea of negligence of Respondent—Finding of fact not upset by High Court—Award of compensation upheld—Finding of High Court as regards lack of negligence reversed.

Claim for compensation—Bus parked in the last stop—Bomb blast inside the vehicle—Incident while appellant alighting—Held, accident arose while motor vehicle was in use—Award of compensation by trial court justified.

The Appellant claimed compensation from the Respondent for the reason that when he was travelling in a bus belonging to the Respondent, a bomb exploded inside the bus as a result of which he sustained serious injuries. The other passengers also suffered serious injuries in the bomb explosion. The compensation claim was allowed by the Tribunal which held that the injuries sustained by the Appellant were permanent in nature and allowed a compensation of Rs. 1,20,000. The Tribunal also relied on the evidence and found that the accident arose out of the negligence of the driver and the conductor of the motor vehicle. On appeal the High Court though upheld the findings of facts, held that there was no negligence on the part of the owner or the driver of the vehicle and set aside the award of the Tribunal.

On appeal the Appellant relying on the decision in *Shivaji Dayanu Patil & Anr. v. Vatschala Uttam More (Smt.)*, [1991] 3 SCC 530 and *Union of India v. United India Insurance Co. Ltd. & Ors.*, [1997] 8 SCC 683 contended that the vehicle was in use at the time of the explosion and took place when the passengers were alighting from the bus.

Allowing the appeal, the Court

A **HELD : 1. The High Court was not right on fact that there was no negligence on the part of the owner or the driver of the bus especially when the Appellant has specifically pleaded about the negligence which was accepted by the Tribunal in the light of the pleadings and of the evidence produced before it. The High Court except observing that there was no negligence, has not upset the finding of the Tribunal that the atmosphere during the period of accident was so polluted requiring care on the part of the conductor and driver of the bus. [224-C]**

B
C **2. There cannot be any doubt that the accident arose out of the use of the motor vehicle justifying the claim of the Appellant. The assessment of the Tribunal in quantifying the compensation in a sum of Rs. 1,20,000 with interest @ 12% is justified. [224-E]**

Shivaji Dayanu Patil & Anr. v. Vatschala Uttam More (Smt.), [1991] 3 SCC 530 and Union of India v. United India Insurance Co. Ltd. & Ors., [1997] 8 SCC 683, referred to.

D **(The Court observed that the sum of Rs. 25,000 given to the Appellant before the High Court must be given credit to while realising the award amount). [224--F]**

E **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10755 of 1995.**

From the Judgment and Order dated 15.6.94 of the Guwahati High Court in M.A.(F) No. 72 of 1993.

F **S.K. Tyagi and C.N. Sree Kumar for the Appellant.**

The Judgment of the Court was delivered by

G **K. VENKATASWAMI, J.** In spite of Notice of Lodgment of Petition of Appeal has been served, the Respondent has not entered appearance to contest this appeal.

The facts, as found by the Motor Accident Claims Tribunal, Kamrup, Guwahati, are given below.

H **The appellant was a passenger in a bus belonging to the Respondent- Corporation. On 17.10.1983, when the bus reached the last stoppage and**

when the passengers were alighting from the bus, a bomb exploded inside the bus as a result of which the appellant sustained serious injuries on his legs. The other passengers also suffered serious injuries due to the bomb explosion. On account of this, the appellant preferred M.A.C. Case No. 64(K)/84 claiming a compensation of Rs. 3,82,000 . The Tribunal found that it had jurisdiction to entertain and adjudicate the claim since the bomb had exploded inside the bus. The Tribunal held that the injuries sustained by the appellant were permanent in nature and awarded a compensation of Rs. 1,20,000 by order dated 2.2.1993.

Aggrieved by that, the Respondent preferred an appeal to the Guwahati High Court in M.A. (F) No. 72/93. The High Court did not disturb the findings of the Tribunal on facts. However, it was of the view that there was no negligence on the part of the owner or the driver of the vehicle and, therefore, the question of paying compensation did not arise. Accordingly, the High Court set aside the award of the Tribunal.

The appellant aggrieved by the judgment of the High Court has preferred this appeal.

The appellant in his claim petition has categorically stated as follows:-

"On the date of accident, the claimant boarded the bus at Judge's field in order to go to his residence at Kahilipara. At that time an abnormal situation arose out of Foreigners Deportation movement. The A.S.T.C. authority plied the City Buses with police help, since before the accident and after the accident. But on the date of the accident, there was no police help in the city bus. The driver of the bus did not take due care and caution in driving the bus."

In support of that statement, an evidence was also given before the Tribunal. In the light of the above averment and evidence, the Tribunal found as follows:

"It is admitted that the present accident took place when a bomb exploded inside it when the bus stopped at last stoppage of the route and it was in stationary condition.

.....

A Here in the case in hand, at the relevant time Assam Agitation was in full swing which necessitated either the conductor of the bus or its driver to take extra care which was found lacking here and as such the accident, I hold, took arising out of the use of motor vehicle and both cases are held maintainable."

B After fixing the liability on the Respondent, the Tribunal assessed the compensation in a sum of Rs. 1,20,000 and awarded the said sum with 12% interest.

C The High Court was of the view that there was no question of negligence on the part of the owner or driver of the vehicle. The High Court observed thus:-

D "When there is a bomb blast and the accident is caused due to bomb blast, it is not a case of any negligence on the part of the owner or the driver, but because of some other events over which the owner or the driver have no control. Such an accident is not the result of negligence or failure to do some duty. It cannot be said in such a case that there is negligence on the part of the owner or the driver. If there is no negligence on the part of the owner or the driver, the question of paying compensation by the owner or by the driver does not arise. Accordingly, we allow these appeals and set aside the judgment and awards dated 2.2.1993 passed by the Member, Motor Accident Claims Tribunal, Kamrup at Guwahati in MAC Case No. 64(K) of 1984 and MAC Case No. 65(K) of 1984.

F At the notice stage, this Court by order dated 18.9.1995 observed as follows :-

G "The first question which arises for consideration is whether the bomb blast which caused injuries to the petitioner took place outside the motor vehicle and whether the petitioner sustained injuries as a result thereof. The High Court appears to have taken the view that it was so. The jurisdiction of the Motor Accident Claims Tribunal depends on the correctness of this finding. The learned counsel for the petitioner wants to produce the entire evidence adduced before the Tribunal to enable proper examination of this finding of the High Court. This be done within eight weeks. List thereafter."

H

After perusing the documents produced pursuant to the above order dated 18.9.1995, this Court granted leave on 20.11.1995. A

The learned counsel appearing for the appellant invited our attention to a decision of this Court in *Shivaji Dayanu Patil and Another v. Vatschala Uttam More (Smt)*, [1991] 3 SCC 530 to support and to restore the Award of the Tribunal which has been set aside by the High Court. In the said case, there was a collision between a petrol tanker and a truck on a National Highway at about 3.00 A.M. , as a result of which the tanker went off the road and fell on its left side at a distance of about 20 feet from the Highway. As a result of the collision, the petrol contained in the tanker leaked out and collected nearby. About four hours later, an explosion took place in the tanker causing burn injuries to those assembled near it and one such person's legal representative filed claim petition before the Tribunal under section 92-A as well as under section 110 of the Motor Vehicles Act, 1939. B C

This Court while repelling various arguments put forward, repudiating the claim, held as follows : - D

"26. These decisions indicate that the word "use" in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. Relying on the above mentioned decisions, the appellate bench of the High Court has held that the expression "use of a motor vehicle" in Section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case, the learned Judges have observed that the tanker in question while proceeding along National Highway 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or E F G H

A accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck."

This view has been referred to and applied in a recent decision of this Court in *Union of India v. United India Insurance Co. Ltd. & Others*, [1997] 8 SCC 683.

After going through the judgment of the High Court, we are of the view that the High Court was not right on facts that there was no negligence on the part of the owner or the driver of the bus especially when the appellant has specifically pleaded about the negligence which was accepted by the Tribunal in the light of the pleadings and of the evidence produced before it. The explosion took place inside the bus is an admitted fact and the usual police escort was not there. The High Court, except observing that there was no negligence, has not upset the finding of the Tribunal that the atmosphere during the period of accident was so polluted requiring care on the part of the conductor and driver of the bus. There cannot be any doubt that the accident arose out of the use of the motor vehicle justifying the claim of the appellant. We are satisfied with the assessment of the Tribunal in quantifying the compensation in a sum of Rs.1,20,000 with interest at the rate of 12%.

E In the result, the appeal is allowed, the judgment under appeal is set aside and the Award of the Tribunal is restored. There will be no order as to costs.

F When the matter was before the High Court, it appears that a sum of Rs. 25,000 was given to the appellant and the High Court while disposing of the appeal directed that the amount already paid need not be refunded by the appellant herein. This amount of Rs. 25,000 must be given credit to while realising the award amount.

V.M.

Appeal allowed.