

Fact :

On October 28, 1969 one Taher Seikh son of late Isu Seikh boarded a bus run by the appellant on the route Burdwan to Nasigram via Khetia and Bhatar. He boarded at Khetia and was proceeding to Bhatar. Since the bus was overcrowded the deceased Taher Seikh along with other passengers got on to the roof of the bus as there was no accommodation available inside the bus. He took his seat on the right side. Unfortunately for him when the bus was nearing Bhatar it swerved on the right side of the road to overtake a cart on the road. The deceased Taher was struck by an overhanging branch of a tree and he fell down on the ground sustaining multiple injuries in his forehead, chest etc. He was removed to B. S. Hospital at Burdwan and there he died on the day following as a result of the injuries suffered

This is an appeal under Section 110-D of the Motor Vehicles Act (Act IV of 1939) (hereinafter referred to as the said Act) and is directed against an award dated January 3, 1974, passed by the Motor Vehicles Accident Claims Tribunal, Burdwan, in Acci-(Sent Claim Case No. 72 of 1969). The appeal raises a short but an important point as to whether contributory negligence on the part of the deceased on whose death in the accident the claim is put forward would defeat the claim. The facts are not much in dispute and are shortly set out as hereunder

. Respondents 1 and 2 before us, the mother and the brother of the deceased lodged a claim of Rs. 20,000 by way of compensation against the appellant and the insurer, respondent No. 3 under Section 110A of the said Act with the Motor Accident Claims Tribunal, Burdwan

Such claim was contested both by the appellant as also by the insurer. The appellant denied that there was any negligence on the part of the driver or the conductor and claimed that the accident was entirely due to the fault on the part of the deceased who was not supposed to travel on the roof of a bus. The insurer took a similar defence but at the same time pleaded an additional defence that when the accident occurred in respect of a passenger carried on the roof of a bus in contravention of the Motor Vehicles Act, it is not covered by the insurance policy and the insurer is not liable to pay any compensation in a case like the present one.

Issues to be decided

1. Was there rashness or negligence on the part of the driver of the vehicle or the conductor?
2. Is the petitioner entitled to compensation, and if so, how much?
3. Is the insurer liable to pay compensation, and if so, to what extent?
4. Is opposite party No. 1 liable for compensation? And if so, to what extent?

1. the Tribunal found that there was positive negligence on the part of the conductor when the said conductor asked passengers to get on to the roof of the bus there being no accommodation inside the bus and but for that negligence the deceased would not have sustained the injuries resulting in his death. The Tribunal, however, further held that there was contributory negligence on the part of the deceased because had the deceased taken reasonable care about his own safety he would not have travelled on the roof of the bus. The Tribunal overruled the special defence taken by the insurer that an accident of the present nature is not covered by the insurance policy and held that both the owner and the insurer are liable to

compensate. But at the same time, according to the Tribunal, contributory negligence on the part of the deceased would go to mitigate the liability of the appellant and the insurer.

2. Tribunal found that the deceased must have been earning Rs. 100 per month and had been contributing at least 50% thereof to his mother for the maintenance of the family. The Tribunal further assessed that since the deceased was only 25 years of age at the time of his death and was of good health it could be expected that he would have lived at least for another 30 years so that he assessed the estimated loss of the claimants at Rs. 50 x 12 x 30 -- Rs. 18,000. He deducted Rs. 2,000 out of the said amount since the compensation is being paid in lump and deducted 50% of the reduced amount on account of contributory negligence on the part of the deceased and thus assessed the compensation at Rs. 8,000. In awarding such compensation to the claimants the Tribunal directed that a sum of Rs. 2,000 is to be paid by the insurer and the balance Rs. 6,000 by the appellant, the owner of the vehicle

3.

Observation:

inviting passengers to travel precariously on the top of an overcrowded bus is itself a rash and negligent act and that apart when passengers were being made to travel on the roof a greater amount of care and caution on the part of the driver was called for so that his leaving the metallic track by swerving on the right so close to a tree with over-hanging branch for overtaking a cart while in speed is also a rash and negligent act. We, therefore, affirm the finding of the Tribunal that the deceased Taher died in an accident which resulted from the rash and negligent act of the driver and the conductor of the appellant.

the deceased was also guilty of contributory negligence cannot be sustained. Here, on the evidence it has been established that the deceased was travelling seated on the roof of the bus. Such travelling by itself has been held by the Tribunal below to be an act of contributory negligence. But the Tribunal below failed to appreciate that the evidence also establishes the position that not only the deceased but a number of passengers were invited by the appellant's employees to travel in that manner. Being invited to do so it would be reasonable to think on the part of such passengers that they would be safely carried to their destination, the bus being driven with such care and caution so as to ensure a safe journey for them. Where the passengers including the deceased were made to travel in that fashion on such an assurance, contributory negligence would be no defence because the deceased was not bound to take such care as the defendant contends but had a right to assume that the defendant would do things rightly and carefully so as to ensure a safe journey for him.

the deceased having been invited to travel on the roof of the bus and such travelling having been adopted as a common method for passengers, the passengers had a right to expect that such travelling would be reasonably safe

Result : The appeal, therefore, fails and is dismissed. There will be no order for costs..