

Citation- AIR 1974 MP 63

Facts

The facts that the plaintiff alleged were that on June 12, 1959 she was going in Bus No. MPJ 1690 -- belonging to the Madhya Pradesh State Road Transport Corporation, from Jabalour to Chhindwara. A truck bearing No. MPJ 9310 owned by Bakhatwarsingh, defendant No. 2. was Coming from the opposite direction-There was a head-on collision between the two vehicles at a distance of about seven miles from Jabalpur.

As a result of this impact, the plaintiff received severe injuries to her right elbow causing multiple fractures. It was further pleaded that the injuries have resulted in a permanent disability of the right hand. Both the drivers, according to the case of the plaintiff, were driving the respective vehicles in utter disregard of the rules of driving and without any regard to the safety of passengers.

The plaintiff claimed a sum of Rupees 73,238.80 as damages against the defendants. The first defendant in the suit is the Madhya Pradesh State Road Transport Corporation which is the owner of the bus. The second defendant is Bakhatwarsingh who is the owner of the truck. The third defendant Dhaniram was at the relevant time driver of the truck. The fourth defendant is Indian Insurance Pools Companies Association which is the insurer of the bus and the fifth defendant is the Northern India Motor Owners Insurance Co. which is the insurer of the truck

The defendants 2 and 3, the owner and the driver of the truck, remained ex parte. The fifth defendant, the Northern India Motor Owners Insurance Co., Which is the insurer of the truck, pleaded that the Plaintiff projected her right elbow outside the bus in which she was travelling and sustained the injuries on account of her own fault knowing well that a vehicle was coming from opposite direction. It was further pleaded that the bus in which she was travelling occupied a major portion of the road keeping more to the right than to the left. The defendant No. 4. the insurer of the bus. Paid Rs. 2,000/- to the plaintiff. This is the maximum amount which an insurer of a bus is liable to pay in case of an injury to a passenger travelling in the bus. No defence was, therefore, put forward by defendant No. 4. The defendant No. 1, the Corporation, which is the owner of the bus. denied the plaintiff's allegations and submitted that the plaintiff having settled with the insurer of the bus there was total discharge of liability

Issues to be decided

Negligence: The question then is whether the plaintiff has been able to make out a case of negligence against the two drivers or any one of them. The fact that the plaintiff's elbow, which was resting on a window of the bus, was injured by coming in contact with some part of the truck itself shows that the two vehicles crossed each other leaving only a little gap in between. while crossing the bus hit the plaintiff's elbow which was protruding from, the window, the drivers of the bus and the truck both must be held to be guilty of negligence.

Contributory negligence : In the long journey if a passenger sitting in a bus keeps his elbow out it cannot be said that he has been guilty of contributory negligence

Observation

the accident happened outside the town where the traffic was not heavy.

It cannot be disputed that the driver of a bus which carries passengers owes a duty of care for the safety of passengers. While driving he must have the passengers in contemplation and he must avoid acts or omissions which can reasonably be foreseen to injure them and in deciding what acts or omissions he should avoid, he must bear in mind the normal habits of passengers. It is a matter of common experience that passengers who sit adjoining a window very often rest their arm on the window sill by which act the elbow projects outside the window. The driver of the bus must have these passengers also in contemplation and. therefore, while overtaking or crossing another vehicle on the road he must not come too close to the vehicle that is overtaken or crossed and he must leave sufficient gap between the vehicles to avoid injury to these passengers. The driver of a vehicle coming from the opposite direction owes a similar duty while crossing a passenger bus. He too must have in contemplation passengers sitting near the windows of the oncoming bus who may have their hands resting on the windows, and in crossing the bus he must not only avoid contact with the body of the bus but he must also avoid coming in contact with the elbow of any passenger that may be resting on the window and projecting outside the body of the bus. He must, therefore, take precautions to move to his near side and leave sufficient gap for preventing any mishap.

Decision

The trial Court came to the conclusion that there was no head-on collision between the bus and truck nor any physical contact between the two. It was also held that plaintiff was protruding her elbow from the window of the bus and the elbow was hit by the truck while crossing the bus and this is how the plaintiff received the injuries. In the opinion of the trial Court, the plaintiff herself was negligent in keeping out her elbow and. therefore, she was not entitled to any damages. The trial Court, however, assessed the damages to which the plaintiff would have been entitled had the defendants been guilty of negligence. Special damages were assessed at Rs. 8,238.70 and general damages were assessed at Rs. 15.000/-

Conclusion : The appeal is allowed