

FIRST APPEAL NO.38/1999

Shri Sadashiv Shantaram
Redkar, major, married,
Govt. Servant, r/o. C/o.
Shri Kashinath Korgaonkar,
H.No.133-A, Opp. Azilo
Quarters, Mapusa, Goa. Appellant.

V/s.

1. Kadamba Transport
Corporation Ltd., through
its Managing Director,
having its Office at Bus
Stand Complex, Panaji, Goa.

2. Shri Kailas Narayan
Singh, major, driver, r/o.
Near Gukrudwara, Vasco,
Goa. Respondents.

Mr. S. G. Dessai, Sr. Adovcate with Mr. Mandar
Shirodkar, Advocate for respondent No.1.

CORAM : F.I. REBELLO, J.

DATE : JUNE 26, 2003.

ORAL JUDGMENT :

None present for the appellant when the matter
is called out. With the assistance of the Counsel for
the respondent, we have gone through the records of the
case.

2. The case of the appellant herein, who was
the applicant in the claim petition No.120/1992, was
that on 26.1.1992 at about 3.30 p.m., the appellant who

was in the bus owned by respondent No.1 and driven by respondent No.2, met with an accident, which caused dislocation of the right shoulder, fracture of left leg, and other injuries. It was his case that the front door of the bus was defective and was opening time and again and the driver and the conductor of the bus had requested him to hold the door so that no body would fall out of the bus. When the bus took the curve at the spot of the accident, the same was driven in a rash and negligent manner, there was a jerk and on account of it, the appellant was flung out, causing him number of injuries. It is on account of that the claim was filed.

Respondent No.1 filed written statement and contended that respondent No.2 was driving the vehicle very cautiously and when it reached Panaji, it was negotiating a curve near Ambedkar Garden Panaji. The case of respondent No.2 was that the applicant was standing near the door obviously with an intention to get down when the vehicle was slow. At the time of negotiating the curve, the vehicle was slow and the appellant tried to get down from the moving bus. While doing so, he fell down and he sustained minor injuries. When this came to the notice of respondent No.2, he stopped the bus, lifted the appellant, hired a rickshaw and took him to the Goa Medical College along with the

conductor of the bus. Then the matter was reported to the Panaji Police Station. They, therefore, denied their liability. Respondent No.2 independently filed his own written statement.

3. The appellant examined himself. As also Dr. Carlos Barreto, who treated him and issued the certificate of 8 % disability . The appellant also examined one Sanjay B. Shirodkar, who acted as panch witness in respect of the site panchanam. CW.4 was a witness who was in the bus. In his examination he has set out that whenever the driver was fast, the door used to open by itself. When the said bus took a turn at Patto, the turn was taken at a fast speed. The rope tied to the door of the bus gave way and it opened and as a result, the appellant was thrown out of the door of the bus. He further deposed that the conductor of the bus had asked the appellant to tie the door with rope. He denied the suggestion that the bus was going at a slow speed. No suggestion was put to this witness at least that the appellant fell down when he tried to get out of the bus. CW.5, Dr. Ulhas Bhale, who has deposed to admission of the appellant in his hospital.

On behalf of the respondents driver of the bus

Kailash N. Singh was examined, as also Ramakant Naik CW.2, the Conductor. Both these witnesses have actually not seen the appellant falling down, but they later on came to know that a passenger had fallen down. RW.3 is one Krishna Vishnu Parab, retired Govt. Servant who, at the relevant time, was working at the Panaji Police Station. It was his case that he referred the bus for inspection of the Motor Vehicle Inspector. It was his case that the bus was in good condition and he had inspected it. He had also got the vehicle inspected by a Motor Vehicle Inspector. Rohidas Dessai is an Auto Mechanic. He was told by T.C. on 27.1.1992 that the bus belonging to the respondent had met with an accident. It was his case that door of the bus as well as the lock of the door were in good condition. This witness, admittedly, was working in the Office of respondent No.1. at the time time of the accident and he was asked to inspect the vehicle by P.I.

4. By an Award dated 21.11.1998, the Claims Tribunal held that the appellant herein had not proved that he met with an accident on account of rash and negligent driving by respondent No.2, of a bus which was having a defective door and in the light of that,

the Claims Tribunal rejected the claim application.

From the evidence what emerges is that the appellant was travelling in the bus. About that there is no dispute. The only dispute is whether the appellant met with an accident on account of rash and negligent driving of the bus by respondent No. 2 herein or that he met with an accident on account of his fault when he jumped out of the bus, which was taking a turn. Apart from his own evidence, as stated earlier, the appellant examined a passenger Sakharam Bandekar, CW.4, who was travelling in the same bus. This witness has deposed about the appellant falling out of the vehicle on account of the rash and negligent driving of respondent No.2. In cross examination, the only suggestion put to this witness was that the bus was going at slow speed. There is no suggestion put to this witness that the appellant fell down as he was trying to jump out of the bus. It is no doubt true that in the cross examination of the appellant, a suggestion was put that just before the accident, the appellant had got up and come near the door in order to alight from the bus. There is no evidence to prove this defence as raised by the respondent. The evidence on record shows that the appellant was a

passenger in the bus. The appellant fell out from the bus when the bus was in motion. The respondents have not been able to disclose any evidence as to how the appellant fell out of the bus. Considering the above, the learned Claims Tribunal has clearly erred in law in holding that the appellant herein has failed to establish that the accident arose on account of rash and negligent driving of the bus by respondent No.2.

5. Considering that and considering the salary being actually drawn by the appellant and the permanent disability fixed at 8 % and applying the multiplier of 15, the compensation to be paid would work out to a sum of Rs.45,000/-.

Considering what has been discussed above, the impugned Award is liable to be set aside and the appeal will have to be allowed. However, there are no findings in so far as the quantum is concerned. This is a matter of the year 1992 and, therefore, it is not appropriate to remand the matter and multiplier in Standard Schedule II can safely be considered. The medical certificate has been produced which shows that the appellant suffered 8 % disability due to the accident. From the salary certificate produced, it is

apparent that the appellant was earning a salary of Rs.3,850/- per month. The appellant at the time of the accident was aged 40 years. Considering the multiplier of 15 and the fact that the appellant continues to be in service, in my opinion, ends of justice would be met if a sum of Rs.45,000/- is awarded with interest thereon at 8 % from 18.9.92 till payment. Appeal accordingly partly allowed. No order as to costs.

F.I. REBELLO, J.

ssm.