
(1986) 03 KAR CK 0034
In the Karnataka High Court

Dhalumal Lakhimal Ramchandani

APPELLANT

Vs

Vimal Shivarudra Wajantri

RESPONDENT

Date of Decision : 04-03-1986

Acts Referred:

Motor Vehicles Rules, 1989 — Rule 161

Citation : (1987) ACJ 378 : (1989) 65 CompCas 543

Hon'ble Judges : N. Venkatachala, J; Murlidher Rao, J

Bench : Division Bench

Advocate : N.A. Mandagi, for the Appellant; G.S. Viewewara and K. Suryanarayana Rao, for the Respondent

Judgement

Murlidhar Rao, J.—This appeal, against the order of the Motor Accidents Claims Tribunal-III, Belgaum, dated April 22, 1985, in MVC No 346 of 1982, is by the owner of Tempo No MEI 4488, in respect of the compensation awarded to claimants-wife and children of Shivarudra Wajantri. The said Shivaruda Wajantri was returning from Goa in the said tempo. The tempo dashed against a roadside tree, resulting in the death of Shivarudra Wajantri. The tempo was driven by Ramesh (respondent No 4). Shivarudra Wajantri was working in Basavanni Brothers Band Co on a monthly salary of Rs. 500; he was 36 years old at the time of the accident. He was a "Shehnai" player.

2. The Tribunal, after holding that the death was due to rash and negligent driving by Ramesh, has awarded compensation at Rs. 44,000. The liability is fastened on the owner and driver of tempo. The insurance company is absolved of the liability, as the act of carrying passengers in the vehicle was in contravention of rule 161 of the Motor Vehicles Rules and was in breach of the terms and conditions of policy (exhibit D-3). Hence, this appeal by the owner of tempo.

3. Mr. Mandagi, appearing for the appellant, urged that the driver was prohibited from taking passengers, and, as such, his act was unlawful and was outside the terms of employment, and, therefore, the accident cannot be treated as having

been caused in the course of employment and, as such, the owner is not vicariously liable. He further urged that if the act is treated as lawful and in the course of employment, the insurance company has to indemnify the owner. No arguments are advanced on other matters.

4. The law of vicarious liability of the owner, for the rash and negligent driving by the driver, is explained by this court in Noreen R. Srikantaiah Vs. L. Dasarath Ramaiah and Another, Considering the decisions of the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, State Bank of India v Smt. Shyama Devi [1979] 49 Comp Cas 130 (SC) and reviewing the earlier decision of this court in Krishna Ramayya Gouda Vs. C.P.C. Motor Company and Others, it was observed thus (at p 346) :

"Applying the law as stated above, their Lordships observed that the test of the principles which govern the vicarious liability of an employer for the loss caused to a customer through the misdemeanour or negligence of an employee, is that the employer is that the employer is not liable for the act of the servant if the cause of the loss or damages arose without the actual fault or neglect of his agents or servants in the course of their employment. Their Lordships further made it clear that the master is liable for his servant's fraud perpetrated in the cause of the master's business, whether the fraud was for the master's benefit or not, if it was committed by the servant in the course of his employment. There is no difference in the liability of a master for wrong whether for fraud or any other wrong committed by a servant in the course of his employment, and it is a question of fact in each case whether it was committed in the course of the employment."

5. In United India Fire and General Insurance Co. Ltd. Vs. U.E. Prasad and Others, the court was considering the claim in respect of a person who had died in a lorry accident, wherein the driver, who was not authorised to take passengers by collecting fares, had taken passengers. The court held as follows (at page 411) :

"The court had occasion to consider the liability of the driver, owner and insurer. In the case of Noreen R. Srikantaiah Vs. L. Dasarath Ramaiah and Another, this court has held that the driver would be liable as he permitted the passenger to travel in the vehicle. The driver and the owner would be bound by the vicarious liability because the driver allowed the passenger in the course of his employment. This court has also held, reviewing the case-law on the point, that the insurance company would not be liable under the Compulsory Insurance Act Policy as it is not covered by the clauses in the policy; `that the owner warned the driver not to take passengers in the truck is no excuse so long the driver acts in the course of his employment". It is obvious that the truck was in the custody of the driver in the course of his employment and he had the implied authority to take passengers also. Hence, both the driver and the owner would be bound to pay compensation for the reasons discussed in the aforesaid decision in detail."

6. Having considered the arguments of Sri Mandagi, we are not persuaded to take a contrary view; we do not find any compelling reasons to differ from the views expressed in these decisions. In *Rise v Plenty* [1976] 1 All ER 97 (CA), Scarman L J observed thus (at page 103) :

"I think it important to realise that the principle of vicarious liability is one of public policy. It is not a principle which is derived from a critical or refined consideration of other concepts in the common law, e.g., the concept of trespass or indeed the concept of agency. No doubt in particular cases it may be relevant to consider whether a particular plaintiff was or was a trespasser. Similarly, when, as I shall indicate, it is important that one should determine the course of employment of the servant, the law of agency may have some marginal relevance. But basically, as I understand it, the employer is made vicariously liable for the tort of his employee not because the plaintiff is an invitee, nor because of the authority possessed by the servant, but because it is case in which the employer, having put matters into motion, should be liable if the motion that he has originated leads to damage to another." (underlining is ours).

7. The ruling of the Andhra Pradesh High Court in *New India Assurance Co Ltd. v Kothapalli Venkateswara Rao* [1986] 60 Comp Cas 34 does not deal with the question of vicarious liability of the owner in the event of his driver taking passengers, on payment, in a vehicle which is not meant for passengers. That was an appeal by the insurance company which was dismissed. The said decision is of no assistance.

8. The fact that the owner is made liable does not mean that in all cases ipso facto the insurance company becomes liable. In the circumstances, the insurance company is justified in refusing to indemnify the owner. The above ruling of this court in *United India Fire and General Insurance Co. Ltd. Vs. U.E. Prasad and Others*, covers this issue.

9. We do not find any merit in this appeal; it fails. M F A is dismissed; no costs.