
(1985) 05 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 17 of 1985

Himachal Road Transport Corporation	APPELLANT
Vs	
Smt. Kaushalya Devi and Others	RESPONDENT

Date of Decision : 10-05-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 84

Citation : (1986) 2 ACC 66 : (1986) ACJ 474 : AIR 1986 HP 21 : (1986) ShimLC 28

Hon'ble Judges : P.D. Desai, C.J

Bench : Single Bench

Advocate : K.L. Bali, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Desai, C.J.—The accident giving rise to the claim petition out of which this appeal arises occurred on June, 20, 1983 at about 7 A.M. near village Baknaghat on the Kalka-Shimla Road. One Nek Ram, aged about 42 at the material time, who was employed as Head Constable in the Himachal Pradesh Police Force, was crushed under the vehicle (passenger bus) owned by the appellant. The Tribunal has found that the bus, which was deployed to run between Solan and Chhausa, had started on June, 19, 1983 at about 8 P.M. and that it was halted mid-way at Kandaghat in the night intervening between June, 19 and June, 20, 1983. The version of the driver of the bus that the halt was required to be taken on account of some mechanical defect does not appear to have been accepted by the Tribunal. When the bus started early next morning and reached near village Baknaghat, the driver of the bus left the vehicle for the alleged purpose of answering the call of nature. The Tribunal has found that there was no evidence on record to show that any precautionary measure was taken by the driver, while he was away, to ensure that the bus was not started by any person by pressing an automatic starter which did not require the application of a key. The conductor of the bus thereupon occupied the driver's seat and started the bus.

While the conductor was driving the bus rashly and negligently, the accident occurred which resulted in the death of Nek Ram. On the basis of aforesaid findings, the Tribunal held that the accident was the result of the rash and negligent act of the employee(s) of the appellant and that the want of due care and caution of the driver had enabled the conductor to drive the vehicle rashly and negligently and that, under the circumstances abovementioned, the appellant was liable.

2. The Tribunal found that the salary of the deceased at the relevant time was Rs. 936/- per month. On that basis, the Tribunal assessed the dependency benefit at Rs. 640/- per month, that is, Rs. 7,680/- per annum. Applying the multiplier of 10, the Tribunal assessed the compensation at Rs. 76,800/-. The sum of Rs. 3,000/- was added to the amount of compensation, assessed as aforesaid, for loss of expectancy of life. The award was accordingly made in the sum of Rs. 79,800/-.

3. The challenge to the impugned award was directed both against the finding on the issue of negligence and liability as well as against the quantification of compensation. The challenge cannot, however, be sustained. The bus was being plied in the course of the appellant's business and it was to be driven by the driver. The bus made an unauthorised halt midway in the night intervening between June, 19 and June, 20, 1983 for which no satisfactory explanation is coming forth. After it started again early next morning, the driver left the bus on the road near village Baknaghat without taking adequate and reasonable care to ensure that no unauthorised person would drive it. The mechanism fixed in the bus was such that it could be started by the mere pressing of an automatic starter. There is no evidence to show that the bus was fitted with a contrivance so that the driver's cabin or the bus itself could be locked. The driver, therefore, owed a special duty of care which he failed to discharge and consequently the conductor, who had an easy access, drove the bus rashly and negligently and caused the accident. Having regard to the totality of the circumstances, there is apparently no reason to reverse the finding on the issue of negligence and on the consequential liability of the appellant.

4. Section 84 of the Motor Vehicles Act, 1939, has some relevance to the point under consideration. The Section provides that no person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive vehicle, or unless the mechanism has been stopped and a brake or brakes applied, or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver. Two decisions bearing on the point may also be referred to in this context.

5. In *Engelhart v. Farrant and Co.* (1897) 1 QB 240, two servants were engaged upon their master's business in distinct capacities. One was to drive a cart and man the horses and the other -- a boy -- was to travel in the cart and to deliver the parcels. The driver left the cart unattended and, while he was absent, the

boy drove on the cart to deliver the parcels and caused the accident. The question was whether the master was liable. It was held that the master was responsible because when the driver left the cart in the charge of the boy, he acted negligently in the course of his master's business. The driver ought to have known that if he left the cart the boy would drive it in the fulfilment of the work of the master. Lord Esher, M. R., precisely answered the question as to the master's liability thus :

"He is liable for the negligence of Mears (that was the driver) if that negligence was "an effective cause" of the subsequent damage to the plaintiff..... If a stranger interferes (with the driving) it does not follow that the defendant is liable; but equally it does not follow that because a stranger interferes, the defendant is not liable if the negligence of a servant of his is an effective cause of the accident."

The said decision lays down the following two propositions:(1) An owner of a vehicle would be liable in damages for an accident caused by his servant in the course of his employment; and (2) He would also be liable if the effective cause of the accident was that the driver in the course of his employment committed a breach of his duty in either not preventing another person from driving the cart or neglecting to see that the said person drove it properly.

6. In Gujarat State Road Transport Corporation Vs. Haribhai Vallabhbhai Darji and Others, the driver of the bus, who was entrusted with the duty of carrying a painter in a trainee bus for executing certain painting work on behalf of the appellant, left the bus unattended in a public place. Be it stated that the bus could be started by simply pressing a push button without the aid of an ignition key and that there was no lock and no shutter on one side of the bus. A stranger boarded the bus and started the same and when the vehicle reached the outskirts of the village, it knocked down a few pedestrians. The accident gave rise to several claim cases. At the appellate stage, the submission on behalf of the appellant, inter alia, was that as the bus was driven unauthorisedly by a stranger, neither the appellant nor the driver could be held guilty of negligence and that, therefore, there was no liability to pay damages. The submission was negated by a Division Bench of the Gujarat High Court in the following words :

".....It can be said that the driver ought to have anticipated that someone might start the bus in his absence and that too a bus which was not having any shutter on the left side and ought not have left the bus unattended on the road in a thickly populated locality of the village.Without any hesitation it can be said that the accident had occurred within the course of his employmentthe driver was in the employment of the S. T. Corporation and he had gone there for the master's work. It was not his personal work. He was acting within the course of his employment and that he was not doing anything for himselfhe left the bus unattended and mat itself is an act of gross-negligence and because of this negligence on the part of the driver the accident had occurredThe only question would be, when he left the bus

unattended whether the said act can be said to be grossly negligent act on his part for which there would be vicarious liability on the part of the appellant-S. T. Corporation. When the driver went to Kukarvada it was his master's business and the driver was authorised agent or was servant of the S. T. Corporation. The S. T. Corporation i.e. the owner of the bus would be liable for the negligence on the part of the driver and the owner cannot escape from the liability for the compensationFrom the above discussion it is clear that the S. T. Bus was without any shutter. It could be started by any person merely by pushing a button. We also consider that the driver was discharging his master's function when he left the bus unattended at Village Kukarvada. He has not taken precaution as prescribed u/s 84 of the Motor Vehicles Act. Hence it can be said that the driver had left the dangerous bus which was powerful engine of death and destruction, which was likely to be used by others and particularly by young persons for which he could have reasonably foreseen the resultant injury..... The S. T. Corporation ought to have taken a reasonable care to see that the bus was having shutter which could be locked."

7. The provisions of Section 84 as well as both these cases support the view that the appellant cannot escape the liability for the negligence of the driver which was the effective cause of the accident. The driver, in the course of his employment, left his seat having stationed the bus on the road without taking adequate and reasonable care to ensure that no unauthorised person would drive it, especially when the bus was fitted with the mechanism of ignition by mere pressing of a button and there was an easy access to the driver's cabin. The appellant has thus been rightly saddled with the liability to satisfy the award.

8. The challenge to the quantification of compensation is equally without merit. The deceased was in his early forties. He was in a secured job. His monthly emoluments were Rs. 936/-. The dependency benefit was computed at Rs. 640/- per month for the widow and four minor children (one son and three daughters). The multiplier of ten was applied. The compensation arrived at accordingly cannot be reasonably regarded as excessive. The award, if at all, is somewhat on the conservative side.

9. For the foregoing reasons, there being

10. The awarded amount deposited by the appellant in the Registry of the Court will be remitted to the Tribunal within ten days with a direction that the sum apportioned in favour of each of the claimants under the impugned award will be separately invested in the name of the concerned claimant in a fixed deposit with a Nationalised Bank at a station convenient to the claimant(s) for a period of sixty three months on the condition that the fixed deposits will not be encashed before the due date of maturity and no loan will be permitted to be raised against the same. The claimants will be only entitled to receive interest accruing due on the fixed deposits periodically. The interest falling due on the fixed deposits made in favour of the minors will be paid to their mother who will use the same for the maintenance and upkeep of the minors and their education. The

fixed deposits will continue to be renewed on the same conditions in case of minors till each of them attains majority. The Tribunal will make appropriate arrangements in this regard within thirty days after issuing notice to the claimants.