
(1985) 07 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No's. 8 and 23 of 1983

Mannalal and Another

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 02-07-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 110D

Citation : (1986) ACJ 902 : AIR 1985 MP 263

Hon'ble Judges : R.K. Varma, J;P.D. Mulye, J

Bench : Division Bench

Advocate : B.K. Samdani, for the Appellant; R.K. Joshi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Mulye, J.—This judgment shall also govern the disposal of M.A. No. 23 of 83 (State of M. P. v. Mannalal) as both these appeals have been filed against the same award dated 1st Oct., 1982 passed by the Member, Motor Accidents Claims Tribunal, Jhabua in claim case No. 16 of 1981.

2. Misc. Appeal No. 8 of 83 has been filed by the claimant Mannalal for enhancement of compensation as the compensation awarded by the Tribunal is for Rs. 31,692.71 p. plus proportionate costs and interest at 4 per cent per annum from the date of the filing of the application, though the claimant had put up a claim for Rs. 2,00,000/-.

3. Misc. Appeal No. 23 of 83 has been filed by the respondent-State with a prayer to set aside the award against the State in toto.

4. Facts giving rise to these appeals may be stated in brief, thus: Truck No. MPZ-5890 belongs to the State of M. P. which was used by the Sub-Divisional Officer, Public Works Department, Jhabua. On the relevant day of the accident, which took place on 10-4-81, respondent Habu was the driver of the said truck.

5. According to the complainant Mannalal he was returning from the haat from Alirajpur to Walpur. After finishing his work he along with other persons boarded the said truck for returning to Alirajpur. The respondent No. 2 obtained the fare charges from the claimant. However, on the way he drove truck in such a rash and negligent manner that it dashed against a tree with got completely uptooted. As a result of the said accident the claimant Mannalal was thrown out as a result of which he sustained injurirs debboth his legs resulting in fracture. He was shifted from Alirajpur to Baroda, after preliminary treatment, for further treatment. According to the claimant he has now become crippled and almost permanently disabled. He, therefore, put up a claim for Rs. 2,00,000/- out of which he claimed Rs. 25,000/- for physical as well as mental pain and suffering, Rs. 25,000/- for medical expenses and rest for general damages as he has now become unfit to carry on his business in grain and cloth.

6. The respondent No. 1 namely, State of M. P. denied and contested the claim, firstly on the ground that respondent Habu was not a salary employed driver, but was engaged temporarily on 19-4-81 only. They also contended that the respondent No. 2 had no right or authority to take passengers in the said truck which was not meant for. carrying passengers and consequently the act meant for carrying passengers and consequently the act of the driver being out of the scope of his employment, the State could not be held liable. They also contested the fact that the accident occurred on account of the rash and negligent driving by the truck driver. On the contrary, according to the respondent-State, the accident was inevitable. They also denied the fact that the claimant has become permanently disabled or that he is unable to carry on his business. They, therefore, contested that the State cannot be held liable on the ground of vicarious liability.

7. The respondent No. 2 by a separate written statement also contended that he had refused to carry the claimant or other persons in the said truck, but on their insistence they sat in the said truck by force. He also submitted that the accident occurred not because of his rash and negligent driving, but it was an inevitable one.

8. The learned Member of the Tribunal, after considering the evidence and material on record came to the conclusion that the accident occurred on account of the rash and negligent driving of the truck by the truck driver as a result of which the claimant sustained severe injuries, with the further result that he has become disabled on account of the fracture sustained to both the legs, he also found that the claimant is entitled to a compensation of Rs. 31,692.71 p. only, plus cost and interest and dismissed the rest of the claim. Hence these appeals.

9. The learned counsel appearing for the State Shri S. R. Joshi, Government Advocate, did not dispute or challenge the factum of accident as such nor did he dispute this fact that on account of the said accident the claimant Mannalal received certain injuries though he submitted that the claimant has failed to prove that he has become permanently disabled as he has not ev.mined any

doctor on that point. It is, therefore, not necessary to reconsider the evidence adduced by the claimant regarding the factum of accident, though the claimant Mannalal as A.W. 1 and Saboordas (A.W. 2) have proved this fact.

10. Admittedly in this case the claimant has not examined the doctor who treated him or operated upon him nor has he examined any other witnesses to prove his medical expenses actually incurred by him nor has he produced any account books to show what is the loss of income which he has to suffer for the rest of his life, though it is no doubt true that he has produced the medical report and some of the bills.

11. The learned counsel for the claimant, therefore, submitted that the learned Member of the Tribunal has awarded meagre damages consisting of Rs. 6,000/- on account of medical expenses, Rs. 10,000/- for pain and suffering and Rs. 15,000/- for loss of income. According to the learned counsel for the claimant, the claimant had to go to Baroda for further treatment accompanied by a family member, had to stay at Baroda for a long time and thus the learned Member of the Tribunal has awarded a negligible amount for medical expenses. So far as loss of income is concerned he submitted that on account of the permanent disability of both the legs, the learned Member of the Tribunal ought to have given compensation for loss. He, therefore, submitted that the compensation awarded is quite low and should be enhanced.

12. As regards the liability of the State the learned counsel for the claimant placed reliance on the following decisions Narayanlal and Others Vs. Rukhmanibai and Others, ; Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, ;. Mariyam Jusab and Others Vs. Hematlal Ratilal and Others, ; 1976 Acc CJ 72 (Guj), Amthiben Maganlal v. Superintending Geophysicist O.N.G.C and 1984 Acc CJ 150 (Guj), Bai Dahiben v. Jesinghbai Bijalbhai.

13. On the other hand the learned Government Advocate submitted that the claimant has not proved damages. He has not produced the account books nor has he examined the doctor or any other person to prove the bills which are produced by him. He also submitted that for the illegal and unauthorised act of the truck driver the State could not be held liable on the ground of vicarious liability as the truck was not meant for carrying passengers and if the driver had agreed to carry the claimant and other persons in the said truck, they travelled at their own risk and because of the accident it is only the driver who can be held personally liable for damages and not the State and in support of his submission he also placed reliance on the same decision reported in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, . The learned counsel for the State also urged that on the basis of the oral testimony of the claimant the quantum of damages awarded under different heads is also excessive as the claimant has failed to prove the damages as required by law. He, therefore, submitted that in any case the State cannot be held liable for the negligent and unauthorised act of the truck driver who was

pecially instructed not to carry any passengers as the truck was not meant for that purpose.

14. So far as the quantum of damages is concerned, after hearing the learned counsel and after going through the evidence and material on record we are of opinion that no interference in the quantum of compensation already awarded is called for as the learned Member of the Tribunal has taken all the relevant facts into consideration. The submissions of the learned counsel for the claimant for enhancement thereof are not convincing as the claimant has failed to prove the exact amount spent on medical expenses so that the same could be increased. In our opinion he has also failed to prove that he is entitled for any enhanced compensation on account of the loss of business because of his permanent disability as the claimant's evidence is not satisfactory and convincing on this point to the effect that he has become permanently disabled or that on account of that disability he is not in a position to carry on his business henceforth. Therefore, in our opinion the compensation awarded to the claimant being just, reasonable and proper no interference therewith is called for.

15. So far as the interest awarded at the rate of 4 per cent is concerned we are of opinion that the same deserves to be modified and the claimant is entitled to claim interest at the rate of 9 per cent per annum from the date of the filing of the application. To that extent the award is modified.

16. This brings us to the next important question as to whether in these circumstances the State can also be held jointly and severally liable to pay the compensation on the basis of vicarious liability. The learned counsel for the claimants submitted that the legal position on this point has been concluded by a Full Bench decision of this Court reported in Narayanlal and Others Vs. Rukhmanibai and Others, wherein it has been held that in such a case the State is vicariously liable. He also placed reliance on the Supreme Court decision reported in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, which has also taken a similar view, though the learned counsel for the respondent-State also placed reliance on this decision in support of his submission that as the driver was not authorised to carry any passenger in the said truck the State cannot be held liable.

17. After going through these decisions as also considering the facts and circumstances, we are of opinion that in this case the respondent-State has failed to rebut the presumption regarding the authority of the truck driver as there appears no reason to doubt the testimony of the claimant and his witness, on this point.

18. In The "Ad Hoc" Committee, the Indian Insurance Company Association Pool Vs. Smt. Radhabai, it has been held that:

"The master is not responsible for a wrongful act done by his servant unless it is done in the course of his employment. It is deemed to be so done if it is either (1) wrongful act authorised by the master (sic) wrongful and unauthorised mode

of doing some act authorised by the master. Where in respect of motor vehicle belonging to the Government the driver who was given the control of the vehicle not merely to drive it but to take it to a place in the course of an employment viz. for bringing the ailing children to the Primary Health Centre, and the driver who was in control of the vehicle gave control of the steering wheel to one unauthorised person, the act of the driver in giving the control of the steering wheel to such an unauthorised person is merely a wrongful and unauthorised mode of doing the act authorised by the master, the act authorised by the master, being the act of driving the vehicle and taking it to the place where the children were, for bringing them to the hospital. In such circumstances the Government viz. the owner of the vehicle is vicariously liable for the negligence of driver in permitting unauthorised person to drive the vehicle."

Similar view has been taken in the decisions reported in *Mst. Amruta Dei and Others Vs. State of Orissa and Another*, as also *Union of India (UOI) Vs. Mrs. Marcia E. Dutta*, in addition to the authorities referred to above cited on behalf of the claimant appellant.

19. There is a presumption that a vehicle is driven on master's business and by his authorised agent and servant, though presumption is rebuttable. If a person is found to be driving the vehicle he shall be presumed to be so doing with lawful authority of its owner and if owner alleges that he had not authorised that person for driving his vehicle then onus is on him. It is no doubt true that where the servant was not acting within the scope of his employment, but on his own, the master would not be held liable. But in that case there should be evidence led to that effect that the driver was prohibited from carrying any passengers in the said truck. In the present case the evidence of the truck driver indicates that he was forced by the petitioner and other persons to allow them to sit in the truck as passengers though he has not denied the fact that he had accepted the hire charges for that purpose. However it is difficult to believe this version as he could have refused to proceed further and put a complete stop to the vehicle. It also appears that the other official travelling in the said truck also did not raise any protest or objection when the truck driver gave a lift to the petitioner in the said truck which subsequently met with an accident.

20. A resume of these decisions would point out that it would always depend on the facts of each case as to whether the master can be held vicariously liable, as in the present case the master being the State. In the present case the respondent State has not led any convincing evidence to rebut the presumption. Thus, as a result of the aforesaid discussion we are unable to agree with the submission made by the learned counsel for the respondent State that the State cannot be held vicariously liable along with the driver to pay the compensation awarded to the claimant, the liability being joint and several.

21. In the result we see no merit in both these appeals which are dismissed with no order as to costs. The award of the Tribunal is maintained, except with the modification that the claimants appellants shall be entitled to claim interest at

the rate of 9 per cent per annum instead of 4 per cent per annum.