

(1981) 04 OHC CK 0009

In the Orissa High Court

Case No : Misc. Appeal No's. 51 and 52 of 1979

Mst. Amruta Dei and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 16-04-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : AIR 1982 Ori 12 : (1981) 52 CLT 19

Hon'ble Judges : N.K. Das, J

Bench : Single Bench

Advocate : A.K. Padhi, in Misc. Appeal No. 51 of 1979, J.K. Tripathy and S. Kar, In Misc. Appeal No. 52 of 1979, for the Appellant; Indrajit Roy and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

N.K. Das, J.—Both the appeals relate to two cases for compensation arising out of the same accident, in which two clerks of the office of R. T. O. Sundargarh died. The accident is of a Govt. Jeep which took place on 9-1-1977 at about I A. M. The age of the deceased Lingaraj Behera in Miscellaneous Appeal No. 51 of 1979 was 26 years and he was having income of Rs. 270.00 per month (as appears from the written statement) as a Lower Division Cferk. In Misc. Appeal No. 52 of 1979 the deceased was Bipin Bihari Pradhan aged about 25 years. The legal heirs of late Lingaraj Behera claimed Rs. 10,800.00 and the claimants of deceased Bipin Bihari Pradhan laid a claim of Rs. 49,680.00.

2. In the morning of 9-1-1979 at about 7 A. M. the R. T. O. Sundargarh went to Purunapani via Biramitrapur for checking of vehicles. The Junior Motor Vehicle Inspector (O, P. W. 2) and one Sri G. C. Patnaik, the Enforcement Inspector also accompanied him. P. W. 3 was the official driver of the jeep. The two deceased persons, namely, Bipin Bihari Pradhan and Lingaraj Behera and two constables were in that jeep. After 11.30 P. M. in the night, the occupants of the jeep had their dinner at Rajgangapur. Thereafter the jeep was driven by the Enforcement

Inspector, G. C. Patnaik. While Sri Patnaik was driving the jeep the accident took place at 2/3 K. Ms. before reaching Paramdih. The jeep dashed against a tree. The Enforcement Inspector who was driving the jeep died at the spot and the two Lower Division Clerks, namely Lingaraj Behera and Bipin Bihari Pradhan also died at the spot.

State of Orissa, the defendant, in the written statement has admitted the accident but has contended that the accident took place due to bursting of the rear tyre of the jeep and that the State is not liable as the accident took place while discharging sovereign functions.

The Claims Tribunal has disallowed the claims in both the cases on two grounds:

(1) The State is protected as the sovereign function was being discharged by its employees; and,

(2) That the accident was due-to bursting of tyre.

3. There is no dispute about the fact that the R. T. O. (O. P. W. 1) and the Junior Motor Vehicle Inspector (O. P. W. 2) and Sri Patnaik, the Enforcement Inspector as well as two Lower Division Clerks had gone in the Government jeep. It is also not disputed that P. W. 3 was the official driver of the jeep. All of them had their meals at about 11.30 P. M. at Rajgangapur. Thereafter admittedly the jeep was driven by Sri G. C. Patnaik, the Enforcement Inspector. While Sri Patnaik was driving the jeep and these two L. D. Clerks as well as O. P. W. 1, O. P. W. 2 and P. W. 3 were inside the jeep, the accident took place. It is also not disputed that the jeep dashed against a tree.

It is contended by Mrs. Padhi, the learned counsel for appellants that the findings of the Tribunal that the officers were discharging sovereign function is wrong and that it was not a case of bursting of tyres. The learned standing counsel vehemently opposed the contentions raised by the learned counsel for the appellants contending that on the principle of *res ipsa loquitur* it cannot be said that the State is, in any way, liable and that it was a clear case of sudden bursting of tyres resulting in the accident.

Normally it is for the plaintiff to prove negligence, but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his negligence. When the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident

might more probably have happened in a manner which did not connote negligence on his part. For the, application of the principle it must be shown that the vehicle was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care (See Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another,

It appears from the evidence of O. P. W. 3, the A. S. I. of Police who went to investigate, found that the right front wheel of the jeep was completely detached from the vehicle and was lying at some distance. Further, he noticed that the rim of the wheel was bent. It would thus appear that the accident was a serious one. Undoubtedly, Sri Patnaik who was driving the jeep also died at the spot as well as the two Lower Division Clerks. From the evidence of the driver P. W. 3, it appears that at Rajgangapur after they took their meals, Sri Patnaik asked him to bring some cigarettes. By the time he brought the cigarettes, Sri Patnaik was holding the steering sitting on the driver's seat. P. W. 3 gave the cigarettes to Sri Patnaik and when he wanted to drive the jeep, Sri Patnaik told him that the front seat was not enough to accommodate four persons and asked him to go to the rear seat and drove the vehicle. He further states that he was aware of the administrative instructions that the jeep was not to be handled by any one excepting himself unless the authority permits to drive the vehicle. In that night he allowed Sri Patnaik to drive the jeep as his higher authority, the R. T. O. did not object to the driving of the jeep by Sri Patnaik. He has further stated that the front tyres of the jeep were almost brand new and he had checked all these tyres before taking out the jeep and he did not find any damage or any crack mark on any of the tyres. From the evidence of the driver as well as from the evidence of other witnesses, it appears that the road was a good road with black top excepting a little portion, which was morum and the said morum portion was also in good condition. From the written statement filed by the State, it appears that when the jeep went with an "U" turn, there was down gradient towards Paramdihi and while negotiating that portion there was bursting of the tyre. It is evident from the written statement that the accident took place while the jeep was negotiating one "U" turn and was a down gradient road. The witnesses have stated that the jeep was in 50 to 60 K. Ms. speed. It would thus appear that the person who was driving the jeep in the midnight would have been careful in driving the jeep while it was taking a complete turn on the road and was in a down gradient motion. Undoubtedly, it amounts to rash and negligent driving.

The next question is whether there was bursting of tyres prior to the accident and the accident was due to bursting of tyres. The R. T. O. and the Junior M. V. I. have stated that they heard a sound of bursting of tyre but the driver who was in the jeep has clearly stated that he did not hear any sound of bursting of tyre prior to the accident. The position of the jeep and the condition of the wheel as stated by O. P. W. 3, the Investigating Officer clearly show that the wheel had gone out of the jeep. It, therefore, appears that the impact was so heavy and bursting of tyres can be the result of the impact. This fact is reinforced by the

statement of the driver that the tyre which is said to have burst was a new tyre and was in good condition and it had been checked before the vehicle started. The evidence of O. P. Ws. 1 and 2 is not very clear about the bursting of tyre. Only they heard a sound like bursting of tyre and Sri Patnaik could not control the steering of the jeep. Curiously enough none of them said anything at that time. The cumulative effect of the evidence available on record is that at midnight while the jeep was taking in "U" turn and was on a down gradient motion running at 50 to 60 K. Ms. speed having brand new tyre and there being no clear evidence about bursting of tyre, the reasonable inference is that the bursting of tyre was the result of the impact of the jeep with the tyre and the wheel had gone out of the jeep.

4. It is next contended that the State Government is not liable because the accident took place while the sovereign function was being discharged which, in other words, can be said to be the act of State. The Tribunal has come to the conclusion that they were discharging the sovereign function and, as such, the State is immune from liability. The admitted facts in this case clearly show that the Regional Transport Officer had gone to check the vehicles. After checking they were returning. He had taken with him these two L. D. Clerks as well as the Enforcement Inspector. The authorised driver was in the jeep. While coming back at Rajgangapur they had their meals and thereafter Sri Patnaik started driving the jeep and the R. T. O. did not object. When the driver wanted to drive the jeep, Sri Patnaik said that he himself would drive the jeep and the driver was directed to go the rear seat. The R. T. O. also did not object. The driver said that as his boss, the R. T. O., did not object, he believed that Sri Patnaik was permitted to drive the jeep. This is also admitted by the R. T. O. (O. P. W. 1) that Sri Patnaik had on many occasions previously driven the jeep. Therefore, the R. T. O. who had taken the jeep had allowed Sri Patnaik to drive the jeep. In the written statement, it is also stated that Sri Patnaik was holding a licence. Nowhere in the written statement or in the additional written statement, the State has taken the plea that Sri Patnaik was authorised to drive the jeep. The State is not liable. The admitted fact, therefore, is that Sri Patnaik was allowed to drive the jeep.

The function of the Regional Transport Officer was to check the vehicles. He had taken the jeep along with other persons, of whom two unfortunate L. D. Clerks expired due to the accident. It cannot be said that it was during the course of the discharge of sovereign function, the accident took place.

5. In *State of Rajasthan v. Mst. Vidya-wati*, AIR 1962 SC 933, the question for consideration was whether the State Government would be liable for the accident while the vehicle was in official use. In that case it has been held that where the driver of a jeep, owned and maintained by the State of Rajasthan for the official use of the Collector of a district, drove it rashly and negligently, while bringing it back from the workshop after repairs and knocked down a pedestrian and fatally injured him, the State can be made vicariously liable for the tortious act, like any

other employer. It has been held that in so far as the State activities have such wide ramifications involving not only the use of sovereign powers but also its powers as employers in so many public sectors, it is too much to claim that the State should be immune from the consequences of tortious acts of its employees committed in the course of their employment as such. The maxim "The King can do no wrong", to sue the Crown for the tortious act of its servant had become outmoded in the context of modern developments in statecraft and, as such, in England, the Parliament intervened by enacting the Crown Proceedings Act, 1947, which came into force in 1948.

In *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, a Bench of five Judges held that there is a material distinction between the acts committed by the servants employed by the State where such acts are referable to the exercise of sovereign powers delegated to public servants, and acts committed by public servants which are not referable to the delegation of any sovereign powers. If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is; was the tortious act committed by the public servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant? If the answer is in the affirmative, the action for damages for loss caused by such tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course of his employment is, in this category of cases, an act of a servant who might have been employed by a private individual for the same purpose.

The principles laid down in *Mst. Vidhya-wati's* case was taken into consideration by the Bombay High Court in *State of Mysore Vs. Ramchandra Gunda and Another*. In that case the accident took place while the Government jeep had gone in connection with a construction of a reservoir. Following the principles of *Vidhyawati's* case, it was held that this construction of the reservoir was at best can be an act of welfare State for the betterment of the people of a part of the State.

6. There is another question for consideration arising out of the facts of the case. It has been held by the Supreme Court in *Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta*, that the substantive rule of law is that the prerogative of the Crown can only be taken away by law. The rule of construction evolved by the Courts to ascertain the legislative intention is, that it is presumed that a statute has not taken away the prescriptive right unless it has expressly or by necessary implication done so.

7. After the amendment of Section 110 of the Motor Vehicles Act by the Amending Act. 100 of 1956, which came into force on 16th Feb., 1957, the Parliament has, in categorical terms by introduction of these sections, stated that if, while driving a motor vehicle (which includes a vehicle owned by the State

Government or by the Government of India) the owner of the vehicle is liable to pay compensation to the persons who are entitled to claim damages. In other words, Section 110 and the Rules made thereunder, including the Government liable for the tortious acts of its servants while driving the vehicle. Therefore, after the Amending Act 100 of 1956, by which Section 110-A of the Motor Vehicles Act has been inserted, the distinction of sovereign and non-sovereign acts of the State no longer exists as all owners of vehicles are brought within the scope of this section. Whether the State is bound by the provisions of the Act is no longer *res Integra* (See *Government of Andhra Pradesh Vs. K. Padma Rani and Others*, .

8. Reliance has been placed by the respondents on *Sitaram Motilal Kalal Vs. Santanuprasad Jaishankar Bhatt*, . In that case, the owner of a vehicle entrusted it to a person for plying it as a taxi. Another person who used to clean the taxi had given the vehicle to other persons for obtaining the licence for driving and while taking the taxi, that person caused bodily injury to a person while the person entrusted with the vehicle was not present. It was held that the person entrusted was not liable. This case was distinguished in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, by the Supreme Court and it was held that while the driver was acting under employment of the owner had taken one passenger into the jeep and the passenger died out of the accident committed by the driver, the owner was held liable. Applying the tests laid down by the Supreme Court in *Puspabai's* case to the facts and circumstances of the present case, it would appear that the R. T. O. allowed Sri Patnaik to drive the jeep in question. Even the driver had allowed Sri Patnaik to drive the jeep. The R. T. O. and the driver both were present in the jeep while the accident took place and as such, the owner is liable.

9. The Supreme Court in *N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others*, , has observed that Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there, save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic may-bes.

10. On the aforesaid analysis, I hold that the accident did not take place in course of checking the vehicle. The R.T. O. w/HS coming back and after midnight had allowed Sri Patnaik to drive the vehicle. It was not the first occasion but previously Sri Patnaik had been allowed to drive the jeep. This cannot be said to be a discharge of sovereign function. In view of principles of *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, and the case of *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, and *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, laid down by the Supreme Court and applying to the facts and circumstances of the case, the owner can be held vicariously liable.

I, therefore, hold that the State is vicariously liable to pay the compensation and

cannot take shelter under the plea of discharge of sovereign function.

11. The next question relates to the quantum of compensation. In Misc. Appeal No. 52 of 1979 the deceased Bipin Bihari Pradhan was aged 25 years and he was having the income of Rs. 306.00 per month. The total claim is Rs. 49,680.00. This amount does not appear to be high and excessive which is much less than the amount which in ordinary course should have been allowed. Therefore, the claimants in Misc. Appeal No. 52 of 1979 are entitled to the entire amount claimed by them.

The deceased in Misc. Appeal No. 51 of 1979 was aged 26 years and the defendant has admitted in the written statement that his monthly pay was Rs. 270.00. Taking the normal course of life to be 65 years, he would live for 39 years more and he would have contributed to the family. He was living in the joint family along with his wife and children. P. W. 4 has stated that the deceased used to pay her Rs. 300.00 every month to run the house including his maintenance. Considering the pay to be Rupees 270.00 per month a deduction of Rs. 100/- for maintenance of the deceased can be made and the balance of Rs. 170/- can be taken to be the contribution to the family which he would have made for 39 years. Calculating according to the above rate the amount comes to Rs. 89,760.00. For a lump sum payment 1/6th of the amount can be slashed. After slashing 1/6th the balance comes to Rs. 74,834.00. I, therefore, hold that the claimants in Misc. Appeal No. 51 of 1979 are entitled to Rs. 74,834.00.

12. In the result, both the appeals are allowed with costs. The claimants in Misc. Appeal No. 51 of 1979 are entitled to Rs. 74,834.00 along with interest at six per cent per annum from the date of the claim till the date of final payment along with costs. Hearing-fee is assessed at Rs. 100,00 only.

In Misc. Appeal No. 52 of 1979 the claimants are entitled to Rs. 49,680,00 together with interest at the rate of six per cent per annum from the date of application till the date of payment along with costt. Hearing fee is assessed at Rs. 100.00 only.