
(1957) 03 RAJ CK 0001
In the Rajasthan High Court
Case No : First Appeal No. 63 of 1954

Mt. Vidyawati and Another	Vs	APPELLANT
Lokumal and Another		RESPONDENT

Date of Decision : 22-03-1957

Acts Referred:

Constitution of India, 1950 — Article 300

Citation : AIR 1957 Raj 305 : (1957) RLW 404

Hon'ble Judges : Wanchoo, C.J.; Dave, J

Bench : Division Bench

Advocate : Prakashchandra and Hingorani, for the Appellant; Kansingh, Deputy Govt. Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Dave, J.—This is a first appeal by the plaintiffs in a suit for damages arising out of an alleged tort. It is directed against the judgment and decree of the Senior Civil Judge, Udaipur, dated 14-4-1954. The appellant No. 1 Mt. Vidyawati is widow of one Jagdishlal Kayasth, while appellant No. 2 Mt. Girjawati is her minor daughter. The deceased Jagdishlal was resident of Udaipur and working as a teacher. The respondent No. 1 Lokumal was a motor driver in the employment of the State of Rajasthan, respondent No. 2.

2. The appellants' case was that on 11-2-1951 at about 4 p. m., Jagdishlal was going on duty in connection with Census work and he was walking on the footpath by the side of a public road leading from Hathi Pole to Delhi Gate in Udaipur City. At that time, respondent No. 1, who was driving a jeep car No. RUM 49 belonging to the State of Rajasthan suddenly came from behind; he was rash and negligent in driving that jeep on the footpath whereby he knocked down Jagdishlal, causing him multiple injuries, including fracture of the skull and backbone.

Jagdishlal was immediately removed to the Hospital and treated there, but he

could not regain consciousness which he had lost immediately after the occurrence and ultimately he died on 14-2-1951. on account of the said injuries. The plaintiffs, therefore, claimed Rs. 25,000/- as damages from Lokumal and the State of Rajasthan.

2-a. Both the respondent contested the suit in the trial court on several grounds on account of which as many as 10 issues were framed. After recording the evidence of both the parties, the trial court found that jeep car No. RUM 49 belonged to the State and it was being used by the Collector, Udaipur. Respondent No. 1 Lokumal was a driver in the employ of the State. He had taken the said vehicle to Royal Auto Engineers Shop for repairs. He got it back at about 4 P.M. He and one Noor Mohammad were sitting therein and they were going from Hathipol to Delhi Dar-waja. A bus was going in front of this vehicle. The respondent wanted to overtake it. The driver of the bus had given way to respondent No. 1 but at the place where respondent No. 1 wanted to cross the bus. there was not enough space and so this driver took the jeep on the footpath and knocked down Jagdishlal. It has passed a decree for Rs. 15,000/- against respondent No. 1 in favour of the appellants. The suit against the State of Rajasthan has, however, been dismissed. It is against this judgment and decree that the present appeal had been filed.

3. It may be mentioned at the outset that respondent No. 1 has not filed any appeal in this Court. The appellants' objection is two fold. Their first contention is that this decree should also have been passed against the State of Rajasthan since it is vicariously responsible for the rash and negligent act of its employees. Their next contention is that their claim has been wrongly cut down by the trial court. It has already been mentioned above that the appellants had filed a suit for Rs. 25,000/-. in the trial court; but they have remained content with fixing the valuation of the appeal at Rs. 19,999/-.

4. Learned Deputy Government Advocate has contested the finding of the trial court regarding the rashness and negligence on the part of respondent No. 1. It is further contended that the State of Rajasthan was at any rate not responsible in tort, as claimed by the appellants.

5. It is not contested that Jeep Car bearing No. RUM 49 belonged to the State of Rajasthan or that it was placed at the disposal of the Collector for his use or that it was being driven on the day of occurrence by respondent No. 1 or that Jagdishlal was knocked down thereby and he died as a result of the injuries which he sustained on account of the accident.

6. The first point which, therefore, calls for determination is whether it was on account of rash and negligent driving by respondent No. 1 that Jagdishlal sustained his injuries. This need not detain us very long because it is not denied by learned Deputy Government Advocate that respondent No. 1 was prosecuted by the State for rash and negligent driving and he has been convicted on that charge. It does not, therefore, lie in the mouth of learned Deputy Government

Advocate now to argue that the act of respondent No. 1 was not rash or negligent. Even then, we have gone into the record of the trial court and we find that the plaintiff has examined P. W. 3 Rehmat Khan and P. W. 4 Nazarali who were sitting in the car at the time when the fateful accident took place. P. W. 3 is a motor mechanic.

He has stated that respondent No. 1 had brought the said car at the workshop of Royal Auto Engineers where he used to work. It was returned after repairs to respondent No. 1 at 4 p. m. When respondent No. 1 was taking the car back, he also went with him. When this car was going from the side of Hathipol to Delhi Gate, one bus was going ahead of it. Respondent No. 1 wanted to overtake the bus and so he blew his horn. The driver gave way and so respondent No. 1 tried to cross it, but as the space on the road was not enough, the front and rear wheels of the right side of the jeep went over the footpath and the car dashed against Jagdishal who was walking on the said footpath.

The witness proceeds to say that Jagdishal fell down on the bonnet of the car and the car proceeded for about 15 paces with Jagdishal still lying on the bonnet. When respondent No. 1 turned the steering of the wheel, Jagdishal fell down on the ground. P. W. Nazir Mohammad, who was with them, told the driver that he had killed a man and he should stop the car. The driver was able to stop the car when it further proceeded for about 40 paces.

Jagdishlal's condition became serious and he was removed to the Hospital by a constable who happened to come there. P. W. 4 Nazirali who was also in the car has given the same statement. Both these witnesses have stated that they had also appeared as a witness on behalf of the State in the Criminal Case against respondent No. 1. referred above. It is quite clear from their statements that respondent No. 1 was both rash and negligent in driving the car when he dashed against Jagdishal. Jagdishal was walking on the footpath and respondent No. 1 had no business to take the car over the footpath and knock him down.

If there was not enough space for the car to pass over the road when he was trying to cross the bus, then respondent No. 1 should not have tried to do so at such a place. He should have crossed the bus at a place where there could be enough space for two cars to move on the road without, fear of accident. It was urged by learned Deputy Government Advocate that respondent No. 1 was perhaps unable to slow down his car and he had no idea that he would knock down Jagdishal. In our opinion, this argument is of no value. Respondent No. 1 should not have in the first instance driven the car at a fast speed on the road and when he knew that there was not enough space on the road for his car to pass, he should have slowed it down.

When he took the risk of taking the car on the footpath, he must have known that it was likely to run over the pedestrians. It is further clear from the statements of these two witnesses that even after the accident, respondent No. 1 did not stop the car at once with the result, that Jagdishlal remained on the

bonnet for sometime and then he fell down. It was at the instance of P. W. 4 that respondent No. 1 stopped his car and he could do that only after it had further travelled about 40 paces. There is therefore no escape from the conclusion that respondent No. 1 was both rash and negligent in driving the car when the accident took place. It is significant that he himself has not challenged the finding of the trial court and filed any appeal in this Court. We are satisfied that the decision of the trial court on issue No. 6 is quite correct.

7. The next question which calls for determination is whether respondent No. 2 is liable to pay damages in tort on account of the negligence on the part of its employee respondent No. 1. The trial court has held that "the constitution and control of the Collector's office at Udai-pur was an instance of exercise of sovereign powers and the State was, therefore, not liable for the tortious act of its employee". Learned counsel for the appellant has urged that if respondent No. 1 were an employee of any car owner other than the Government, his employer would have been liable for damages in torts. The position of respondent No. 2; which is the State of Rajasthan in the present case, was no better than that of an ordinary employer because it was no part of its sovereign powers to keep vehicle at the disposal of the Collector and, therefore, respondent No. 2 was as much responsible as any ordinary employer would have been in similar circumstances. Learned Counsel has very frankly conceded that he has not been able to hit upon any decided case which may be on all fours with the present one: but he has referred to a number of other cases to support his views.

8. It is not contested by learned Deputy Government that if the jeep-car were to belong to a private person and if respondent No. 1 were his employee, then that person would have been vicariously liable to pay damages in torts on account of the misfeasance on the part of his employee. He, however, claims immunity for the State for its liability to pay damages in torts on the ground that the car was deputed by the State with "the Collector for his official duties, that the driver was also employed for driving the car for official purposes, that whatever the State had done was in exercise of its Sovereign or Governmental powers and, therefore, though the employee himself may be personally liable for damages to the dependants of the deceased, the State is protected from such liability on account of its Sovereignty. We have, therefore, to determine whether the State can claim immunity in the present case on account of its Sovereignty.

9. We have given due consideration to the arguments advanced on both the sides. It is true that Sovereignty is an acknowledged essential attribute of a State and in certain matters it is immune from responsibility for damages in torts committed by its employees. In England, no such action in torts used to lie against the Crown, in Common Law, firstly on the maxim that "The King can do no wrong", secondly, it was thought that the King could not be impleaded in his own courts. The procedure by way of petition of right was, however, available to the subject and in appropriate cases, the treasury used to pay compensation *ex-gratia*.

This immunity has, however, been brought to an end to a large extent by the Crown Proceedings Act, 1947 which came into force on 1st January, 1948. In India, the position is not yet settled by legislation and, therefore, we have to depend upon case law as it has developed from time to time. The earliest and the most important case on the subject is the *Peninsular and Oriental Steam Navigation Co. v. Secretary of State* 5 Bom HCR App 1 (A), which was decided in 1861. In that case a servant of the plaintiff company was taking a carriage drawn by a pair of horses belonging to it.

While the carriage was passing the Kidder-pore Dockyard, which was a Government dockyard, certain workmen in the Government employ dropped a piece of iron funnel casing which startled the plaintiff's horses and resulted in damage to one horse to the extent of Rs. 350/-. The plaintiff, therefore, brought an action for damages in torts against the Secretary of State for India. It was contended on behalf of the defendant that the State could not be liable for damages occasioned by the negligence of its officers, or persons employed in its service.

It was observed by their Lordships that, "This, as a general rule, is true, for it is an attribute of sovereignty, and an universal law, that a state cannot be sued in its own Courts without its consent." but it was observed at the same time, that the question as to the liability of the Secretary of State in Council to be sued depended principally upon the construction of Section 65 of the Government of India Act, 1858. Then, after going through the history of the East India Company and discussing the entire position of law, it was observed that.

"There is a great and clear distinction between acts done in the exercise of what are usually termed sovereign powers and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them."

Their Lordships came to the conclusion that the undertaking in which the defendant was engaged was such as could be carried on by private individuals, and, therefore, the plaintiffs' suit was decreed. So far as the proposition of law embodied in the last observation of their Lordships is concerned, there has been no controversy. In the same judgment, however, their Lordships made another observation which runs as follows :

"But where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by a sovereign, or private individual delegated by a sovereign to exercise them, no action will lie."

10. This observation has been interpreted in certain cases strictly and in other cases liberally. But so far as the present case is concerned, we think that it is not helpful to respondent No. 2, Learned Deputy Government Advocate has no doubt urged that the State had deputed the car for the Collector and employed respondent No. 1 in, exercise of its sovereign powers. But it may be pointed out

that it would be wrong to say that everything which a State does is done in exercise of its sovereign powers and not otherwise.

As pointed out by their Lordships in the above case, there is a great and clear distinction between acts done in exercise of what are usually called sovereign powers and acts done in the conduct of undertakings which may as well be carried on by private individuals. Ordinarily, the Government only gives conveyance allowance to those officers who are expected to keep conveyances and who have to do a good deal of touring in connection with their official work. The owners of the vehicles who receive such allowance would not be exempt from vicarious liability if any misfeasance is committed by their drivers and an action in torts is brought against them, even though the accident giving rise to such an action takes place at a time when the driver is taking the car for some official business.

For instance, if the driver of a Collector is taking the car when the Collector is going to his office or to inspect a site in connection with his official duty and he overruns somebody on account of his negligence, the Collector would not be held immune on the ground that he is getting conveyance allowance from the State for that car. Now, instead of giving such an allowance, the Government is keeping a few vehicles for certain departments and they are placed at the disposal of certain officers. This may be either because the officers cannot afford to buy and maintain their own cars or because it is thought that the maintenance of Government vehicles is conducive to greater efficiency.

It may be urged that such cars are not meant for private undertakings or commercial purposes; but this reasoning cannot stand because, at the same time, it is clear that the purchase or maintenance of such vehicles has nothing to do with, the exercise of sovereign powers. It does not require any sovereign authority or Governmental powers to purchase or maintain cars or to keep drivers for driving the same. There are a number of public and private companies and persons who also purchase cars and give them to their employees in order that they may render better service to them.

They cannot be allowed to invoke any immunity for tortious acts of their employees. In our opinion, the State is in no better position in so far as it supplies cars and keeps drivers for its employees in its civil service. It may be clarified that we are not here considering the case of drivers employed by the State for driving vehicles which are utilised for military or police service. In that case, it may perhaps be urged with some justification that the State would not be responsible for the rashness or negligence of its drivers when the tortious act is committed by them when they are engaged in their duties connected with law and order of military activities.

The reason is that an ordinary person cannot keep vehicles and drivers for police or military purposes and it is only the sovereign authority which can exercise those powers. But when Government employs persons to drive vehicles on public

roads for purposes for which ordinary persons also do. then, in our opinion, the State may be held vicariously responsible for the acts of its employees just as any private employer. In the present case, the car was being brought from a private workshop after repairs just as a car of any private owner would have been brought back. The driver was not taking the car to quell any riot or disturbance and there was no question of his being employed in exercise of sovereign powers. Under the circumstances, we do not see any reason why respondent No. 2 should not be held responsible just as any other ordinary employer would have been.

11. Learned Deputy Government has cited a few cases in support of the stand taken by him and it would be proper to discuss them. He has drawn our attention to a decision of this Court in *Gopalsingh v. Union of India*, AIR 1957 Raj 17 (B). That case is however, easily distinguishable from the present one. It was a case in which an action was taken against a public servant by his superior officer during the course of his statutory duties and the subordinate officer had claimed damages from the Union of India on the basis of an allegation that his superior officer had made a mistake in taking action against him.

It was held that the Union of India could not be held responsible vicariously for the act of its employee because the action in question was not taken by the will or order of the Union of India. The present case is of a very different nature and the observations made in the case cited above do not apply to it. It may be pointed out that even in the above case it was made quite clear that a distinction must be made between acts done by the Crown in pursuance of ventures which a private individual might undertake equally well and acts done in exercise of Governmental powers which could not be lawfully exercised save by the sovereign authority or persons to whom the sovereign authority might delegate those powers.

The employment of a driver for driving a vehicle placed at the disposal of another employee is a thing which could equally be done by any private individual and it cannot be said that such power could not be lawfully exercised except by a sovereign authority or a person to whom sovereign authority might be delegated. Moreover the decision in the above case proceeded on the view that when the duty to be performed is imposed by law and not by the will of the employer, the employer is not liable for the wrong done by the agent in such employment.

Powers and duties, which are fixed by law, if they are not directly commercial in nature, may generally speaking be governmental, and act done in the exercise of such powers, or in the purported fulfilment of those duties are not within the rule of vicarious liability. In the above case, whatever action was taken by the appellants' superior against him was in exercise of powers which were laid down by law.

12. The next case cited by learned Deputy Government Advocate is *A. M Ross v. Secy, of State*. ILR 37 Mad 55 : (AIR 1915 Mad 434) (C). It was a case in which

the plaintiff had sued for damages in respect of two orders passed by the Collector of Ganjam suspending and dismissing a local agent of an association which was recruiting labour for Assam under the Assam Labour and Emigration Act. It is obvious that the case was of a very different nature and it has little bearing on the facts and circumstances of the present case.

13. Another case cited by him is Secy. of State Vs. Srigobinda Chaudhuri, In that case, the plaintiff, whose estate was released from the management of the Court of Wards, had complained that the Manager appointed by the Court of Wards had not done his duties by realising all monies with diligence or had not accounted to the Court of Wards for certain moneys which he had collected. It was held that the Secretary of State "could not be sued in respect of an act of a subordinate in the exercise of sovereign or Governmental power.

14. The next case cited by him is Secy. of State Vs. Ramnath Bhatta, In that case, the Deputy Collector had paid the money to a wrong person in exercise of his statutory duties and so it was held that the Secretary of State for India was not liable for a wrongful act of an officer, which was done in performance of his statutory duties. It would be enough to say that the driver in the present case was not performing any statutory duties. He was doing the same job which a driver of a private employer would be doing and, therefore, these two cases are also of no avail in the circumstances of the present case.

15. The next case referred is Ram Gulam and Another Vs. Government of U.P., In that case the plaintiff's ornaments were stolen away by somebody from his house. The police was able to recover them and they were produced in the Court as exhibits, but later on, they were stolen away from the Malkhana of the Collector and were not traced. In the circumstances, it was held that the rule embodied in the maxim "respondeat superior" is subject to the well-recognized exception that a master is not liable for the acts of his servants performed in discharge of a duty imposed by law.

16. He next referred to the case of Shan-karrao Balaji v. Shambihari, AIR 1951 Nag 419 (G). It was a suit for damages for assault and battery and trespass to property. Defendant No. 6 was Provincial Government and defendants Nos. 1 to 3 were police officers and the Government was sought to be held responsible for their acts. It was observed that,

"If the first three defendants acted for the purpose of maintaining or restoring order they clearly acted in the exercise of powers which can only be exercised by the sovereign authority in the land, or by those to whom these powers have been delegated. On the other hand, if they were not so acting but only pretended to act in such manner for their own private ends then they were not acting within the scope of their commercial employment, and so an ordinary employer would not be liable."

Learned Deputy Government Advocate has drawn our pointed attention to the following observation appearing in the above case:-

"In the case of a Provincial Government its servants are employed either for the doing of "Commercial acts" or "Sovereign" acts. If a tort is committed within the scope of what may be termed "Commercial" employment then the Government would probably be liable provided other necessary factors were also present, but if the acts fall within the scope of their "sovereign" employment then the Provincial Government is not liable."

17. It is contended on the basis of the above observation that the State can be held liable in torts for the acts of its employees only if they are employed for some "commercial undertaking" and that all acts other than commercial acts are "sovereign" acts. It may be observed that the learned Judges were there not considering the question whether every act on the part of the Government which is not commercial would come under the category of "sovereign" acts. If that is the meaning which is placed on this observation, then we would respectfully differ since, in our opinion, it cannot be said that every act of the Government, which is not commercial, is a sovereign act.

18. Another case cited by learned Deputy Government Advocate is AIR 1944 41 (Federal Court) In that case, the appeal before their Lordships of the Federal Court arose out of a suit for damages for false imprisonment instituted by the appellants against the Government of Madras and four police officers. In that case, the police had misunderstood the instructions and wrongly detained the widow of the ex-Maharaja of Nabha and her daughter.

In that case, the learned Judges of the High Court had based their decision in favour of the Province of Madras on two grounds: (1) that defendants 2 to 5 acted in exercise of their "statutory power" and (2) that the State could not be held liable for the improper conduct of public servants unless those acts had been done under the orders of the Government or had been subsequently adopted and ratified by it. It was observed by Spens C. J. that, "There, are obvious, difficulties in this case in accepting the view that defendants 2 to 5 were discharging a "statutory duty" in their dealings with the appellant. As we however agree with the learned Judges as to the other ground of their decision in favour of defendant 1, it is unnecessary to discuss this aspect of their decision". It may be remarked that the negligence on the part of the employees of the State in the above case was not of a kind for which an ordinary employer could be held liable.

19. Lastly, reference has been made to the AIR 1948 121 (Privy Council) In that case the respondent urged that he was entitled to recover by that action his arrears of pay from the purported order of dismissal up to the date of action. In that connection it was observed by their Lordships that "It is unnecessary to cite authority to establish that no action in tort can lie against the Crown and therefore any right of action must either be based on contract or conferred by statute." It may be remarked that the above observations of their Lordships should be understood in the context in which they were made. Their Lordships did not mean to disapprove the view expressed in 5 Bom HCR App 1 (A), which

they had already approved in *Secretary of State v. Moment* ILR 40 Cal 391 (PC) (J).

20. It would thus appear that in the facts and circumstances of this case, the cases cited by learned Deputy Government Advocate are not helpful to respondent No. 2. Article 300 of the Constitution of India provides that, "the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of parliament or of the Legislature of such state enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or being sued if this constitution had not been enacted.

The provisions of Section 65 of the Government of India Act, 1858 were reproduced in Section 32 of the Government of India Act. 1915 and also in Section 176(1) of the Government of India Act, 1935. There can, therefore, be no question of going backwards on the position of law which was explained Sir Barnes Peacock C. J. in 5 Bom HCR App 1 (A). We have already discussed above that even according to the view taken in that case, respondent No. 2 would be liable for the tort of its employee, since it was committed in the course of a transaction in which any private person would engage himself.

It may be added that the State is no longer a mere police state and this country has made vast progress since the above decision was made. Ours is now a welfare State and it is in the process of becoming a full fledged socialistic state. Every- day. it is engaging itself in numerous activities in which any ordinary person or group of persons can engage himself or themselves. Under the circumstances, there is all the more reason that it should not be treated differently from other ordinary employers when it is engaging itself in activities in which any private person can engage himself.

21. As regards the quantum of damages, we have already mentioned above that respondent No. 1 has not filed any appeal. No argument has been raised on behalf of respondent No. 2 also for reducing the amount awarded by the trial court. The appellants have no doubt claimed Rs. 5,000/- more, but they have not given any indication as to how this sum is justified. It was faintly urged that the deceased might have earned this much amount if he had remained alive; but it should not be forgotten that the appellants are getting capitalised value of all that the deceased would have earned in his lifetime and, therefore, we do not see any reason to increase the amount.

22. The appeal is, therefore, partly allowed. The trial Court's decree be amended and a decree for Rs. 15,000/- be given against respondent No. 2 also in favour of the appellants. The appellants will receive proportionate costs from the respondents in both the Courts.