

(1978) 10 MP CK 0024

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 18 of 1973

Narayanlal and Others

APPELLANT

Vs

Rukhmanibai and Others

RESPONDENT

Date of Decision : 16-10-1978

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 105

Citation : (1979) ACJ 261 : AIR 1979 MP 74 : (1980) ILR (MP) 807 : (1979) JLJ 461 : (1979) 24 MPLJ 405

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J;B.R. Dubey, J

Bench : Full Bench

Advocate : S.M. Jain, for the Appellant; S.N. Gupta and Surjig Singh, for the Respondent

Judgement

Sohani, J.

The following question has been referred to this Bench for opinion:--

"Whether the act of a driver of a vehicle in giving lift to a person, in disregard of any statutory rule or prohibition, while driving the vehicle in execution of the owner's business, can be held to be the performance by the servant of an act for which the owner of the vehicle cannot be held vicariously liable?"

The facts giving rise to the aforesaid question have been set out in the order of reference. It has been found that appellant No. 2 was employed by appellant No. 1 as a driver of his vehicle for the purpose of transporting goods from Udaigarh to Indore, that the accident took place while the vehicle was being so driven by appellant No. 2, that appellant No. 2 was not prohibited by appellant No. 1, from giving lift to anyone in the truck when the goods were to be transported from Udaigarh to Indore, and that the deceased who was the owner of the goods which were being transported from Udaigarh to Indore, was riding in the truck at the material time with the consent of the driver, appellant No. 2. It was also found that the accident took place as a result of negligent driving of the vehicle

by appellant No. 2. Appellant No. 1, the owner of the vehicle, however denied his liability for the aforesaid negligent act of his servant on the short ground that the servant had in disregard of Rule 105 framed under the Motor Vehicles Act, 1939 providing that no person should be carried in a goods vehicle other than a bona fide employee of the owner or the hirer of the vehicle. Relying on a decision reported in *Bhaiyalal Godre and Others Vs. Smt. Rajrani and Others*, , it was urged that as there was a prohibition existing in consequence of a statutory rule and as the servant had acted in disregard of the statutory rule, the owner could not be held vicariously liable for the act of the servant. The Division Bench doubted the correctness of the proposition enunciated in *Bhaiyalal v. Rajrani* (supra) and has, in consequence, made this reference. It is in these circumstances that the question has come up before us for consideration.

Before we proceed to consider the question referred to us, it would be useful to have a brief look at the historical origin of the doctrine of vicarious liability. We cannot do better than reproduce the following passage in the judgment delivered by Scarman LJ reported in *Rose v. Plenty* (1976 ACJ 387).

"Let me begin with a statement of the general principle of vicarious liability, as I understand it in its application to compensation for accidental damage. In words which have frequently been quoted both in the Courts and in the Universities. Salmond on Torts (16th Edn. 1973, p. 462) refers to the basis of vicarious liability for accidental damage as being one of public policy. That view is supported by quotations (dated no doubt, but still full of life) of a dictum of Lord Brougham (*Duncan v. Findlater* (1839) 6 C1 & Fin 894 at 910) and of another, one hundred years or more earlier of Sir John Holt (*Hern v. Nichols* (1701) 1 Salk 289). That it is socially convenient and rough justice (*I. C. I. Ltd. V. Shatwell* (1964) 2 All ER 999 at 1012) to make an employer liable for the torts of his servant in the cases to which the principle applies, was recognised in *Limpus v. London General Omnibus Co.* (1862-1 H & C 52ft). See the judgment of Wiles, J. (1 H & C 539). I think it important to realise that the principle of vicarious liability is one of public policy. It is not a principle which derives 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."

Therefore, the concept of trespass or the concept of agency in determining the master's liability for the acts of his servants is, in our opinion, not relevant. The only relevant considerations, before the master is held liable for the act of his servant, are whether the servant is liable and whether the act is done by the servant in the scope or course of his employment. In *Young v. Edward Box & Co. Ltd.* ((1951) 1 TLR 789), Lord Justice Denning stated the proposition thus:

"The next question is how far the employers are liable for their servant's conduct. In order to make the employers liable to the passenger it is not sufficient that they should be liable for their servant's negligence in driving. They must also be responsible for his conduct in giving the man a lift. If the servant has been forbidden, or is unauthorised, to give anyone a lift, then no doubt the

passenger is a trespasser on the lorry so far as the owners are concerned, but that is not of itself an answer to the claim xxx. In my opinion, when the owner of a lorry sends his servant on a journey with it, thereby putting the servant in a position, not only to drive it, but also to give people a lift in it, then he is answerable for the manner in which the servant conducts himself on the journey, not only in the driving of it, but also in giving lifts in it, provided, of course, that in so doing the servant is acting in the course of his employment".

According to Lord Denning, if the driver is proved to have acted in the course of his employment in giving the plaintiff a lift, this fact is sufficient to make the master vicariously liable. This test, enunciated by Lord Justice Denning, has been approved by the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, .

The next question for consideration is what are the acts of the servant which fall within the purview of the expression "in the course of the employment". As pointed out by the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, the master is not only liable for the negligence of the driver if that driver is his servant acting in the course of his employment, but also when the driver is, with the master's consent, driving the vehicle on the master's business or for the master's purposes. It is, however, urged on behalf of appellant No. 1 that as his servant, appellant No. 2, had, in giving lift to the deceased acted in disregard of a statutory rule, the act of the servant could not be held to be an act in the course of his employment. The contention advanced on behalf of appellant No. 1 is that if there is a prohibition either by the master or by any provision of law, an act in disregard of the prohibition is outside the scope of employment of the servant. Reliance is placed on the Division Bench decision of this Court in Bhaiyalal Godre and Others Vs. Smt. Rajrani and Others, .

Now, the decision in Bhaiyalal v. Rajrani (supra) is based on a decision reported in Twine v. Bean's Express Ltd. (1946 1 All ER 202). In that case, it was found that the express prohibition on giving lifts was not only a prohibition but also a limiting factor on the scope of the employment. Applying that principle to a case where the servant has acted in disregard of a statutory rule would be tantamount to holding that directions given by the master and the statutory provisions, dealing with the manner in which the act should be performed define or limit the scope of employment of a servant. Such a construction, in our opinion, fails to take into account the distinction between a prohibition which limits the scope of the employment of a servant and a prohibition which merely limits the manner in which the servant is required to execute the work which he is employed to do (Canadian Ry. Co. v. Lockhart AIR 1943 PC 63). In our opinion the learned Judges of the Division Bench, in deciding Bhaiyalal Godre and Others Vs. Smt. Rajrani and Others, failed to take into account the aforesaid distinction and the proposition of law enunciated in that case that the act of giving a lift to an unauthorised person is not merely a wrongful mode of performing an act of the

class which he was employed to perform but performance of an act of a class which he was not authorised to perform at all, is stated too broadly and, with respect, we regret our inability to agree with the proposition so stated. It is a question of fact to be determined in each case, whether the prohibition defines the sphere of employment or it merely deals with the conduct within the sphere of employment.

Now, a statutory rule providing that no person should be carried in a goods vehicle other than a bona fide employee of the owner or hirer of the vehicle deals with the conduct of the driver within the sphere of employment. The sphere of employment of appellant No. 2 is to drive the vehicle in execution of the master's business from Udaigarh to Indore. That sphere is not in any manner limited by the prohibition contained in the statutory rule in question.

For all these reasons, it must be held that the proposition enunciated in *Bhaiyalal Godre and Others Vs. Smt. Rajrani and Others*, does not lay down correct law and, in our opinion, the answer to the question referred to us is that the act of a servant, employed to drive a vehicle, in giving lift to a person in disregard of a statutory rule or prohibition while driving the vehicle in execution of the owner's business, is an act for which the owner is vicariously liable.

The matter be now placed before the Division Bench for deciding the appeal in the light of the aforesaid opinion.