
(1981) 06 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : First appeal from the Order No. 264 of 1980

Neelam Devi and others

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 02-06-1981

Acts Referred:

Constitution of India, 1950 — Article 300(1)

Citation : (1981) 06 P&H CK 0016

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : H.S. Giani, for the Appellant; Amarjit Chaudhry, for the Respondent

Final Decision : Dismissed

Judgement

Sukhdev Singh Kang, J.—Whether the driver driving the military vehicle at the time of the accident, was acting in the discharge of the sovereign function of the State or such delegated authority, and, as such, the Union of India, is immune from all liability for his tortious acts, is the short but meaningful question raised in this appeal. The facts that enwomb the legal controversy may be set out:--

On December 18, 1978, at 3.30 P.M. Harbhajan was going from his village Barwala on a cycle. A military truck driven by respondent No. 2 in a rash and negligent manner collided against Harbhajan when he was near the Government Tubewell, Harbhajan died on the spot.

Kaushalya Devi widow of Harbhajan and Kartar Devi, mother of Harbhajan, as also the children of Harbhajan have filed a claim application, claiming Rs. 20,000/-, as damages The Union of India and the driver, who were impleaded as respondents, resisted the claim. It was averred by them that respondent No 2 (the driver) was coming to the unit lines. He blew the horn Harbhajan went to the left side of the road. In the meantime, a civilian vehicle crossed the vehicle of respondent No. 2. He again blew the horn and also applied the brakes. The cyclist did not move and as a consequence, the vehicle struck against the cyclist

who fell down and sustained injuries. The truck was stopped at a distance of 500 meters. A technical objection was also raised that while driving the army truck, respondent NO. 2 was performing the duties, which were covered under the sovereign functions of the State, and, therefore both were not liable to pay damages. The claim Tribunal framed the following issues:--

- (1) Whether the accident occurred on account of the driver of the vehicle No. 73B, 1188N in a rash or negligent manner?
2. Whether the death of Harbhajan son of Jiwan occurred on account of the said accident?
3. To what amount of compensation if any the petitioners are entitled ?
4. Whether the respondent is not liable on account of the accident occurred in performance of duties by the employees and is covered under the Sovereign function of the State ?
5. Whether the petition is barred by time?
6. Relief.

It decided issues Nos. 1 and 2 in favour of the claimants He held that the respondent No. 2 had driven the vehicle negligently, and that the death of Harbhajan was the direct result of the accident caused by respondent No 2. He also decided issue No. 3 in favour of the claimants and calculated the damages at Rs. 39,400/-. It, however, decided issue No. 4 against the claimants and held that respondent No. 2 was driving the vehicle in the exercise of the sovereign functions of the State and, therefore, the respondents were not liable to pay any compensation. It decided issue No. 5 against the respondents and held that the claim was filed within time. In view of his findings on issue No. 4 it dismissed the claim application. Dissatisfied with this order of the Tribunal, the claimants have filed this appeal. The sovereign functions of the State have not been defined by any statute. The vexed questions as to what is "sovereign function" has been taxing the minds of the courts for quite sometime. In a recent judgment, the Full Bench consisting of five Hon"ble Judges of this Court in Baxi Amrik Singh v. The Union of India (1973) 75 P.L.R. 1, after an exhaustive review of the ratio of the various authorities on the subject, set down certain rules of guidance, which are--

1. Under Article 300(1) of the Constitution of India, the Union of India and the States in our Republic have the same liability for being sued for torts committed by their employees as was that of the East India Company.
2. The nature and extent of this liability, is that the Union of India and States are liable for damage occasioned by the negligence of servants in the service of the Government if the negligence is such as would render an ordinary employer liable.
3. That in view of the rule stated above, the Government is not liable if the tortious Act (act) complained of has been committed by its servant in exercise of

its sovereign powers, by which we mean powers that cannot be lawfully exercised except by sovereign or a person by virtue of delegation of sovereign rights.

4. The Government is vicariously liable for the tortious acts of its servants or agents which are not proved to have been committed in the exercise of its sovereign functions or in exercise of the sovereign powers delegated to such public servants.

5. The mere fact that the act complained of was committed by a public servant in course of his employment is not enough to absolve the Government of the liability for damages for injury caused by such act.

6. When the State pleads immunity against claim for damages resulting from injury caused by negligent act of its servants, the area of employment referable to sovereign powers must be strictly determined. Before such a plea is upheld, the Court must always find that the impugned act was committed in the course of an undertaking or an employment which is referable to the exercise of the delegated sovereign powers

7. There is a real and marked distinction between the sovereign functions of the Government and those which are not sovereign, and some of the functions that fell in the latter category are these connected with trade, commerce, business and industrial undertakings.

8. Where the employment in the course of which the tortious act is committed is such in which even a private individual can engage, it cannot be considered to be a sovereign act or an act committed in the course of delegated SOvereign functions of the State.

9. The fact that the vehicle, which is involved in an accident, is owned by the Government and driven by its servant does not render the Government immune from liability for its rash and negligent driving. It must further be proved that at the time the accident occurred, the person driving the vehicle was acting in discharge of the sovereign function of the State, or such delagated authority.

10. Though maintenance of Army is a sovereign function of Union of India, it does not follow that the Union is immune from all liability for any tortious act committed by an Army personnel.

11. In determining whether the claim of immunity should or should not be allowed the nature of the act the transaction in the course of which it is committed, the nature of the employment of the person committing it and the occasion for it, have also to be considered.

H.S. Bordoloy R.W. 1 is respondent No. 2 himself. He gave an eye witness account of the accident. He stated that he was driver of the vehicle involved in the accident. On the 18th of November, 1978, he was coming back after completing his training along with some boys at about 3 P.M. He was about 3

kilometres away from Barwala towards Ambala when the accident took place. In cross examination, he stated that he was on routine training on which he had gone and therefore he was going back to his unit Rada Kant (R. W. 2) stated that on the 18th of December, 1972, he went to Barwala on training in an army vehicle, which was driven by respondent No. 2. After completing the training they were coming back in a convoy. This training is a yearly course and a large number of force (personnel) is involved in that. From the statements of these two witnesses, it is clear that they are both members of the armed forces. They had gone to Barwala for training. The training of the armed forces in the art of war and for professional accomplishment is surely a sovereign act of the State. The military training cannot be imparted to the civilians. It cannot be legally imparted by anybody except the army authorities. Respondent No. 2 himself was receiving this training. They were returning to their lines when the accident took place. In these circumstances, the return journey of respondent No. 2 in the army vehicle is an integral part of the training itself. It is inextricably linked up with training. The army personnel were moving in a convoy. In every army operation the movement of the troops is an important part of the operations themselves. Respondent No. 2 was not driving the vehicle just to provide certain services to the army, which may be provided by any civilian transporter. The movement of the troops in large numbers in the army vehicles to and fro the place of training or exercise is a part of the training or exercise. The troops are never taken to such training exercise or courses in private transport. No private person can perform this function. I have dilated upon this aspect of the matter at some length, because it has been held by the Full Bench under proposition No. 6 that the area of employment referable to sovereign powers must be strictly determined.

In certain cases when the army drivers have been involved in accident, while they were not discharging any sovereign functions, the courts had entertained claims. For example, in *Union of India Vs. Jasso and Others*, the vehicle driven by the army driver was loaded with coal which was being taken to the general headquarters at Simla. Surely, any private carrier could provide this service. In *Smt Satya Wati Devi v. Union of India through Satya Wati Devi Vs. Union of India and Others*, , an army driver was taking a hockey team comprising members of the armed forces when he met with an accident. The members of the team were not concerned with any official duties. It was in these circumstances, held that the driver was not performing any sovereign functions while carrying hockey team. Similarly, in *Union of India Vs. Sugrabai and Others*, the claim for immunity from damages was repelled, because the military driver was carrying a machine when he met with an accident. This job could be performed by any private transporter. *Smt. Iqbal Kaur Vs. Chief of Army Staff*, the driver was instructing recruits in the art of driving. So, it was not accepted that he was performing any duties in exercise of sovereign functions. In *Baxi Amrik Singh's* case (supra) the driver who was an armyman had been entrusted with the duties of checking military personnel and he was moving about in connection with his

duties when he met with an accident. It was held by the Full Bench that the driver was performing duties in exercise of the sovereign functions. The facts of the present case are also akin to the facts of Baxi Amrik Singh's case (supra).

For the foregoing reasons, there is no merit in this appeal and the same is dismissed. No costs.