
(1989) 02 AP CK 0035
In the Andhra Pradesh High Court

Nerati Pichamma and Another

APPELLANT

Vs

Pasumala Arogiya and Others

RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 5, 59

Citation : (1991) 2 ACC 197

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Judgement

K. Ramaswamy, J.—Both the appeals and the civil revision petition are disposed of together as they arise out of the same cause of action.

2. Both the appeals are filed against the common order and decrees in O.P. Nos. 216 of 1983 and 218 of 1983, dated August 19, 1985, on the file of the Motor Accidents Claims Tribunal, Nalgonda.

3. The appellants in C.M.A. No. 1247 of 1985 are the father and mother of the deceased, who are claimants in O.P. No. 216 of 1983. They preferred this appeal claiming compensation of Rs. 50,000/- as against Rs. 20,000/- awarded by the Tribunal below to the 1st petitioner and dismissing the claim of the 2nd petitioner therein.

4. The appellant in C.M.A. No. 1407 of 1985 is the driver, 2nd respondent in the very same O. P. No. 216 of 1983. He filed this appeal aggrieved by the direction of the court below to pay the compensation to the claimant.

5. Civil Revision Petition No. 3749 of 1985 is filed by the driver, 2nd respondent in O.P. No. 218 of 1985, aggrieved by the order and decree therein, wherein he was directed to pay Rs. 1,000/- as compensation to the injured persons by name Ashok in the same accident.

6. Thus, all the three cases are disposed of together by a common judgment.

7. The admitted facts are that one K. Narayana Reddi, first respondent in both

the O.Ps., is the owner and one Arogiya, second respondent in both the O.Ps. is the driver of the tractor-trailer bearing Nos. APL 4722 and APN 5105 respectively. One Ludharaiah, father of the driver and the 2nd respondent driver took the tractor-cum-trailer on 21.8.1983 on hire for 15 days from transplantation work and they brought the same to Dattapuram and parked it in the open space in front of the school. On the fateful day, i.e., on September 1, 1983, in the early hours at 5.00 a.m. when the driver started the tractor and drove it in the reverse direction in a rash and negligent manner, without noticing the deceased and the injured who were sleeping there, the deceased by name Rajaiah aged 18 years, a cowboy, was run over by the tractor and one Ashok sustained injuries. The father and mother of the deceased laid their claim for compensation of Rs. 50,000/- in O.P. No. 216 of 1983 and the injured person, Ashok, laid his claim for compensation in O.P. No. 218 of 1983. In O.P. No. 216 of 1983, the Tribunal below has awarded a sum of Rs. 20,000/- to the 1st petitioner, mother of the deceased and dismissed the claim of the 2nd petitioner, the Tribunal further directed the 2nd respondent driver to pay the compensation amount to the 1st petitioner while dismissing the claim as against the owner of the vehicle, the first respondent therein. Dissatisfied with the order and decree of the court below, the claimants filed C.M.A. No. 1247 of 1985.

8. The driver, 2nd respondent in O.P. No. 216 of 1983, is the appellant in C.M.A. No. 1407 of 1985. He filed this appeal aggrieved by the direction of the court below, directing him to pay the compensation amount to the 1st petitioner while dismissing the claim against the owner, 1st respondent, C.R.P. No. 3749 of 1985 is filed by the driver, 2nd respondent in O.P. No. 218 of 1983, which was filed by the injured Ashok in the same accident. The court below awarded Rs. 1,000/- to the injured and directed the driver to pay that amount while dismissing the claim as against the owner of the vehicle.

9. Two contentions have been raised by Mr. D. Reddappa Reddy, learned Counsel for the driver, appellant in C.M.A. No. 1407 of 1985 and for the revision petitioner in C.R.P. No. 3749 of 1985.

10. Firstly, it is contended that Arogiya had not driven the vehicle rashly and negligently and no legal liability can be fastened to the driver. I find no force in this contention. The court below on a careful consideration of the entire oral and documentary evidence found that the driver was responsible for the accident. In fact, PW 2, the injured in the same accident and claimant in O.P. No. 218 of 1983 is a direct witness to the occurrence. The fact that PW 2 sustained injuries during the course of the same accident clearly shows that he witnessed the occurrence. Moreover, his evidence is quite clear and cogent. PW 2 stated that the wheels of the trailer actually ran over the deceased and also hit him (PW 2). He has no axe to grind against the appellant driver. The court below has rightly held that the driver alone was responsible for the accident accepting the evidence of PW 2. I, therefore, confirm the finding that the accident occurred due to rash and negligent driving of the appellant.

11. Next, it is contended that Narayana Reddi, being the owner of the vehicle, by virtue of operation of Section 59 read with Section 5 of the Motor Vehicles Act, 1939 (Act 4 of 1939), for short "the Act", continues to be the owner and that therefore, he is liable for payment of damages for death of the deceased or bodily injury to the victim. I find no force in this contention also. It may be that, u/s 59 of the Act, the general conditions attached to the permit arc, the permit shall not be transferred except with the permission of the transport authority which granted the permit and that the owner continues to be governed by the provisions of the Act for use of the vehicle in the public place in the manner provided in the permit. Section 5 of the Act is also to the same effect. But, the crucial question is whether there is vicarious liability between the owner and the driver of the vehicle. Admittedly, the driver had taken the vehicle for agricultural operations. Unless there is jural relationship of master and servant between the owner and driver, the doctrine of vicarious liability cannot be extended to the third party. In *Sitaram Motilal Kalal Vs. Santanuprasad Jaishankar Bhatt*, their Lordships of the Supreme Court considered the doctrine of vicarious liability. Speaking for the Bench Hidayatullan, J. (as he then was) held:

The law is settled that a master is vicariously liable for the acts of his servant acting in the course of his employment. Unless the act is done in the course of employment, the servant's act docs not make the employer liable. In other words, for the master's liability to arise, the act must be a wrongful act authorised by the master or a wrongful and unauthorised mode of doing some act authorised by the master. The driver of a car taking the car on the master's business makes him vicariously liable if he commits an accident. But it is equally well- settled that if the servant, at the time of the accident, is not acting within the course of his employment but is doing something for himself the master is not liable. There is a presumption that a vehicle is driven on the master's business and by his authorised agent or servant but the presumption can be met. It was negatived in this case, because the vehicle was proved to be driven by an unauthorised person and on his own business. The de facto driver was not the driver or the agent of the owner but one who had obtained the car for his own business not even from the master but from a servant of the master prima facie the owner would not be liable in such circumstances.

XXX XXX XXX The law with regard to agents is the same. As was observed by Lord Atkinson in *Samson v. Aitchison* (1912) AC 884, it is a matter of indifference whether a person by styled a servant or agent since it is the retention of control which makes the owner or the principal responsible. Just as the tort must be committed by a servant either under the actual control of his master or while acting in the course of his employment, the act of agent will only make the principal liable if it is done within the scope of his authority. By a process of ratiocination, the courts have made a slight distinction by attempting to find a "right to control" as the basis of the master's liability and have distinguished it from a "right to control" in cases of simple agency to bring the two cases together. We find it simpler to state the law that an agent will make the principal

responsible so long as the agent does the act within the scope of his authority or does so under the actual control of the principal. We do not subscribe to the extension of the doctrine that the act of the servant or the agent must be for the master's benefit. This extension was made by Willes, J. in *Barwick v. English Joint Stock Bank* LR (1867) 2 Ex 259. The word "benefit" is vague and it is better to adhere to the words "course of employment" or the "scope of authority". There is much institutional criticism of such extension. Similarly, we are doubtful whether the extension of the principle by the introduction of the doctrine of implied authority, which was relied upon in the school master's case referred to above, was quite correct. If the dictum is accepted, not only the master would be liable for what he may be supposed to have "impliedly authorised" the servant to do (however illegal) but also for all the servant's negligence not in doing his duty but in doing something on his own account when he should be properly acting for the master.

The above decision was followed in *Devki Devi Tiwari and Others Vs. Raghunath Sahai Chatrath and Others*, by a Division Bench of the Allahabad High Court. Thus it is settled law that unless the jural relationship of master and servant is established between the owner of the vehicle and the person who drove the vehicle, vicarious liability cannot be fastened merely because the owner happened to entrust the vehicle to third party and the accident occurred when the third party was driving the vehicle. The doctrine of vicarious liability has arisen only on account of jural relationship that for every tortious act committed by the servant, the master should be made liable. Otherwise, the master could easily escape the liability for the tortious act committed by the servant during the course of employment and for the benefit of the master. In this case, since the jural relationship of master and servant is absolutely lacking, the Tribunal below is well justified in exculpating the liability of the owner and I do not find any compelling reasons to differ from the conclusion arrived at by the Tribunal below.

12. It is contended by Mr. Jaganmohan Reddi, learned Counsel for the appellants-claimants in C.M.A. No. 1247 of 1985 that Exh. B-1 clearly shows that there is an agreement that the said Arogiya alone should undertake the liability if any such liability has arisen on account of the accident or unauthorised user of the vehicle and therefore, it is clear that he has undertaken a special responsibility for the damages due to unauthorised user of the vehicle handed over to him by the owner thereof. He further contended that the deceased is aged 18 years and he would have contributed even at the rate of Rs. 10/- per day at least for over a period of 12 to 15 years and the court below committed error in deciphering the reasons for granting Rs. 20,000/- in lump sum. I find no force in the contention. Admittedly, the deceased is only a cow boy and it is not an assured employment. He may be earning Rs. 10/- per day so long as there is work. Since it is a precarious work, there is no continuity of assured employment. That apart, the deceased after attaining majority and after getting married, the possibility of his contributing the entire earnings to the family would gradually recede, and he may not contribute the same amount even after marriage to the parents.

Considered from either perspective, the amount of Rs. 20,000/- granted by the Tribunal below cannot be said to be arbitrary. But, however, the claimants are entitled to interest at 9 per cent per annum on the amount awarded by the Tribunal below from the date of the claim till the date of realisation.

13. For all the aforesaid reasons, the appeal C.M.A. No. 1247 of 1985 is allowed to the extent indicated above, but without costs.

14. The appeal C.M.A. No. 1407 of 1985 and C.R.P. No. 3749 of 1985 are dismissed and there shall be no order as to costs.