
(2005) 01 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 362 of 1999

Pritam Chand

APPELLANT

Vs

Himachal Road Transport Corporation and Another

RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Motor Vehicles Act, 1939 — Section 173, 173(1), 92, 92A(1), 92A(2)
Motor Vehicles Act, 1988 — Section 163A

Citation : (2005) ACJ 1927 : (2005) 3 RCR(Civil) 138 : (2005) 1 ShimLC 415

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Rakesh Jaswal, for the Appellant; D.S. Parmar and Suresh Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, J.—This appeal has been filed u/s 173 of the Motor Vehicles Act against the award of the Motor Accidents Claims Tribunal, Shimla dated 8.9.1997 dismissing the claim petition filed by the appellant.

2. The facts necessary for disposal of the petition are that one Pritam Singh was the driver of jeep No. HIM 537 owned by the Himachal Road Transport Corporation, hereinafter referred to as the H.R.T.C. He had gone on official duty with Kanshi Ram Verma, Chief Inspector of the H.R.T.C. According to the version of the respondent as stated by Kanshi Ram Verma, they had returned from tour on 26.3.1995 at 9.45 p.m. He had instructed the driver Pritam Singh to park the vehicle at the Main Bus Stand and to get the same repaired next day at Tara Devi Workshop. The driver Pritam Singh, admittedly, was residing at Junga which is about 25 km. away from Shimla. This witness also admitted that at the relevant time no bus left for Junga after 6-7 p.m. in the evening. Pritam Singh took the jeep towards his residence and on the way he gave a lift to the present appellant who is also employed as a driver with the H.R.T.C. The jeep met with an accident in which the driver Pritam Singh died. The appellant suffered injuries in

the said accident and filed a claim petition for grant of compensation. This petition has been dismissed by the Tribunal on the ground that vehicle at the relevant time was not being driven by the driver in connection with the business of the respondent and, therefore, owner respondent is not vicariously liable.

3. Mr. Rakesh Jaswal appearing on behalf of the claimant has argued the matter at length and submitted that the Tribunal has not appreciated the law cited before him especially the judgment of the Apex Court rendered in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, 1977 ACJ 343 (SC). According to him, the master is vicariously liable for the acts of his servant even if the servant acts in a manner that does not comply with the mandate given by his master. Mr. Jaswal submits that the third party can claim compensation from the owner on the principle of vicarious liability.

4. On the other hand, Mr. D.S. Parmar, appearing on behalf of the respondent H.R.T.C. has supported the award of the Tribunal and has submitted that since the driver was not on duty and he had been specifically directed to park the vehicle at Main Bus Stand and had unauthorisedly taken the vehicle to his residence, H.R.T.C. cannot be held responsible for payment of compensation.

5. The law with regard to the vicarious liability is evolving and developing. Over the years, the approach of the courts is becoming more liberal and the trend is moving towards making the master liable for the acts of the servant. The concept of no fault liability has been introduced in motor accident cases. Even in such cases of no fault liability the trend is to make the master responsible for the acts of the servant.

6. In *Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt*, 1966 ACJ 89 (SC), the owner of the vehicle entrusted it to person A for plying as a taxi. B used to clean the taxi. He was either employed by the owner or by A. A trained B to drive the vehicle and took B for obtaining licence for driving. While taking the test B caused the accident. A was not present when the accident occurred. By a majority view, the Supreme Court held that the owner was not liable since the person who borrowed the taxi and the driver had not acted in the course of the business of the owner. The court held that test was—Whether the act was done on the owner's business or that it was proved that it has been impliedly authorised by the owner. It was further held that unless the act is done in the course of his employment, the servant's act does not make the employer liable.

7. This judgment was considered by the Supreme Court in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, 1977 ACJ 343 (SC). In this case one "P" was travelling in the car being driven by the Manager of respondent company. The car dashed against the tree resulting in the death of "P". The widow of "P" filed claim petition under Motor Vehicles Act against the company, the owner of the car. The High Court following the decision of *Sitaram Motilal Kalal's* case, 1966 ACJ 89 (SC), held that the owner cannot be held to be vicariously liable in taking Purshottam as a passenger as the said act was neither in the

course of employment nor under any authority of the owner. The Supreme Court upset the findings of the High Court and held that the owner was liable to pay the compensation. The Apex Court in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, 1977 ACJ 343(SC), held thus:

"(14) Before we conclude we would like to point out that the recent trend in law is to make the master liable for acts which do not strictly fall within the term 'in the course of the employment' as ordinarily understood. We have referred to *Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt*, 1966 ACJ 89(SC), where this court accepted the law laid down by Lord Denning in *Ormrod v. Crosville Motor Services Ltd.*, (1953) 2 All ER 753, that the owner 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 owner's consent, driving the car on the owner's business or for the owner's purposes. This extension has been accepted by this court."

8. Lord Justice Denning in *Young v. Edward Box and Co. Ltd.*, (1951) 1 TLR 789 has made the pertinent observations:

"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. V. In my opinion, when the owner of a lorry sends his servant on a journey with it, thereby putting the servant in 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."

9. In *Salmond's Law of Torts*, it has been said thus:

"On the other hand it has been held that a servant who is authorised to drive a motor vehicle, and who permits an unauthorised person to drive it in his place, may yet be acting within the scope of his employment. The act of permitting another to drive may be a mode, albeit an improper one, of doing the authorised work. The master may even be responsible if the servant impliedly and not expressly, permits an authorised person to drive the vehicle, as where he leaves it unattended in such a manner that it is reasonably foreseeable that the third party will attempt to drive it, at least if the driver retains notional control of the vehicle."

10. In *Halsbury's Laws of England*, it has been stated:

"Where the act which the employee is expressly authorised to do is lawful, the employer is nevertheless responsible for the manner in which the employee

executes his authority. If, therefore, the employee does the act in such a manner as to occasion injury to a third person, the employer cannot escape liability on the ground that he did not actually authorise the particular manner in which the act was done, or even on the ground that the employee was acting on his own behalf and not on that of his employer."

11. A Full Bench of Punjab and Haryana High Court dealt with the question of vicarious liability of the owner in *Pirthi Singh v. Binda Ram*, 1987 ACJ 167 (P&H). After considering the aforementioned authorities of the Apex Court and a large number of English authorities on the point, the Full Bench held as follows:

"The vicarious liability of the master does not depend on the lawful or unlawful nature of the acts of the servant and the master would be liable for the alleged act of the servant which had taken place in the course of his employment even though the servant may have acted in contravention of some of the provisions of the statute or the Rules made there under.... It follows that in a motor accident case the determining factor so far as the liability of the owner is concerned is whether the act was committed by the driver in the course of his employment or not. If the driver was acting in the course of his employment then the owner would be liable even though he acted against the express instructions of the owner or in violation of the Rules framed under the statute."

12. This question had also come up for consideration before a Division Bench of Karnataka High Court in *M.S. Rayta and Another etc. Vs. Gowrawwa Channabasappa and Another etc.*, It was held that the master is vicariously liable even if the act of the driver is in violation of the departmental instructions. In that case, the vehicle in question belonged to the defence department. The defence taken was that driver was not in the master's employment nor driving the vehicle on the master's instructions. Driver had been asked to take the vehicle to a particular place and to bring it to the garage; but the driver did not return to the garage and instead unauthorisedly he on his own went in an altogether different direction on a joy ride. On the way he picked up some civilian passengers. An accident occurred and the claim petition was filed.

13. The High Court rejected the defence of the State and held that despite departmental instructions and the specific instructions to the driver, it cannot be said that the driver was not driving the vehicle in connection with his duties and functions as a driver.

14. In *State of Madhya Pradesh v. Ratna Devi*, 1991 ACJ 166 (MP), while considering a similar plea held the owner State of Madhya Pradesh vicariously liable to pay compensation even though the driver of the government jeep took the vehicle without permission and unauthorisedly gave lift to two passengers who died in the accident.

15. A similar point came up before the Apex Court in *State of Maharashtra v. Kanchanmala Vijaysing Shirke*, 1995 ACJ 1021 (SC). The Supreme Court held as follows:

"(15) On behalf of the appellants reliance was placed on the judgment in the case of *Sitaram Motilal Kdlal v. Santanuprasad Jaishankar Bhatt*, 1996 ACJ 89 (SC). In that case the owner of the vehicle entrusted it to A for plying as a taxi. B used to clean the taxi. He was either employed by the owner or by A. A trained B to drive the vehicle and took B for obtaining the licence for driving. While taking the test B caused bodily injury to the respondent. At the time of the accident, A was not present in the vehicle. On the question whether the owner was liable, it was held in the majority judgment that the owner was not liable because evidence did not disclose that owner had employed B to drive the taxi or given him the permission to drive the taxi. However, Subba Rao, J., (as he then was), held that the owner was liable because A did not exceed the authority conferred on him by the owner in employing B as a servant and permitted him to drive the vehicle in order to obtain the licence for assisting him as a driver. This case was considered by this court in the case of *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, 1977 ACJ 343 (SC), and it was said that recent trend in law is to make the master liable for acts which do not strictly fall within the term "in the course of employment" as ordinarily understood. The learned counsel for the appellants sought to distinguish *Pushpabai's* case by contending that therein this court accepted the authorised act of the driver being within the course of employment because of his occupying "high position of Manager", whereas in the case at hand Appellant No. 3, the driver, was a class IV employee. We do not think that the ratio of the case turns on the position occupied by the driver. The real thrust of the decision is acceptance of the trend to make the master liable for acts which do not strictly fall within the term "in the course of employment" as ordinarily understood.

xxx xxx xxx (17) Incidentally, it may be pointed out that in Motor Vehicles Act, 1939, Chapter VII-A "liability without fault in certain cases" has been introduced (Chapter X of the Motor Vehicles Act, 1988). Sub-section (1) of Section 92-A provides that where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle, the owner of the vehicle shall be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section. Sub-section (2) specifies a fixed amount for such liability without fault. In view of Sub-section (3), the claimant is not required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the vehicle. Sub-section (4) of that section says in clear and unambiguous words that a claim for compensation under Sub-section (1) of that section shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made. Section 92-B clarifies that the right to claim compensation under Section 92-A in respect of death or permanent disablement of any person shall be in addition to any other right, i.e., the right to claim compensation on principle of fault. The introduction of provisions creating liability without fault gives out that Parliament has provided for payment of

compensation within certain limits, ignoring the principle of fault. When even under the law of Tort, courts have held that the employer is vicariously liable for an authorised act done in an unauthorised manner taking into consideration the interest of the victims of the accident, according to us, this approach is all the more necessary while judging the liability of the owner of the vehicle under the statutory provisions of the Motor Vehicles Act."

16. A Division Bench of this court has considered in detail the law with regard to the vicarious liability in *New India Assurance Co. Ltd. v. Lachhmi Devi*, 1996 ACJ 496 (HP). In that case several persons sustained injuries when they were travelling in a truck. The owner of the truck contended that the driver had allowed the passengers to board the truck against his instructions and, therefore, he was not liable. After taking into consideration the entire law, the Division Bench of this court negated the plea of the owner and held that the owner was responsible and liable for the conduct of his driver even if the same may be unauthorised.

17. From a reading of the various judgments noticed hereinabove it is clear that the law with regard to the vicarious liability has been made more liberal and the rule of vicarious liability has been expanded by judicial pronouncements. One cannot lose sight of the fact that the State has thought it fit to even introduce the concept of no fault liability. After the amendment of 1994 in the Motor Vehicles Act, 1988, the legislature has enacted Section 163-A in the Act. Claimants can claim compensation without having to prove negligence. Even the insurance companies are held liable in cases where the owner is not at fault on the ground that since the owner has not committed a breach of the policy, the insurance company is liable. The State Governments and the State owned transport Corporations have been exempted from getting their vehicles insured and they cannot be placed on better footing than the insurance companies. They must take the responsibility for the acts of their employees and as such they are liable to pay compensation for any tortious act of the employee. Even if the act of the employee may be beyond the scope of his duties or he may have acted in violation of the instructions or mandate issued to him, the employer cannot escape the liability.

18. In the present case, admittedly the driver was on duty and according to the respondents, he had been asked to park the jeep at the Main Bus Stand. This appears to be afterthought. The driver could not have been expected to walk to his native place which is about 25 km. away from the Main Bus Stand. It is a known fact that the drivers do take the government vehicles to their residences especially when they finish their duties at odd hours as happened in the present case.

19. However, assuming that the driver had taken the vehicle unauthorisedly, this would not help the case of the respondent, H.R.T.C. He was admittedly the driver of the vehicle and the vehicle had been put in his charge by the owner. In view of the law laid down by the Supreme Court, the owner is also liable for acts of the driver which he may have unauthorisedly done. Therefore, the finding of the Tribunal below on this point is set aside and it is held that respondent H.R.T.C. is

responsible for tortious act of the driver.

20. With regard to negligence from the evidence on record, it is apparent that the vehicle rolled down into the khud. It has also come in evidence that the vehicle was being driven rashly and negligently. In fact the Tribunal has also given this finding which has not been challenged. Therefore, it is held that the accident had occurred due to the negligence of the driver.

21. Now comes the question of the amount of compensation to which claimant is entitled. As per the statement of PW 1 Dr. R.S. Yadav, appellant Pritam Chand remained admitted in the Neurosurgery Department with effect from 27.3.1995 to 4.4.1995. He has suffered compression fracture of lumbar spine No. 1. After the discharge from the hospital, the appellant Pritam Chand remained as outdoor patient in the Orthopaedics Department. According to this witness, the appellant has been under treatment though as an outdoor patient right from May, 1995 and he was still under treatment when the statement of the doctor was recorded on 5.3.1997.

22. According to the expert witness, the claimant-appellant has suffered permanent disability to the extent of 25 per cent as per the disability certificate Exh. PA. He has stated that the claimant-appellant had to wear belt at least for a period of three years and he cannot carry heavy load or do heavy manual work. He cannot also bend his body easily. However, he has admitted that the claimant-appellant can continue his job as a driver. From the above evidence, it is clear that no financial loss has been caused to appellant-claimant with regard to loss of his pay since he continues to be employed as a driver in the H.R.T.C. However, he remained in hospital for about a week. He has not claimed any medical expenses since the same were being reimbursed to him. However, he remained on leave for about 3 months and keeping in view the fact that his salary was Rs. 5,085, therefore, he is entitled to Rs. 15,000 on account of leave due to the accident. He is also entitled to an amount of Rs. 5,000 for special diet etc. It may be true that the salary of appellant-claimant is not affected. However, the fact remains that he has suffered a permanent disability to the extent of 25 per cent. He will have to bear with his disability throughout his life and the earning capacity of claimant-appellant after retirement would definitely be adversely affected.

23. Keeping in view all these factors, a sum of Rs. 30,000 is awarded to the appellant-claimant on account of pain and suffering as well as future loss, discomforts and loss of amenities. The total compensation thus payable to the claimant-appellant is Rs. 50,000. He is also entitled to interest at the rate of 9 per cent per annum with effect from 8.9.1997 the date of institution of the petition till the date of deposit of the amount. The respondent, H.R.T.C, is directed to deposit the amount within eight weeks from today failing which the rate of interest shall stand enhanced to 12 per cent per annum.

24. The impugned award of the Claims Tribunal is set aside and the appellant is held entitled to compensation and interest as detailed above. Appellant-claimant

is also entitled to costs which are quantified at Rs. 2,000.