
(1987) 03 AP CK 0059
In the Andhra Pradesh High Court

Putchala Achayamma and Others

APPELLANT

Vs

Pelava Rama Krishna Rao and Others

RESPONDENT

Date of Decision : 23-03-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1988) 1 ACC 243 : (1988) ACJ 951

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Judgement

P.A. Choudary, J.—This matter arises u/s 110-A of the Motor Vehicles Act, 1939. One P.V. Ramakrishna Rao was the owner of a lorry, ADM 5365. The driver of that lorry was Puchala Tatharao. While that lorry was proceeding from Hyderabad to Dhawaleswaram, the said Tatharao entrusted the driving of the lorry to one D. Subrahmanyam, a cleaner. While that Subrahmanyam was driving the lorry, it met with an accident on 9-9-1980 at 5.30 A.M., killing Tatharao, the driver and another person by name Karri Ramu. The deceased Tatharao was aged about 40 years at the time of his death and was found to be earning about Rs. 200/- per month. On the basis that Tatharao would have been living for another 30 years more, the wife and children of Tatharao claimed compensation in a sum of Rs 75,000/- both against the cleaner, Subrahmanyam and the owner, Ramakrishna Rao and the National Insurance Company Limited, Vijayawada which had insured the owner of the lorry against the accident claims. This claim amount of Rs. 75,000/- was divided into Rs. 65,000/-towards general damages and Rs. 10,000/- towards special damages. The claim of the wife and the minor children of the deceased Tatharao was numbered as MAT OP No. 20/1981 and tried by the Motor Vehicles Accidents Claims Tribunal (District Judge), Khammam who had awarded a sum of Rs. 40,000/- towards the general damages and Rs. 5,000/- towards the special damages. In the trial Court, the cleaner remained ex parte. The owner and the Insurance Company had filed separate counters. Their broad contention was that the cleaner was not employed by the owner and that the deceased had brought death upon himself by unauthorisedly allowing the cleaner

to drive the vehicle and that, therefore, they were not liable to pay compensation for the death of the deceased. They also contended that the amount claimed is excessive.

2. The learned District Judge accepted the contention of the owner and the Insurance Company and held that the cleaner was unauthorisedly employed by the deceased Tatharao to drive the lorry. Now, on that basis, the learned District Judge exonerated both the owner and the Insurance Company from their liability to pay damages to the deceased's wife and minor children. The learned Judge, however, upheld the claim of the deceased's children and the wife as against the impecunious cleaner to an extent of Rs. 45,000/-. It is against the above order, this appeal has been filed by the children and the wife of the deceased Tatharao.

3. The learned Counsel for the appellants Mr. Somakonda Reddy argued that the lower court erred in upholding the claim of the owner and the Insurance Company and absolving them from liabilities. His argument is that the cleaner was appointed and employed while the accident took place on the business of and for the benefit of the owner and for the wrongful acts committed by the cleaner while being so employed for the benefit of or on the business of the owner, the owner shall be held liable.

4. The contention of the learned Counsel for the appellants is that the lorry is going from Hyderabad to Dhawaleswaram on a business mission of the owner. The authority of the driver Tatharao to take that lorry to Dhawaleswaram from Hyderabad is undoubted. If, in the discharge of his duties, as a driver, Tatharao has engaged the cleaner to drive the vehicle, it should be held that Tatharao had engaged the cleaner on the business mission or for the benefit of the master.

5. I find the above contention of the learned Counsel for the appellants is acceptable to law which is slowly but steadily moving towards providing absolute cover to innocent victims of motor accidents. The growth of law is however interesting. In *Engelhart v. Farrant and Company* (1987) 1 QB 240, Lord Esher M.R. observed about one century back ;

If a stranger interferes (with the driving it does not follow that the defendant is liable ; but equally it does not follow that because a stranger interferes, the defendant is not liable if the negligence of a servant of his is an effective cause of the accident.

6. When the driver delegated his authority to the cleaner that must be held to be the effective cause of accident. So it is a case of driver causing the accident. Master's vicarious liability is not obliterated by interference of a stranger in the commission of a tortuous act by the delegatee of the servant. If the stranger's interference was actively invited or tolerated by the servant employed by the master and as a result thereof, tortuous acts have been committed by the acts of delegatee on a mission of master's business or for his purpose or profit, the master cannot escape his liability on the ground that the tortuous act was the result of a stranger's interference. Prof. R.S. Atiyah wrote in his Book on

Vicarious Liability.

...that where the servant delegates the driving to a person in such circumstances that the act of delegation is itself a negligent act, the negligence is to be regarded as negligence committed in the performance of an authorised act. The authorised act in this case is the act of generally keeping charge of the vehicle which has been entrusted to the servant's care. A servant who is told to drive a vehicle from one place to another is (unless perhaps he is accompanied by a superior servant) necessarily entrusted with the custody of the vehicle as well as with the duty of driving it, and if he is guilty of negligence in safeguarding his custody of the vehicle, this is negligence in the performance of an authorised act for which the master will be liable.

Prof. Atiyah also quotes a decision of the American Court which is more emphatic.

If the authorised driver places at the wheel an incompetent substitute the employer is not less liable than he would be if the driver left the car on the road without sufficiently applying the brakes.

7. *Ilkiw v. Samuels* 1963 2 ALL ER 875, holds that it is negligent on the part of a truck driver to allow another person to drive it without making any enquiry as to his ability to drive. That negligent act of entrusting the driving of the vehicle makes the owner liable. The above cases were fully approved by a judgment of the Karnataka High Court *K. Jayaraj Balilal v. Alfred Quadres and Anr.* AIR 1979 Kar 134 where a Division Bench of the Karnataka High Court held the owner liable for the tortious acts committed by the negligent "driving of an unauthorised driver. In The "Ad Hoc" Committee, the Indian Insurance Company Association Pool Vs. Smt. Radhabai, , the Madhya Pradesh High Court held the owner liable in tort for the wrongful act of unauthorised driving by a person other than the driver. In that case, the vehicle belonging to the State Government was entrusted to one Lallu for bringing ailing children to the hospital. After the vehicle took petrol on the way, one Satyanarayana drove the vehicle with Lallu sitting by his side and met with an accident. Satyanarayana had no driving licence to drive the vehicle. The Madhya Pradesh High Court held that the accident took place by reason of a wrongful and unauthorised mode of doing an act authorised by the master. It accordingly held the master liable vicariously for the accidents caused by such an unauthorised act of driving. The Division Bench held that Lallu and Satyanarayana were employed in driving the vehicle on the business of the master and had thereby made the master liable vicariously for the tortious acts of Satyanarayana. It was on that basis the Division Bench of the Madhya Pradesh High Court distinguished the judgment of the Supreme Court in *Sitaram v. Santanu Prasad* AIR 1966 S.C. 1967 where under the cleaner¹ was found to have caused the accident while driving the vehicle unauthorisedly on a business other than that of his master. The underlying principle of law behind this episodic citation of cases is that the one who can bear the burden of this tragedy must share it provided he is somehow connected with it. Applying those decisions, it cannot be said that the employment of the cleaner in the present case is not in

the execution of the master's business. I, therefore, hold that the master is liable for the tortuous acts of the cleaner. I accordingly hold that the lower Court is wrong in exonerating the owner from his vicarious liability for the tortuous acts of the cleaner. It follows that the owner is also liable to pay the amount of compensation.

8. The next question for consideration is whether the Insurance Company should also be made liable. It is not in dispute that the vehicle was insured by the Insurance Company undertaking to indemnify the owner against accident claims. In the absence of any limits shown to have been drawn the extent of the liability of the Insurance Company should be held to be coterminus with the liability of the insured owner of the lorry. It should, therefore, follow that the Insurance Company should also be made liable both jointly and severally with the insured to the fullest extent. But it is argued by Sri Hanumaiah learned Counsel for the Insurance Company that u/s 96 (2) (B) (ii) of the Motor Vehicles Act, the liability of the Insurance Company is excluded where the tortuous acts are committed by a person who was not duly licensed. In fact, the Insurance Company has taken this plea in the counter. It is, no doubt, true that u/s 96, the Insurance Company could have contracted out such a liability arising out of the tortuous acts committed by an unlicensed driver. But in all such cases the question is whether the Insurance Policy contained any such limitations. That is a question of fact. The Insurance Company had not taken any steps whatsoever to produce its before the court and exhibit the conditions including its liability on the basis of the above Section 96(2). In similar circumstances, the Madhya Pradesh High Court has held in the above mentioned case the owner liable for the tortuous acts of the cleaner Satyanarayana for the reason that policy was not produced.

9. Following the reasoning of the Madhya Pradesh Judgment I hold that the insurance Company has not succeeded in showing in this case by producing the necessary evidence that its liability is excluded where the accident took place by reason of driving the vehicle by unauthorised persons. Accordingly I hold the Insurance Company is also liable to the same extent as the owner is liable. I must say that Section 96(2) helps the insurer only to exonerate itself from certain liabilities provided those limitations are carried into the policy.

10. Then remains the question of compensation to be awarded. The claimants claim that Tatharao was getting Rs. 350/- per month as a lorry driver whereas the owner of the lorry deposed that Tatharao was getting only Rs. 200/- per month. But the owner had not produced any evidence, which is the best evidence in this case. His account books would show that salary was being paid to the Tatharao. Under the circumstances of failure of the owner to produce his account books I find that the deceased Tatha Rao was getting Rs. 350/- per month. Accepting the period of longevity of Tatharao to be about 75 years, I hold that he would have worked for another period of 20 years as a lorry driver and earned Rs. 72,000/-. The amount of Rs. 10,000/- claimed as special damages is, in my opinion, on the low-side. The deceased has several minor children. In the

circumstances, I think, it will be just and proper to award an amount of Rs. 75,000/- as claimed by the claimants as the proper compensation payable to them.

11. For the above reasons, I allow this CM A. holding all the respondents jointly and severally liable to pay the claimants a sum of Rs. 75,000/- as compensation. The amount payable shall carry an interest of 12% from the date of the judgment in the lower Court. The above amount shall be divided into 6ve equal shares keeping the minors" shares in separate accounts in any nationalised bank with the mother as the guardian of the property till they attain majority. Accrued interest shall be payable to the minors. The CM.A. is accordingly allowed with costs.