
(1985) 09 AP CK 0003
In the Andhra Pradesh High Court
Case No : A.A.O. No. 597 of 1982

R. Venkateswara Rao

APPELLANT

Vs

P. Vijayalakshmi and Others

RESPONDENT

Date of Decision : 28-09-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 95

Citation : (1987) ACJ 105

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : M.V. Ramana Reddy, for the Appellant; P. Gangaiah Naidu and S. Hanumaiah, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramaswamy, J.—The Appellant was travelling in the lorry ADF 446 from Gudur to Nellore on 16.7.1980 and when the lorry reached a point near Spinning Mills in Dargamitta, Nellore town, an accident occurred in which the Appellant sustained injuries. Then the Appellant laid a claim u/s 110-A of the Motor Vehicles Act for a compensation of Rs. 26,800/-. He impleaded the first Respondent, the owner and the second and third Respondents, the insurance companies. He did not implead the driver as party Respondent. After framing appropriate issues, the Tribunal below found as a fact that the occurrence has taken place as a result of rash and negligent driving of the driver of the lorry ADF 446. But, it found that the first Respondent owner expressly instructed the driver not to carry any passengers for hire or reward. Therefore, the owner is not liable equally since Exh. B-1 policy does not cover the risk for passengers being carried in the vehicle. The third Respondent with whom the vehicle was insured was found not liable. As a fact it was found that the Appellant sustained injuries. He would be entitled to a compensation of Rs. 14,500/-. In view of the fact that both the first Respondent owner and the third Respondent, insurance company, are not liable for the compensation, the Tribunal below dismissed the application as against which the

present appeal has been filed.

2. In this appeal, Mr. M.V. Ramana Reddy, learned Counsel for the Appellant, has contended that though the driver who is examined as RW 2 has not denied that he has given free lift to the Appellant, the evidence clearly establishes that RW 2 collected fare of Rs. 5/- from the Appellant and therefore it is for hire or reward. When the driver during the course of his employment, i.e while driving the vehicle, collected fare and taken the Appellant as a passenger, it is for hire or reward. Therefore, the first Respondent owner is vicariously liable for payment of compensation. Since the owner is liable, insurance company is also equally liable for payment of compensation. In support thereof he relied upon a Division Bench judgment of this Court in the United India Fire and General Insurance Co. Ltd. Vs. Maddali Susheela and Others,

3. The above contentions have been resisted by Mr. P. Gangaiah Naidu, learned Counsel for the first Respondent, stating that the evidence on record clearly establishes that the owner, i.e., the first Respondent, gave express instructions not to take any passenger for hire or reward. Therefore, even if there is any amount taken by the driver, this act is outside the course of his employment and it is an unauthorised act. Therefore, the first Respondent is not liable for the payment of compensation. In support thereof he relied upon the judgment of a Division Bench of this Court in M. Visalakshi v. Treasurer Council of Machiraju Vishalakshi and Others Vs. The Treasurer, Council of India Mission of the Luthern Church in America Guntur and Others,

4. Mr. S. Hanumaiah, learned Counsel appearing for the third Respondent, has placed before me copiously several decisions contending that the policy Exh. B-1 does not cover any liability for payment of compensation when a goods vehicle carries passengers for hire or reward. Proviso (2) to Section 95 of the Motor Vehicles Act expressly excludes such liability. He also contended that even the owner is not liable because the owner has expressly prohibited the driver to carry passengers. He cited some decisions in support of his contention. But in view of the concession made by the learned Counsel for the Appellant in his reply that the claim against the insurance company is not pressed the need to go into that question is obviated. The decision in United India Fire and General Insurance Co. Ltd. Vs. Maddali Susheela and Others, has no application to the facts in this case. In that case, the liability of the insurance company has not been challenged. The ratio in that case need not be considered in view of the fact that the Appellant has not pressed his claim against the insurance company.

5. The next question is whether the first Respondent owner is vicariously liable for the acts of the servant, viz. the driver RW 2. I have gone through the evidence of RWs 1 and 2 and the evidence of PW 1.1 believe the evidence of PW 1. It is admitted that the driver is a stranger. Therefore, the theory that he has given free lift is an obvious falsehood. The Appellant has examined himself as PW 1 who has clearly stated that he paid Rs. 5/- as hire to take him from Gudur to Nellore. I do not find any ground to disbelieve his evidence in this regard. The

fact that he was travelling in the vehicle and that he sustained injury during the course of travelling is an admitted fact. Under these circumstances, the necessary conclusion is that the Appellant paid Rs. 5/- to the driver RW 2 and that he was carried for hire as a passenger in the lorry ADF 446.

6. The next question is whether the first Respondent owner is vicariously liable for the tortious act committed by the servant. Admittedly RW 2 is the driver and the first Respondent is the owner. In *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, it was held:

It is now firmly established that the master's liability is based on the ground that the act is done in the scope or course of his employment or authority.

When the driver was actually responsible in the course of employment, in giving a lift, that was sufficient to make the Defendant liable. Their Lordships of the Supreme Court observed that the ratio laid down by Lord Denning in *Young v. Edward Box and Co. Ltd.* (1951) 1 TLR 789, which is as follows:

The first question is to see whether the servant was liable. If the answer is yes, the second question is to see whether the employer must shoulder the servant's liability. So far as the driver is concerned, his liability depends on whether the Plaintiff was on the lorry with his consent or not....

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 owners are concerned; but that is not of itself an answer to the claim. 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.

This ratio was approved by the Supreme Court and held that the servant was acting in the course of his employment and therefore, the owner is liable for the tortious act of the servant. The same view was followed in *Abdul Jabbar v. Muniammal* AIR 1981 Madras 112 and *Oriental Fire and General Insurance Company Ltd. Vs. B. Parvathamma and Others*, I have also taken the same view in C.M.A. No. 604 of 1981, dated 14.8.1985. I have no hesitation to conclude that when a servant commits tortious act during the course of his employment and if it is within the scope of the authority, the owner is vicariously liable for the tortious act of the servant.

7. The next question is whether the first Respondent is liable for the damage caused due to accident occurred. I have carefully considered the evidence of RWs

1 and 2, particularly with reference to RW 2. His evidence in chief examination is categorical that the Respondent did not authorise him to carry any passengers for hire or reward. Though he stated that he did not charge any hire and gave free lift to the Appellant to travel in the cabin of the lorry which I have rejected earlier. The driver admitted in his evidence that he was picking passengers now and then by collecting fares for his pocket expenses. Obviously the Appellant must have been taken for the private gain of the driver RW 2 without any authority or benefit of the owner, the first Respondent. When he is not authorised to carry any passengers in the vehicle without the permission either express or tacit of the owner, the necessary conclusion is that he out stepped his authority during the course of his employment and therefore, the driver alone is liable for tortious act and the owner is not vicariously liable. The same view was taken by a Division Bench of this Court in *Machiraju Vishalakshi and Others Vs. The Treasurer, Council of India Mission of the Luthern Church in America Guntur and Others*, The Tribunal below also considered the entire evidence and reached the same conclusion.

8. The reasoning is well supported by evidence and therefore, it does not warrant interference in this appeal. The appeal is accordingly dismissed; but in the circumstances, each party is directed to bear their own costs.