

(1976) 03 OHC CK 0029

In the Orissa High Court

Case No : Miscellaneous Appeal No. 23 of 1975

Sabitri Kumari Das and Others

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 19-03-1976

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1976) 42 CLT 589

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : S. Misra, for the Appellant; Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Acharya, J.—The applicants who preferred the claim for compensation u/s 110-A of the Motor Vehicle Act (hereinafter referred to as the Act) being aggrieved by the impugned order, have preferred this appeal.

2. Appellant No. 1 is the widow and Appellant Nos. 2, 3 and 4 are the minor sons of the deceased. The State of Orissa admittedly is the owner of the Jeep ORB 1392 which caused the accident on 11-9-1973 when it was being driven by a mechanic of M/s. National Motor Workshop of Bhubaneswar. It was alleged by the claimants, and it has been found by the Court below, that the said jeep at the time of the accident was being driven in a rash and negligent manner and that the vehicle in question at the relevant time had been entrusted by its owner for repairs to M/s. National Motor Workshop and a mechanic of the said workshop, while driving the said jeep for trial after repairs, knocked down the deceased and caused his death. The said findings are not challenged.

3. The Claims Tribunal finds that the claimants ordinarily would have been entitled to a compensation of Rs. 40,000/- for this accident, but in this case the owner of the vehicle, i. e. the State of Orissa, cannot be hold liable for this

accident as the vehicle in question at the relevant time had been delivered to the above mentioned workshop for repairs and so the said vehicle and mechanic of the workshop who was driving the vehicle at the time of the accident were not under the control of State of Orissa. It further holds that the said workshop in the facts of this case acting as an independent contractor and so the State of Orissa cannot be held liable for the accident committed by the mechanic of the workshop.

4. Mr. Misra, the learned Counsel for the Appellants, contends that the claimants, on the facts and circumstances of this case are entitled to get compensation from the owner of the jeep, and that the Court below has not been able to appreciate the law on the subject in the correct perspective.

5. The finding of the Court below that the State Government is not liable to pay any compensation for this accident has been arrived at on a wrong appreciation of the law on the point. The Court also has not appreciated correctly the observations made in the two decisions referred to by it in the impugned judgment. It is well settled that the master is vicariously liable for any negligent act of his servant if the servant then was acting in course of his employment under the said master. The principal also is responsible for a negligent act of an agent if the agent does that act within the scope of his authority or does so under the actual control of the principal.

6. In the Supreme Court decision in *Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt and Ors.* 1966 A.C.J 89 their Lordships hold that for the master's liability to arise, the act must be a wrongful act authorised by the master or a wrongful or unauthorised mode of doing some act authorised by the master. With regard to the principal's liability for the act of the master, their Lordships in paragraph 12 of the said decision state:

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.

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The word "benefit" is vague and it is better to adhere to the words "course of employment" or "the scope of authority"

In proceeding to discuss the law on the subject their Lordships referred with approval to the observation made by Cockburn C.J. in *Storey v. Ashton* (1868) 4 Q.B.D. 476, which is as follows:

.... that the master is only responsible so long as the servant can be said to be doing the act, in the doing of which he is guilty of negligence in the course of his employment as servant."

7. Regarding a car owner's responsibility Lord Denning in *Ormrod and Anr. v. Crosville Motor Service Ltd. and Anr.* 1955 (2) A.F.R. 753 states:

.... The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friend, or anyone else. It is being used wholly or partly on the owner's business or for the owner's purpose, the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern.

8. The decision in *Gopalakrishna Embrandiri v. Krishnankutty and Anr.* 1966 A.C.J. 262, is in connection with an accident during trial drive, as in the present case before me, and the observations made in paragraph 9 therefore being very apt to the present case, are quoted below:

9. The question then arises whether the 4th Defendant, when he took out the lorry for a trial drive after repair, was acting within the scope of his employment. Though it has been concurrently found against by the Courts below, I should say he was. In repairing the steering column of a motor vehicle, a mechanic is expected to take a trial drive in order to see that his work has left the driving mechanism in smooth working, without a test to that effect he cannot be confident of his repairs. It may be that the 4th Defendant has no authority to drive a lorry on public road. But "that is neither here nor there. Even if he had been expressly forbidden to drive any vehicle, if he did it for purposes of the work he was engaged for, it would only be doing an authorised job in an unauthorised way.

In *Vimal Rai and Ors. v. Gurucharan Singh and Ors.* 1967. A.C.J. 115, while dealing with the contention raised on behalf of the Respondents that the possession of the garage owner and the act of his driving the motor vehicle were unauthorised and therefore no vicarious liability can be attached to Respondent No. 1, it was held that:

.... There cannot be the least doubt that so far as Respondent No. 1 is concerned, the possession of Respondent No. 2 was authorised. It is also clear from the evidence that Respondent No. 2 entrusted the motor cycle for repairing the defect in its kick, to the workshop of Respondent No. 5. There is no evidence on behalf of the Respondents that there were any instructions that the repairs were to be carried on by Respondent No. 5 and nobody else. Respondent No. 5 is admittedly carrying on business as a repairer and an implied authority must be presumed to the effect that Respondent No. 5 could get the defect repaired by any one in his workshop. The learned Claims Tribunal has remarked that Respondent No. 2 had not authorised either Respondent No. 4 or 5 to drive the vehicle. He has further held that it was not necessary for the purpose of repairing the defect to drive the vehicle. Now, in this case, the defect which was to be repaired was the defect in starting the motor cycle.

Nobody has come forward as an expert witness to say that it was not necessary to drive the motor cycle in order to repair the starting trouble. It was for the Respondents to prove conclusively that the act of driving the motor cycle for repairing the starting trouble was in excess of the authority. The finding of the Claims Tribunal that the driving of the motor cycle was not required for the purpose of repairing the starting trouble is, to my mind, without any satisfactory evidence. In the absence of any satisfactory evidence in that behalf, I am of the view that it cannot be said that driving of the motor cycle was not involved in the process of repairing the starting trouble and I, therefore, find that the driving of the motor cycle was not an act in excess of authority.

9. In this case admittedly the owner of the vehicle in question, had entrusted it to the garage owner M/s. National Motor Works for repairing the said vehicle. Ext. B, exhibited and proved on behalf of the Respondent shows that the jeep in question had been entrusted to the workshop for changing its clutch-plate, for overhauling the gear box (main and special), for changing certain bearings, for overhauling and repairing the differential, for decarbonizing the engine and for major tuning of the engine. Opp. party witness No. 1, the regular driver of the jeep, states that the vehicle after repair was taken out for test drive I; he was also in the jeep at that time. There is nothing on record on which it can be said that the owner had not authorised the workshop-men to drive the vehicle for testing the same after repairs. From the above list of repairs which were to be done by the repairer it is quite evident that after carrying out the said repairs any repairer would take out the jeep for a test drive in order to be satisfied that the new fittings and the repair work as required were properly done. Moreover, the owner of the vehicle who wanted replacement of some of its parts and repair of some others as stated above would not have taken back the jeep from the repairer without being satisfied about its proper performance in a test drive. Therefore, the test drive of the vehicle was necessarily involved in the act and for the purpose of repairing the said vehicle. So the mechanic in the said workshop in taking out the jeep for a test drive was acting in course of his employment to repair the said jeep or was acting within the scope of his authority in that direction. But while performing that job he acted in a rash and negligent manner and caused the accident in question. As the driver committed the said act in course of his employment or within the scope of his authority the owner of the vehicle will be held vicariously liable for the said negligent act of he driver. There is nothing on record to show that the owner of the vehicle had distinctly forbidden the repairs of the workshop took the jeep for a test drive. The regular driver of the jeep (O.P.W. 1) states that he was in the jeep when it was taken out for the said test drive. That fact and the unavoidable necessity of having a test drive show, in the absence of anything, that the repairer had the express or implied authority of the owner to take out the jeep after repairs for a test drive, and that drive was for the owner's benefit and purpose. In the aforesaid facts and circumstances of the case conclusion is inevitable that the mechanic in driving the jeep for a test drive was walking within the scope of his employment

and/or authority and so the owner of the vehicle would be vicariously liable for the rash and negligent act of the mechanic.

10. Mr. Mohanty, the learned. Government Advocate appearing for the Respondent, urges that the principle of vicarious liability cannot be applied in this case as the relationship between the owner of the vehicle and the repairer was not that of a master and servant or principal and agent, but the said relationship was purely of a contractual nature. In support of his above contention he cited the decision in B. Govindarajulu Chetty Vs. M.L.A. Govindaraja Mudaliar and Others, . In that case it was of course observed that the relationship between an owner of a vehicle and a proprietor of a workshop to whom the vehicle is entrusted for repairs is only of an independent contractor and not of a master and servant. But that observation is made only in respect of the actual execution of the work of repair in particular, and the learned Judges proceeded on the basis that in the actual execution of that particular work the proprietor of the workshop was not under the order or control of the person for whom the work was done. That observation does not apply to the particular point for decision in the instant case and the facts on which that point arises for consideration in this case. Moreover, the facts of the said reported case are entirely different as is evident from paragraph 15 thereof.

.... The accident in this case was not as a result of the act of repair by itself but on account of a collateral circumstance altogether totally unconnected with the work of repair.

It is also evident from the said paragraph that the driver of the garage to which the bus in question had been entrusted for repairs had taken out the bus for his own purpose and the accident took place at that time for the negligent act of the driver. That accident did not take place in course of the employment of the driver for testing the vehicle in the interest of the owner nor was he working within the scope of his authority. The decisions and observations in that case were made in the context and perspective of the peculiar facts of that case and so the same cannot be applied to the instant case before me.

On a consideration of the facts and circumstances of the case and the law on the point as stated above, I am firmly of the opinion that the owner of the vehicle, i. e. the State of Orissa (Respondent in this appeal) is liable to pay compensation to the claimants for the accident in question.

11. The Tribunal has assessed the compensation at Rs. 40,000/ -. On the evidence on record a case for enhanced compensation could not be made out by Mr. Misra, the learned Counsel for the Appellants. Accordingly, the compensation amount of Rs. 40,000/ - as assessed by the Tribunal is confirmed, and the said amount be paid by the State of Orissa to the claimants through its appropriate department with interest at the rate of 6 per cent per annum from the date of filing of the claim petition till the payment of the said amount to the claimants.

The appeal is allowed as stated above with costs.