

(1989) 01 AP CK 0009

In the Andhra Pradesh High Court

Case No : A.A.O. No"s. 12 and 512 of 1986

Sampath Reddy

APPELLANT

Vs

Gudda Meddi Suchi Venkatamma and Others

RESPONDENT

Date of Decision : 31-01-1989

Acts Referred:

Evidence Act, 1872 — Section 3

Motor Vehicles Act, 1939 — Section 110B, 110C, 84

Penal Code, 1860 (IPC) — Section 304, 304(A), 379

Citation : (1990) ACJ 626 : AIR 1989 AP 337

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : C. Malla Reddy, for the Appellant; K. Harinath, Standing Counsel and S.C. Rangappa, for the Respondent

Judgement

1. C.M.A. Nos. 12 of 1986 and 512 of 1986 arise out of the same cause of action and the same judgment and the facts are the same and, therefore, they are disposed of by a common judgment. On 4-10-81 at about 7.40 p.m., the driver of the 1st respondent Corporation's bus APZ 9226 kept the vehicle in Janagoan Bus-stand, and himself and the conductor went to take their meals in-a Canteen. By the time, they returned they found the vehicle missing and they reported the matter to the Depot Manager and the Traffic Inspector. In the meanwhile, K. Sampath Reddy, the second respondent in the O.P. and the appellant in C.M.A. 12 of 1986 drove the vehicle and near Kazipet he hit the deceased G. Komuraiah, a Kalasi working in the Railway Department, who was proceeding to his house by a cycle and coming opposite to the vehicle. The vehicle dashed against him. He was taken to the Hospital. But in the meanwhile, he died. Sampath Reddy drove the vehicle to a distance of two to three K.Ms and abandoned the same. In the meanwhile, the Depot Manager laid the complaint to the police under Ex. B.2 about the theft of the vehicle. The police and the Depot people of the first Respondent Corporation went in search of the vehicle. They found the vehicle abandoned. One Kishan Rao, Quarry owner of the nearby scene of offence, laid a

complaint to the police about the rash and negligent driving by Sampath Reddy which was witnessed by P.W. 2 and others. On the basis thereof, a case in C.E 194/82 for the offence u/s 304(a), I.P.C., was registered and investigated into. Another case in C.C. No. 210/82 was also registered for the offence u/s 379, I.P.C. and investigated into. In both the cases, Sampath Reddy was acquitted. In the meanwhile, the widow, four minor children and the parents of the deceased G. Komuraiah laid their claim u/s 110(a) of M.V. Act 4 of 1939 inasumof Rs. 1,35,000/-The Tribunal below awarded a sum of Rs. 64,200/- in all. The Tribunal below absolved the driver of the Corporation and the Corporation of their liability holding that there is no proof to show that the driver of the bus had kept the ignition keys in the vehicle. This is a case of theft. Therefore, the corporation is not liable for the payment of compensation. As against the amount awarded, Sampath Reddy, the second respondent in the Tribunal below filed C.M.A. 12 of 1986, and as against disallowance of the claim against the Corporation, the claimants filed C.M.A. 512 of 1986. Thus both the appeals are disposed of together.

2. The contention of Sri C. Malta Reddy, learned counsel appearing for Sampath Reddy is that there is i\\o satisfactory proof that Sampath Reddy had driven the vehicle much less rashly and negligently. The direct witnesses are P. Ws. 2 and 4 who spoke about the act of causing the death of G. Komuraiah by rash and negligent driving by Sampath Reddy. The Tribunal below having rightly rejected the evidence of P.W. 2 ought to have rejected the evidence of P.W. 4. P.W. 4 admitted that he knew the name of Sampath Reddy, but he did not inform the name. It is also contended that the Criminal Court has rightly acquitted the appellant for the offence under Ss. 379 and 304(a), I.P.C. There is no satisfactory proof that Sampath Reddy had driven the vehicle and caused the accident. The learned Counsel Sri Rangappa, appearing for the claimants resisted the claim contending that the evidence on record satisfactorily established that it is Sampath Reddy who drove the vehicle and that theft was committed on account of the negligence on the part of the driver of the Corporation vehicle kept the ignition key in the bus itself and left unattended to by anybody, and thereby the driver has facilitated commission of theft of the vehicle by Sampath Reddy. For the vicarious negligent acts of the driver, the Corporation is also liable and the Tribunal below has committed a grievous error of law in absolving the Corporation. Sri K. Harinath, learned counsel appearing for the Corporation has contended that the vehicle has been stationed in the bus-depot and that the driver "and the conductor having kept the vehicle stationed, left for taking their meals in a neighbouring canteen. After they returned, they found the vehicle missing and immediately, they complained of it to the Depot Manager and the Traffic Inspector who in turn complained to the police. In the meanwhile, Sampath Reddy drove the vehicle and caused the accident by hitting the traveller, G. Komuraiah. Therefore, the Tribunal below has rightly absolved the Corporation of its liability. The rival contentions give rise to two points. Firstly, whether it is proved that Sampath Reddy had driven the vehicle at the time when

the accident had occurred and whether he had driven the vehicle rashly and negligently. Secondly, whether the Corporation is absolved from its liability to pay the damages to the claimants. As regards the first contention, we have the undisputed evidence of P.W. 4. The undisputed fact is that the vehicle belongs to the Corporation and it is a service-vehicle. It was kept in the Bus-Station at Jangoan as admitted in the counter-affidavit filed by the Corporation. It cannot be improved upon at this stage that the bus-station and the bus-depot are one and the same, and the bus was stationed at the other end of the bus-depot. It is not their case set out in the counter. Therefore, I cannot look into the contention raised by Sri Harinath and I proceed on the footing, as admitted by the Corporation, that the bus was stationed in the bus-station. No doubt, there is no evidence whether the ignition key was taken by the driver along with him when the vehicle was kept in the bus-station and himself and conductor left to canteen for taking their meals. But the fact remains that it was driven. It is also an admitted fact that before leaving the bus, the driver and the conductor made no arrangements to watch the vehicle. Section 84 of the Act provides that no person driving or incharge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licenced to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver. Thereby, u/s. 84 of the Act a statutory duty is cast upon the driver to see that the vehicle is either kept incharge of a person duly licenced in his absence or the mechanism should be stopped and breaks applied. In such a case, there cannot be any accidental motion of the motor vehicle in the absence of the driver. No prosecution has been taken by the driver of the Corporation. Therefore, when the vehicle was kept in the bus-station unattended to, it had facilitated the second respondent-appellant to drive the vehicle. The question thus is whether Sampath Reddy, the appellant, had driven the vehicle or not. We have the evidence of P.W. 4 and P.W. 2 in this regard. Even excluding the evidence of P.W. 2 which was discarded by the Tribunal below as he did not support the case of the prosecution for the offence u/s 304(A), I.P.C., we have the evidence of P.W. 4. No doubt, P.W. 4 was not examined in the Criminal Court. It is true that direct witness has to be examined at the trial in a Criminal Court. But the absence of examination of a direct witness in the criminal Court, his evidence can be looked into if the same inspires confidence to be accepted that he is a direct witness to the accident, It is a well settled legal position. It needs no citation. The question is whether the evidence of P.W. 4 can be accepted or not. P.W. 4 stated in his cross-examination also that he knew the appellant earlier and that he does not know his name. It shows that he has previous acquaintance with Sampath Reddy, but he does not know his name. As stated earlier, he has no axe to grind to speak against the appellant. He is not related even to the deceased and to the claimants and so he is absolutely a disinterested person. Nothing has been elicited during his cross-examination except the fact that he was not examined at the trial in the criminal Court. The Tribunal below has accepted his evidence. Except the suggestion that

he is giving false evidence by taking money from the claimants, nothing has been elicited. Having considered the evidence from the stated perspective, I have no hesitation to hold that P.W. 4 is a reliable witness who is working as a cooly along with P.W. 2 in the quarry of Krishna Rao. Krishna Rao himself has laid the complaint before the police and in the complaint, he mentioned the presence of P.W. 4. Unfortunately, Krishna Rao died before he was examined in the Tribunal. Under those circumstances, I accept the evidence of P.W. 4 as a truthful witness and therefore, his evidence inspires confidence to be accepted as true version without any corroboration. The name of Sampath Reddy was mentioned in Ex. B1 given at the earliest point of time. When : once the evidence of P.W. 4 is accepted, it is to be held that Sampath Reddy drove the vehicle and caused the accident due to his rash and negligent driving of the vehicle resulting in the death of G. Komiraiah, the deceased, who was coming on the extreme left side of the road on a cycle. Accordingly, the finding of the Tribunal below that the accident has occurred as a result of rash and negligent driving of Sampath Reddy is confirmed and Sampath Reddy is liable for the payment of the damages. The next question is whether the Corporation is vicariously liable for the negligent act on the part of its driver in keeping the vehicle at a public place, unattended to violating the statutory provisions u/s. 84 of the M.V. Act. Sri Harinath, the learned counsel has cited a decision in *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, . Therein, the Supreme Court held that (Paras 21 and 22 of AIR).

"The liability of the owner of the cars to compensate the victim in a car accident due to the negligent driving of his servant is based on the law of tort. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he was negligent. The number of the vehicles on the road increased phenomenally leading to increase in road accidents. To remedy the defect various steps were taken. The Indian Law introduced provisions relating to compulsory insurance in respect of third party insurance by introducing Chapter VIII of the Act. Before a person can be made liable to pay compensation for any injuries and damage which have been caused by his action it is necessary that the person damaged or injured be able to establish that he has some cause of action against the party responsible. Causes of action may arise out of actions for wrongs under the common law or for breaches of duties laid down by statutes. In order to succeed in an action for negligence the plaintiff must prove (1) that the defendant had in the circumstances a duty to take care and that duty was owed by him to the plaintiff, and that (2) there was a breach of that duty and that as a result of the breach damage was suffered by the plaintiff. The master also becomes liable for the conduct of the servant when the servant is proved to have acted negligently in the course of his employment. Apart from it in common law the master is not liable for as it is often said that owner of a motor car does not become liable because of his owning a motor car".

Thereby, it is settled law that before making an owner responsible for the tortuous act on the part of servant, it must be established that the servant has a duty either at common law or statute and that he committed breach thereof and then there arises vicarious liability which the master has to bear on account of the negligent act or statutory breach or violation of common law by the servant. There is no dispute as regards this principle- The question is whether that principle can be extended to the facts of this case. He further placed reliance on a decision of the Punjab and Haryana High Court in *Guriqbal Singh v. Surinder Kaur*, 1982 Ace CJ 406. Therein Justice Tiwana considered the case with similar facts as in the case on hand. Therein the owner of the truck had entrusted it to the driver Tara Singh. Later, he parked the same at a distance of one mile south east of Harike on Makhu-Moha Road and then one Ram Singh got into the seat of the driver and drove the truck towards Amritsar and caused a head-on collision with Punjab Roadways Bus No. PUA 985, being driven by Amrik Singh, deceased. On those facts, the learned Judge has held that it being an accident due to the driving by a third-party who was not authorised, the master is not liable and the liability of the Corporation was absolved on that ground. But the same Court in *Lajwanti and Others Vs. Haryana State and Others*, , S.S. Sodhi, J., has taken diametrically an opposite view. The learned Judge has held that the driver has a statutory duty to keep the vehicle in safe custody, but he kept the vehicle unattended to and left way-side teastall for taking tea. In the meanwhile, an unauthorised person had driven the vehicle causing death of Krishna Kumar who was proceeding on the road by a cycle and, as such the master is liable for the tortuous act committed by the driver due to his negligence. In *Venkatachalam Vs. Sundarambal Ammal and Another*, , Ratnam J., had considered similar questions. Therein, the contention of the owner of the bus that the third-party was not connected with him as he was not authorised to drive the vehicle and that there was no relationship of master and servant between him and servant and that, therefore, the owner is not liable for the tortuous act committed by the third-party, was negatived by the learned Judge, it was held that the driver was negligent in not taking necessary precautions in taking away the ignition key so as to rule out the possibility of somebody meddling with the bus and as such the owner is vicariously liable for the damages and the doctrine of *res ipsa loquitur* was applied. I respectfully agree with the learned Judge. It is to be seen that u/s 84 of M.V. Act, there was a statutory duty cast on the driver to see that the vehicle is kept in such a manner that there is no possibility of third party meddling with it and causing any accident. In this case, the vehicle was kept in public place, viz., in the bus-station where several people will have an access to get into the vehicle. The driver and the conductor left the vehicle without keeping the vehicle in charge of any person to see that nobody meddles with the vehicle and thereby, the driver is negligent in discharge of his statutory duty cast on him u/s 84 of M.V. Act. Thereby, he facilitated Sampath Reddy to get into the driver's seat and to drive the vehicle to a long distance and caused the accident by hitting the deceased, G. Komuraiah, on the extreme left side, while he was proceeding in the opposite direction. Thereby, the driver of the motor vehicle was

negligent in discharging his duty. The owner is so vicariously liable for the negligent act on the part of the driver and has to equally share the burden of damages caused due to the death of the person passing on the public road. In this case, the quantum is not in dispute by either of the counsel. The claim is determined by the Tribunal and on the facts and circumstances, the Tribunal below awarded a sum of Rs. 64,200/- in all as can be seen from the judgment. Therefore, the quantum is also upheld and the Corporation as well as Sampath Reddy are jointly and severally liable for the payment of the compensation awarded by the Tribunal below. Accordingly, the appeal C.M.A. 12 of 1986 filed by Sampath Reddy is partly allowed and the appeal C.M.A. 512 of 1986 filed by the claimants is allowed in toto. In the circumstances, each party is directed to bear their own costs. The claimants are entitled to interest at 12% per annum from the date of the claim till the date of realisation. No costs.