

(1967) 01 DEL CK 0003

In the Delhi High Court

Case No : First Appeal No. 10-D of 1957

Satya Wati Devi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-01-1967

Acts Referred:

Citation : (1968) ACJ 119 : AIR 1967 Delhi 98 : (1969) 2 LLJ 195

Hon'ble Judges : S.K. Kapur, J; Narain Andley, J

Bench : Division Bench

Advocate : K.K. Raizada and M.K. Chawla, for the Appellant; Parkash Narain and A.B. Saharya, for the Respondent

Judgement

1. The present suit was instituted by the mother of Shiam Narain Singh, deceased, aged 22 years on the date of the accident, that is 13th July, 1951. The father of Shiam Narain Singh did not join as plaintiff and he was, therefore, impleaded as defendant No. 3.

2. Shiam Narain Singh held a permanent commission on the Indian Air Force at the time of his death his total emoluments amounted to Rs. 527-8 per month. Shiam Narain Singh was killed in an accident with a three toner Air Force Vehicle which was at the time of the accident, being driven by M.N. Kanji Lal, defendant No.2. On the fateful day it was at about 8-00 P.M. that defendant no. 2 who had been detailed with vehicle No. 550542 at the Delhi Sports Run, entered the 'in' Gate of 3 Wing Guard Room Indian Air Force, on Maud Road, Delhi cantonment, to report to the Guard Room about his return. He came out of the 'out' Gate and was going to park the vehicle at the Sub-Motor Terminus on the same road. For going to the parking terminus he had to again enter the 'in' Gate of the 3 Wing Guard Room but when nearing the curve for entering the Gate on the right, the motor cycle driven by the deceased hit against the vehicle and as a result of the accident Shiam Narain Singh died two hours later. At the time of the accident Shiam Narain Singh was carrying Pilot Officer Woodfall on the pillion seat of his motor-cycle. One Mr. A.K. Ghosal, another Pilot Officer, was also going side by

side with the deceased at the time of the accident and his motor-cycle also collided against the vehicle and he got injured. Mr. A.K. Ghosal, appeared as a witness as P.W. 3.

The trial Court dismissed the suit on two grounds.

(1) The Union of India defendant No. 1 was not liable for the tortuous act of M.N. Kanji Lal, defendant No. 2 and

(2) The plaintiff had failed to prove that she was entitled to any amount by way of damages.

One of the questions that arose before the trial Court, namely, whether the defendant No. 2 was guilty of driving the vehicle rashly and negligently, was answered in favor of the plaintiff. The same very three questions arise and have been argued before us.

So far as the question of negligence of driver, M.N. Kanji Lal is concerned, the trial Court has carefully analysed the evidence and I have no hesitation in agreeing with it. There is no dispute about three facts:-

(1) The accident took place about 4 or 5 yards from the 'in' Gate between the 'in' Gate and the 'out' Gate of the 3 Wing Guard Room, the distance between the two Gates being about 30 to 40 yards;.

(2) both the motor cycles on the one hand and the vehicle on the other were going in opposite directions facing each other on the Maud Road, which is a straight road; and

(3) the accident took place between 7-30 to 7-45 P.m. when it was slightly drizzling.

The defense of M.N. Kanji Lal was that he did not see any vehicle coming from the opposite side in spite of the fact that he remained in a look out for the same; that the motor-cyclists coming from the opposite direction suddenly put on their head lights and he was suddenly dazed by the glare there from; that at the time of the accident one head-light of his vehicle was on; that the street lights were not lit at that time; and that he did not notice any vehicle coming from the opposite direction and took the approaching turn in a normal way. He however, admitted in the course of his cross-examination, that according to the rules of the road if he had seen the motor-cycles coming from the opposite direction, he should have permitted them to pass first. Mr. A.K. Ghosal, however, stated that he and the deceased Shiam Narain Singh started from the Officers Mess on two different motor cycles at about 7-30 or 7-45 P.M. that the lights of the motor-cycles were on; that distance from the Mess to the point of the accident was about a mile; that they were driving the motor-cycles on the left side of the road; that when they were proceeding towards the Delhi Cantonment on the road that passes in front of the main Guard Room No.3 Wing he saw the motor truck coming out from the "out gate" of the main Guard Room; that the point of

accident was about 3 or 4 yards from the road leading to the in gate "that in the beginning the truck was keeping towards the left; that he was following the motor cycle driven by the deceased; that as they had just crossed the second road leading into the main gate of the Guard Room the truck turned all of a sudden, to its right across their path, and that when the vehicle came in front of their motor cycles, the distance was too small to take any action to avoid the accident.

I fully believe the evidence of Mr. A. K. Ghosal and it, therefore, clearly emerges that the motor-cycles had their lights on and it was impossible for the driver of the truck to miss them, and that the driver took a pre-mature sudden turn without having regard to the rules of traffic. He should have permitted the motor cycles to pass before taking the turn. I am not prepared to believe the statement of the driver that the motor-cyclists were coming without lights and he was dazed by the sudden glare of the head lights of the motor-cycles, as alleged by him, or could not see the motor-cycles by reason of the drizzle. In any case, the drizzle should have put on him a stricter guard and even if he was dazed he should have stopped the motor vehicle rather than attempted a turn to the right. I, therefore, conclude, in agreement with the view of the trial Court, that Kanji Lal driver was negligent and there was no negligence on the part of the deceased.

3. This takes me to the other question, namely, whether the Union of India is liable for the tortuous act of the driver? Before the State can be allowed immunity against liability for the tortuous acts of the servants the Courts have to come to the conclusion that the impugned act was committed in the course of an undertaking or employment which is referable to the exercise of sovereign power or to the exercise of the delegated sovereign power. In *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, , the State was held liable for the negligent act of the driver, an employee of the State of Rajasthan, while he was driving the jeep-car from the repair-shop to the Collector's residence for the Collector's use give rise to a valid claim for damages against the State of Rajasthan or not? The Supreme Court took the view that the negligent act in driving the car was not referable to the exercise of governmental powers. The question again came up for consideration before their Lordships of the Supreme Court in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, , and their Lordships laid down the laws thus:

In dealing with such cases, it must be borne in mind that when the State pleads immunity against claims for damages resulting from injury caused by negligent acts of its servants, the area of employment reliable to sovereign powers must be strictly determined. Before such a plea is upheld, the Court must always find that the impugned act was committed in the course of an undertaking or employment which is referable to the exercise of sovereign power, or to the exercise of delegated sovereign power.

The question that falls for determination therefore in this case is was the impugned and committed in the course of an undertaking or employment

referable to the exercise of sovereign power, or to the exercise of delegated sovereign power, or even to the exercise of statutory powers as in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, ? The record abounds with evidence to the contrary. Reference to Exhibit P. 10 would show that the vehicle was engaged in carrying hockey and basket ball teams to Indian Air Force Station, New Delhi, to play a match against Indian Air Force, New Delhi. It appears that after the match was over the driver went to the Guard Room to report about his return and was, at the time of the accident going to park the vehicle at the Sub-Motor Terminus. Such an activity can hardly be referable to the exercise of any of the powers mentioned above which can entitle the State to a claim for immunity. *Flight Ltd. W.R. Menzies* appeared as P.W. 3 and spoke about the nature of the duty for which the vehicle had been detailed. He said -

I had the power to authorise vehicles to proceed on duty runs. I could not send out vehicles on private business. As far as I recollect the vehicle involved in the accident was on duty run. The vehicle had booked in the Guard Room and was returning on its way to the Section. When a vehicle is send out on duty it has authority slip known as form 658. That form is filled in and my signatures are obtained".

He then produced Exhibit P 10 to show the exact nature of the duty for which the vehicle was engaged, which I have already discussed above.

4. Mr. Parkash Narain, the learned counsel for the respondents, says that it is one of the functions of the Union of India to keep the Army in proper shape and trim and since the hockey and basket ball teams were carried by the truck as a part of physical exercise by the Air Force Men the Union of India should be held immune for the tortuous act of the driver. I am afraid, I cannot agree. It is the nature of the activity that has to be seen in such cases and where an act is done, which cannot truly be called the exercise of sovereign power, the State would be liable. Carrying hockey and basket ball teams to play a match can be no process of extension be termed as exercise of sovereign power. I am, therefore, not in agreement with the view of the trial. Court that in the circumstances of this case the Union of India was immune from liability. I, therefore, hold that the Union of India was also liable for the damages suffered by the plaintiff.

5. This then takes me to the question of assessment of damages. The evidence of the plaintiff discloses that on the date of the accident she was 47 years of age and today she would be 62 years. The plaintiff in her statement said that her father was alive on the date of her statement and he was 75 years of age. Having regard to the evidence she can be expected to live for another five years. That means that if the deceased was paying her some money she would have enjoyed the pecuniary benefit for a period of 20 years. *Shiam Narain Singh*, was 22 years of age, on the date of his death. The evidence of *Shri R.N. Shirvastava* shows that average life of male members of the family is pretty long. However, it would be safe to hold that the deceased would have lived and served at least for another 20 years, which period coincides with the period held available to the

plaintiff for the enjoyment of pecuniary benefit. I am not unmindful of the hazards to which the Air Force officers are subjected, but I have taken account of that in calculating the expected age of the deceased and in further reducing the damages which otherwise I would have been inclined to award. The evidence of the plaintiff and defendant No. 3 shows that the deceased was paying about Rs.200/- per month to the plaintiff. I have no reluctance in believing that evidence. The pecuniary benefit, therefore gained in the course of 20 years by the plaintiff would come to about Rs. 48,000/-.

There are some other factors which have to be taken into consideration - (I) the hazards to which the deceased would have been subjected; and (II) the plaintiff will earn interest for the next five years, being the expected age, on the lump sum awarded which having regard to the present market conditions, should be anywhere between 6 to 8 per cent. She will further have the advantage of immediately having lump sum amount on hand. The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value in the hands of the plaintiff. No doubt, in such like cases, which are of frequent occurrence these days, certain rules relating to the measure or assessment of damages have gradually been evolved, yet, in general, there is no specific rule upon the matter and it is always left to the good sense of the Court to assess as best as it can what it considers to be an adequate recompense for the loss suffered by the plaintiff. The assessment may well be a matter of great difficulty. Indeed, in some cases, one of guess work but the fact that it cannot be made with mathematical accuracy is no reason for depriving the plaintiff of compensation. Yet that is the mistake into which the trial Court seems to have fallen.

The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit and, on the other, any pecuniary benefit which, from whatever source, comes to him by reason of the death. It is indeed not sufficient for the plaintiff to prove that he has lost by the death of the deceased a mere speculative possibility of pecuniary benefit. He must show that he has lost a reasonable probability of pecuniary advantage.

Mr. Parkash Narain, the learned counsel for the respondents says that it can scarcely be expected that the son was paying to the plaintiff out of the salary he was getting and that he would have continued to pay. He further says that the whole matter is beset with doubts, contingencies and uncertainties and therefore, the view of the trial Court should be upheld. He also pointed out that the deceased was not married and we should take into consideration the fact that after marriage he may not have been the benevolent towards the mother, or may not have found himself in a position to spare so much. This argument overlooks the fact that in the course of years he would have gained sufficient rise in life as well as resulting in corresponding increase in the emoluments. Having considered the entire evidence on the record, I am of the opinion that the deceased would

have been of at least the same financial assistance to the plaintiff as before his death. Of course, I have said earlier, such calculations have to be subject to changes, and chances that might have affected him and his mother but, I think, I have taken a sufficient account of these factors. I have also said earlier that the amount will have to be taxed down because of the hazards inherent in the Air Force life. Having regard to these various factors, I am of the opinion that Rs.25,000/- should be assessed as damages payable to the plaintiff.

6. Since I have come to the conclusion that defendant No. 2 Kanji Lal, was driving rashly and negligently and the accident was the result of his negligence alone he is also liable for the damages.

7. In these circumstances, I set aside the judgment and decree of the trial Court and decree the plaintiff's suit for Rs.25,000/- against the defendants Nos. 1 and 2. The plaintiff will also have the proportionate costs throughout.

S.N. Andley, J.

8. I agree.

9. Appeal allowed.