
(2005) 09 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : FAO (MVA) No. 540 of 2000

Secretary, H.P.S.E.B. and Another

APPELLANT

Vs

Richard and Others

RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 92A(1), 92B

Citation : (2007) ACJ 341 : AIR 2006 HP 37

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Kuldip Singh and Bimal Gupta, for the Appellant; Bhupender Palhanja, for Jagdish Rajta, (for Nos. 1 to 3) and Rajinder Panishta, for M.L. Brakta, (for No. 4), for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—A claim petition u/s 166 of the Motor Vehicles Act for grant of compensation was filed by the husband and minor children of deceased Kamla Verma alleging that the deceased who was an employee in the H.P. State Electricity Board (hereinafter referred to as "the Board") had to work after 5.00 p.m. Therefore, at about 6.30 p.m. she was permitted to take the official vehicle to go home. This vehicle met with an accident due to the rash & negligent driving of the driver resulting in her death.

2. On the other hand, the version of the driver is that he in fact along with the vehicle was at Bhata Kuffer on 29-10-1998. According to the driver he had received a telephonic call at the shop of one Mast Ram from Kamla Verma. Mast Ram had given him a message and he in turn had rung up Kamla Verma deceased. The deceased had asked the driver to bring his vehicle to her residence at Housing Board Colony to take her to hospital as she was feeling unwell. According to the driver he took the vehicle and after picking up the deceased he had just gone a little distance when the lights of the vehicle suddenly went off and he could not see the road and the vehicle rolled down

from the edge of the road.

3. The case of the Board is that the driver was not authorised to carry the deceased. According to the appellant/Board only the Assistant Executive Engineer was authorised to grant permission for an employee to take the vehicle. The Assistant Executive Engineer appeared as R.W. 1. He stated that permission in this behalf could only be granted by him and in his absence by the Junior Engineer. On 29-10-1998 i.e. on the date of accident the Assistant Executive Engineer was not present at Shimla.

4. The case set up by the driver is that he in fact had taken permission from the Junior Engineer. The Junior Engineer appeared in the witness box as RW-2. No question was asked by any one of the parties as to whether he granted any permission or not. Therefore, I shall proceed on the basis that no permission was taken from the Junior Engineer.

5. I have heard Shri Kuldip Singh, Sr. Advocate appearing on behalf of the Board. He has contended that the driver was driving the vehicle in an unauthorized manner. According to the terms of his appointment the driver could not have taken the vehicle without their permission of either the Assistant Executive Engineer or the Junior Engineer. In this case since he took the vehicle without their permission, the Board cannot be held vicariously liable for the totally unauthorized act of the driver. He has relied upon the judgment in case Sitaram Motilal Kalal Vs. Santanuprasad Jaishankar Bhatt, , in which the Hon"ble Apex Court held as under:

(27) The law is settled that a master is vicariously liable for the acts of his servant acting in the course of his employment. Unless the act is done in the course of employment, the servant's act does not make the employer liable. In other words, for the master's liability to arise, the act must be a wrongful act authorized by the master or a wrongful and unauthorized mode of doing some act authorized by the master. The driver of a car taking the car on the master's business makes him vicariously liable if he commits an accident. But it is equally well settled that if the servant, at the time of the accident, is not acting within the course of his employment but is doing something for himself the master is not liable. There is a presumption that vehicle is driven on the master's business and by his authorized agent or servant but the presumption can be met. It was negated in this case, because the vehicle was proved to be driven by an unauthorized person and on his own business. The de facto driver was not the driver or the agent of the owner but one who had obtained the car for his own business not even from the master but from a servant of the master. Prima facie, the owner would not be liable in such circumstances.

6. The law with regard to the various liability is evolving and developing. Over the years, the approach of the Courts is becoming more liberal and the trend is moving towards making the master liable for the acts of the servant. The concept of no fault liability has been introduced in Motor Accident cases. Even in such

cases of no fault liability the trend is to make the master responsible for the acts of the servant. In *Sitaram Motilal Kalal Vs. Santanuprasad Jaishankar Bhatt*, the owner of the vehicle entrusted it to person A for plying a taxi. B used to clean the taxi. He was neither employed by the owner or by A. A trained B to drive the vehicle and took B for obtaining licence for driving. While taking the test B caused the accident. A Was not present when the accident occurred. By a majority view, the Apex Court held that the owner was not liable since the person who borrowed the taxi and the driver had not acted in the course of the business of the owner. The Court held that the test was -- whether the act was done on the owner's business or that it was proved that it has been impliedly authorized by the owner. It was further held that unless the act is done in the course of his employment, the servant's act does not make the employer liable.

7. This judgment was considered by the Hon"ble Supreme Court in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, .* In this Case one "P" was travelling in the car being driven by the Manager of the respondent-company. The car dashed against the tree resulting in the death of "P". The widow of "P" filed claim petition under the Motor Vehicles Act against the company -- the owner of the Car. The High Court following the decision of *Sita Ram Motilal Kalal case (supra)* held that the owner cannot be held to be vicariously liable in taking Purshotam as a passenger as the said act was neither in the course of employment nor under any authority of the owner. The Supreme Court upset the findings of the High Court and held that the owner was liable to pay the compensation. The Apex Court in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, held thus:*

14. Before we conclude we would like to point out that the trend in law is to make the master liable for acts which do not strictly fall within the term "in the course of the employment" as ordinarily understood. We have referred to *Sitaram Motilal Kalal Vs. Santanuprasad Jaishankar Bhatt*, where this Court accepted the law laid down by Lord Denning in *Ormrod v. Crosville Motor Services Ltd.* 1953 (2) All ER 753 (*supra*) that the owner is not only liable for the negligence of the driver if that driver is his servant acting in the course of his employment but also when the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes. This extension has been accepted by this Court.

Lord Denning in *Young v. Edward Box and Co. Ltd.* (1951) 1 ILR 789 has made the following pertinent observations:

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 unauthorized, to give anyone a lift, then no doubt the passenger is a trespasser on the lorry so far as the 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 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.

In Salmond's Law of Torts, it has been said thus:

On the other hand it has been held that a servant who is authorized to drive a motor vehicle, and who permits an unauthorized person to drive it in his place, may yet be acting within the scope of his employment. The act of permitting another to drive may be a mode, albeit an improper one, of doing the authorized work. The master may even be responsible if the servant impliedly, and not expressly, permits an unauthorised person to drive the vehicle, as where he leaves it unattended in such a manner that it is reasonably foreseeable that the third party will attempt to drive it, at least if the driver retains notional control of the vehicle.

In Halsbury's Law of England, it has been stated:

Where the act which the employee is expressly authorised to do is lawful, the employer is nevertheless responsible for the manner in which the employee executes his authority, If, therefore, the employee does the act in such a manner as to occasion injury to a third person, the employer cannot escape liability on the ground that he did not actually authorize the particular manner in which the act was done, or even on the ground that the employee was acting on his own behalf and not on that of his employer.

8. A Full Bench of the Punjab and Haryana High Court dealt with the question of vicarious liability of the owner in Pirthi Singh and Another Vs. Binda Ram and Others, After considering the aforementioned authorities of the Hon"ble Court and a large number of English authorities on the point, the Full Bench held as follows:

The vicarious liability of the master does not depend on the lawful or unlawful nature of the acts of the servant and the master would be liable for the alleged act of the servant which had taken place in the course of his employment even though the servant may have acted in contravention of some of the provisions of the statute or the Rules made thereunder. It follows that in a motor accident case the determining factor so far as the liability of the owner is concerned is whether the act was committed by the driver in the course of his employment or not. If the driver was acting in the course of his employment then the owner would be liable even though he acted against the express instructions of the owner or in violation of the Rules framed under the Statute.

9. This question also come up for consideration before a Division Bench of the Karnataka High Court in M.S. Rayta and Another etc. Vs. Gowrawwa

Channabasappa and Another etc., It was held that the master is vicariously liable even if the act of the driver is in violation of the departmental instructions. In that case, the vehicle in question belonged to the defence department. The defence taken was that the driver was not in the master's employment and was not driving the vehicle on the master's instructions. The driver had been asked to take the vehicle to a particular place and to bring it to the garage, but the driver did not return to the garage and instead unauthorisedly, he on his own, went in an altogether different direction on a joy ride. On the way he picked up some civilian passengers. An accident occurred and the claim petition was filed. The High Court rejected the defence of the State and held that despite departmental instructions and the specific instructions to the driver, it cannot be said that the driver was not driving the vehicle in connection with his duties and functions as a driver.

10. In State of Madhya Pradesh and Another Vs. Ratna Devi and Others, while considering a similar plea the High Court of M.P. held the owner -- State of Madhya Pradesh vicariously liable to pay compensation even though the driver of the Government jeep took the vehicle without permission and unauthorisedly gave lift to two passengers who died in the accident.

11. A similar point came up before the Apex Court in State of Maharashtra and Others Vs. Kanchanmala Vijaysing Shirke and Others, . The Apex Court held as follows:

15. On behalf of the appellants reliance was placed on the judgment in the case of Sitaram Motilal Kalal Vs. Santanuprasad Jaishankar Bhatt, . In that case the owner of the vehicle entrusted it to A for plying as a taxi. B used to clean the taxi. He was either employed by the owner or by A. A trained B to drive the vehicle and took B for obtaining the licence for driving. While taking the test B caused bodily injury to the respondent. At the time of the accident, A was not present in the vehicle. On the question whether the owner was liable, it was held in the majority judgment that the owner was not liable because evidence did not disclose that owner had employed B to drive the taxi or given him the permission to drive the taxi. However, Subba Rao, J. (as he then was) held that the owner was liable because A did not exceed the authority conferred on him by the owner in employing B as a servant and permitted him to drive the vehicle in order to obtain the licence for assisting him as a driver. This case was considered by this Court in the case of Pushpabai and it was said that recent trend in law is to make the master liable for acts which do not strictly fall within the term "in the course of the employment" as ordinarily understood. The learned Counsel for the appellants sought to distinguish Pushpabai case by contending that therein this Court accepted the unauthorized act of the driver being within the course of employment because of his occupying "high position of Manager", whereas in the case at hand Appellant 3 --the driver -- was a Class IV employee. We do not think that the ratio of the case turns on the opposition occupied by the driver. The real thrust of the decision is acceptance of the trend to make the master

liable for acts which do not strictly fall within the term "in the course of employment" as ordinarily understood.

xxx xxx xxx xxx 17. Incidentally, it may be pointed out that in Motor Vehicles Act, 1939, Chapter VII-A "liability without fault in certain cases" has been introduced (Chapter X of the Motor Vehicles Act, 1988). Sub-section (1) of Section 92-A provides that where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle, the owner of the vehicle shall be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section. Sub-section (2) specifies a fixed amount for such liability without fault. In view of Sub-section (3), the claimant is not required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the vehicle. Sub-section (4) of that section says in clear and unambiguous words that a claim for compensation under Sub-section (1) of that section shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made. Section 92-B clarifies that the right to claim compensation u/s 92-A in respect of death or permanent disablement of any person shall be in addition to any other right i.e. the right to claim compensation on principle of fault. The introduction of provisions creating liability without fault gives out that Parliament has provided for payment of compensation within certain limits, ignoring the principle of fault. When even under the law of tort, Courts have held that the employer is vicariously liable for an authorized act done in an unauthorized manner taking into consideration the interest of the victims of the accident, according to us, this approach is all the more necessary while judging the liability of the owner of the vehicle under the statutory provisions of the Motor Vehicles Act.

12. A Division Bench of this Court has considered in detail the law with regard to the vicarious liability in *New India Assurance Co. Ltd. Vs. Lachhmi Devi and Others*, In that case several persons sustained injuries when they were travelling in a truck. The owner of the truck contended that the driver had allowed the passengers to board the truck against his instructions and, therefore, he was not liable. After taking into consideration, the entire law, the Division Bench of this Court negated the plea of the owner and held that the owner was responsible and liable for the conduct of his driver even if the same may be unauthorized.

13. From a reading of the various judgments cited above it is clear that the law with regard to vicarious liability has been made more liberal and the rule of vicarious liability has been expanded by judicial pronouncements. One cannot lose sight of the fact that the State has thought it fit to even introduce the concept of no fault liability. After the amendment of 1985 in the Motor Vehicles Act, 1988 the legislature has enacted Section 163-A in the Act. The claimants can claim compensation without even having to prove negligence. Even the Insurance Companies are held liable in cases where the owner is not at fault on

the ground that since the owner has not committed a breach of the policy, the Insurance Company is liable. The State Governments and the State owned Transport Corporations have been exempted from getting their vehicles insured and they cannot be placed on a better footing than the Insurance Companies. They must take the responsibility for the acts of their employees and as such they are liable to pay compensation for any tortuous act of the employee. Even if the act of the employee may be beyond the scope of his duties or he may have acted in violation of the instructions or mandate issued to him the employer cannot escape the liability.

14. The case of the Board is that the driver had taken the vehicle without the permission of the authority authorized to grant such permission. Even if this case is accepted then also in my opinion the Board has to be held vicariously liable for the unauthorized act of the driver. The driver was employed to drive the jeep. Neither RW1 nor RW2, i.e. the Assistant Executive Engineer and the Junior Engineer have stated that Kishori Lal was not the driver of the vehicle. Since he was the driver of the Jeep and the Jeep was entrusted to him, he could have driven the Jeep. The mere fact that he unauthorisedly took the Jeep to the house of Kamla Verma can only lead to the conclusion that he did his authorized duty in an unauthorized manner. The Board cannot escape its liability. The learned Tribunal has rightly held the Board vicariously liable for the acts of its driver.

15. No other point was argued.

16. In view of the above discussion, I am of the opinion that the appeal of the Board is without merit. The same is dismissed with no order as to costs.