
(2014) 12 RAJ CK 0072
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4631/2003

Sohan Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 146
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2014) 12 RAJ CK 0072

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Hem Singh Rathore, Advocate for the Appellant; A.S. Khangarot, Addl.G.C, Advocate for the Respondent

Judgement

Veerender Singh Siradhana, J.—One Shri Yogesh Sharma lodged a report on 9th August, 1995 against the petitioner for offence under Section 279 and 304-A of the Indian Penal Code (hereinafter referred to as the "IPC", for short) for causing death of his wife Smt. Meena by rash and negligent driving. However, the trial Court acquitted the petitioner vide judgment and order dated 12th December, 2001. Shri Yogesh Sharma and his children also filed a claim petition claiming compensation under the provisions of the Motor Vehicle Act, 1988, before the Motor Accident Claims Tribunal, Jaipur, wherein an amount to the tune of Rs. 1,50,000/- (Rupees : One Lac Fifty Thousand Only) together with interest @ 9%, was made in favour of the claimants and against the State-respondents/ employer as well as the petitioner being driver of the vehicle. Though the State-respondents paid the amount of compensation to the tune of Rs. 2,23,638/- (Rupees : Two Lacs Twenty Three Thousand Six Hundred & Thirty Eight Only), to the claimants, however, directed the petitioner to deposit the amount paid as compensation to the claimants, failing which deduction was to be effected from monthly salary of the petitioner. Aggrieved of the action of the State-respondents-employer vide communications dated 21st May, 2003, 16th July, 2003 and 25th July, 2003, the present writ proceedings have been instituted by

the petitioner-driver of the vehicle.

2. The learned counsel for the petitioner reiterating the pleaded facts and grounds of the writ application has contended that at the relevant time, the petitioner was driving the vehicle in course of his employment as an employee of the State-respondents-employer and therefore, he cannot be held liable to pay any part of the amount awarded as compensation in favour of the claimants by the Tribunal. In support of his submissions, the learned counsel has placed reliance on the opinion in the case of *Randhir Singh v. Smt. Roshanara & Ors.*: 2001(2) T.A.C. 310 (Delhi) and *State of Maharashtra and Others Vs. Kanchanmala Vijaysing Shirke and Others*, .

3. In response to the notice of the writ application, the respondents have filed their counter-affidavit admitting the fact of registration of the FIR and acquittal of the petitioner in the criminal case for offence under Section 279 and 304-A of IPC. However, since the petitioner was driving the vehicle at the relevant time and an award has been made by the Tribunal holding the petitioner-driver responsible for rash and negligent driving, therefore, the petitioner is liable to pay the compensation. Reference has been made to the text of Section 146 of the Act of 1988.

4. I have heard the learned counsel for the parties and with their assistance, perused the materials available on record.

5. The controversy raised is no more res-integra in view of pronouncement of the Hon'ble Supreme Court in the case of *State of Maharashtra & Ors.* (supra) wherein the Hon'ble Supreme Court while examining the issue of vicarious liability for any act of employees of the employer in the course of employment, held thus:--

"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 92A 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 92B clarifies that the right to claim compensation under Section 92A 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 the 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 authorised act done in an unauthorised 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."

6. In the instant case at hand, it is not disputed that the petitioner has been acquitted of offence under Section 279 and 304-A of IPC. Further, there is nothing in the counter affidavit filed on behalf of the State-respondents, indicating as to why the petitioner should be held liable to pay the amount of compensation. Once, it is established that the negligent act of the driver was in course of employment, the State shall be liable to make payment of the amount of compensation. The accident took place while the petitioner was performing the duty of the driver during the course of his employment, and therefore, the State-respondents are liable to pay the compensation payable on account of the accident as awarded by the Tribunal, and the petitioner cannot be made liable for the same.

7. For the reasons and discussions herein above and in view of the law declared by the Hon'ble Apex Court of the land, I have no hesitation in holding that since at the time of the accident the petitioner was driving the vehicle, in course of his employment of the employer-State-respondents, and therefore, he cannot be held liable for the payment of amount of compensation made vide award dated 27th January, 2003.

8. In the result, the writ application succeeds and is hereby allowed. The impugned orders dated 21st May, 2003 (Annexure-3), 16th July, 2003 (Annexure-4) and 25th July, 2003 (Annexure-6), are hereby quashed and set aside.

9. In view of the final adjudication on the writ application, the stay application stands closed.

10. However, in the facts and circumstances of the case, there shall be no order as to costs.