

(2004) 07 RAJ CK 0056

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 253 of 1996

State of Rajasthan

APPELLANT

Vs

Smt. Shekhu and Others

RESPONDENT

Date of Decision : 22-07-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2005) 1 ACC 156 : (2006) ACJ 1644 : (2004) 4 RLW 2659 : (2004) 4 WLC 335

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : O.P. Boob, for the Appellant; Rajesh Panwar, for Respondents Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—The civil misc. appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) has been filed by the State of Rajasthan (appellant) against the judgment and award dtd. 25.7.1995 passed by the learned Judge, Motor Accident Claims Tribunal, Banner in Claim Case No. 29/93 by which be awarded a sum of 2,36,000/- as compensation to the claimants- respondents No. 1 to 4 on account of death of .Shri Khartha Ram (hereinafter referred to as the deceased).

2. It arises in the following circumstances:

i) That claimants - respondents No. 1 to 4 filed claim petition on 20.2.1993 before the Motor Accident Claims Tribunal. Barnier (hereinafter referred to as the "Tribunal"), claiming a sum of Rs. 9/12,000/-as compensation on account of death of the deceased in the accident alleging inter alia that 20.8.1992 in the evening, the deceased and his brother Kushla Ram (A.W.2) were going on bicycle after doing the job of massion and at that time a jeep No. RJ-04-C/0223 came from opposite direction which was being driven by respondent No. 5 Achla Ram and

belonging to the Distt. Collector, Banner and hit the bicycle as ;\\ result of which kharlha Ram died in the hospital.

ii) That the appellant filed reply to (he claim petition and after filing reply, the learned Tribunal framed 4 issues.

iii) That the learned Tribunal after recording evidence and after hearing the parties, passed the award dtd. 25.7.1995 in the manner as staled above.

iv) Aggrieved from the judgment and award dtd. 25.7.95, this appeal has been preferred by the appellant.

3. In this appeal, following submissions have been raised by the learned counsel for the appellant:

i) That at the time of accident, the jeep in question was not being driven by the respondent No. 5 Achla Ram and no accident had taken place with the jeep in question and thus, the findings on issue No. 1 are liable to be quashed and set aside.

ii) That the State Government is not liable for the tortious act committed by Achla Ram (respondent No. 5) as at the time of accident, the jeep was not being used for Government work and thus, the findings on issue No. 3 are liable to be quashed and set aside.

iii) The learned counsel for the appellant has also challenged the findings on issue No. 2 and it has been submitted by him that the compensation to the tune of Rs. 2,36,000/- which was awarded by the learned Tribunal is excessive in nature and the same may be reduced accordingly.

4. On the other hand, the learned counsel for the respondents have supported the impugned judgment and award passed by the Tribunal. The respondents No. i to 4 have also submitted cross- objection for enhancement of amount of compensation.

POINT NO. 1.

5. So far as point No. 1 is concerned, the learned Tribunal has framed issue No. 1 which pertained as to whether the accident had taken place with the jeep No. R.J-C/0223 or not and it was decided in favour of the respondents - claimants after discussing the evidence on record. Apart from this, there is ample evidence in this case. Ex.1 is the FIR which shows that accident had taken place with the jeep and Ex.2 is (he challan which was filed against the respondent No. 5 and Ex. 9 is the mechanical inspection report of the jeep in question which shows that there were signs of accident on the jeep in question and hence to say that no accident had taken place with the jeep in question cannot be accepted and apart from this, the learned Tribunal has discussed the evidence in detail on this issue and has come to the conclusion that the accident had taken place by the jeep in question and therefore, the issue No. 1 was rightly decided by the learned Tribunal and findings on issue No. 1 do not suffer from basic infirmity or illegality

and the same are liable to be confirmed one and the point No. 1 raised by the learned counsel for the appellant stands rejected.

POINT NO. 2

6. So far as point No. 2 is concerned, the Tribunal has framed issue No. 3 in this respect which reads as under:

"Whether on 19.8.92 after 12-noon, the jeep in question was not being used for government work and therefore, the State Government was not responsible for paying any compensation?"

7. On this issue, the learned Tribunal gave the finding stating that burden of proving that issue was on the appellant and no evidence was led by the appellant and it was further observed by the learned Tribunal that on the contrary from the evidence of the claimants - respondents it has been proved that on 20.8.92, the jeep in question was being driven by Achla Ram (respondent No. 5) negligently and because of rash and negligent driving by respondent No. 5, the accident had taken place which resulted in death of the deceased and so far as the fact whether at the time of accident, jeep in question was being used for government work or not is concerned, since for that there was no evidence on the part of the appellant, therefore, the learned Tribunal came to the conclusion that the appellant had failed to prove that fact and thus, this issue was decided in favour of the claimants - respondents and against the appellant. The findings on issue No. 3 have been challenged by the learned counsel for the appellant.

8. Before proceedings further and examining the findings on issue No. 3, position of law in respect of vicarious liability and sovereign liability has to be seen.

VICARIOUS LIABILITY, ITS MEANING

9. "Vicarious liability" means that one person takes or supplies the place of another so far as liability is concerned. This phrase means the liability of a person for the tort of another in which he had no part. A master is jointly and severally liable for any tort committed by his servant which acting in the course of his employment.

CONCEPT OF VICARIOUS LIABILITY

10. It is settled and undisputed principle of the law of Torts that master is answerable for every such wrong of his servant as is committed in the course of his service, though no express command or privity of the master be proved and the wrongful act may not be for the master's benefit. In fact, there is a catena of authority even for the proposition that although the particular act which gives the cause of action may not be authorised, still, if the act is done in course of employment which is authorised, the master is liable. This doctrine of liability of the master for the acts of his servant is based on the maxim respondent superior, which means "let the principal be liable" and it puts the master in the same position as if he had done the act himself. It also derives validity from the

maxim qui facit per alium facit per se, which means "ho who does an act through another is deemed in law to do it himself."

11. "The doctrine of vicarious liability" said Lord Pearce in Imperial Chemical Industries Ltd. v. Shatwoll 1965 AC 656, "has not grown from any very clear, logical or legal principle but from social convenience and rough justice."

12. Even when the owner of the motor vehicle is involved in an accident is not "directly negligent, still he becomes liable to pay the compensation to the claimants if they show that the accident has been caused due to the negligence of the driver or some other servant of the owner. Such liability is called vicarious liability where under common law the master becomes liable for the negligent actions of his servants carried out in the course of their normal duties.

13. Thus, it can be said that:

i) An owner of a car would be liable in damages for an accident caused by his servant in the course of his employment.

ii) He would also be liable if the effective cause of the accident" was that the driver in the course of his employment committed a breach of his duty in either not preventing another person from driving the car or neglecting to see that the said person drove it properly.

VICARIOUS LIABILITY IN MOTOR ACCIDENT CASES

14. The general principle is well settled and it is neatly given by Pearson, L.I, in Norton v. Canadian Pacific Steamships Ltd. (1961) 2 All E R 785, thus:

"The owner of a car, when he takes or sends it on a journey for his own purposes, owes a duty of care to other road users, and if any of them suffers damage from negligent driving of the car, whether by the owner himself or by an agent to whom he had delegated the driving, the owner is liable."

15. The limitation on this principle has been succinctly stated by Cockburn, C.I in Storey v. Ashton (1894) 4 QB 476, thus :

"The true rule is 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."

Lush, J. put it:

"The question in all such cases as the present is whether the servant was going that which the master employed him to do."

16. Lord Denning observed in Ormrad v. Crosvile Motor Services Ltd. (1953) 2 All ER 753.

"It has often been supposed that the owner of a vehicle is only liable for the negligent of the driver if that driver is his servant acting in the course of his

employment. This is not correct. The owner is also liable if the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purpose.....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, 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 merely escapes liability when he lends it or hires it to a third person to be used for purpose in which the owner has no interest or concern."

COURSE OF EMPLOYMENT

17. The Hon'ble Supreme Court in *Pushpabai v. Ranjit Ginning & Pressing Co.* (1977) ACJ 343, has approved the statement of Lord Lenning which somewhat expanded, and liberalised the idea that the owner is not only liable for the negligence of the driver if that driver is his servant acting in the course of the 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. Whatever might be the law on this subject in earlier days, both the concepts of "scope of employment" and the law as to obligations towards trespassers have undergone radical changes. The Hon'ble Supreme Court observed in *Pushpabai v. Ranjit Ginning & Pressing Co. Pvt. Ltd.* (supra).

"Before we conclude, we would like to point out that the recent trend in law is to make the master liable for acts which do not strictly fall within the term "in the course of employment" as ordinarily understood."

18. Keeping in view the above proposition of law, the matter can be concluded in the following manner:

i) What emerges, therefore, is that the act of the driver viewed in the background and as part of all the surrounding circumstances, cannot be isolated from the course of employment or the course of the master's work.

(ii) Even a careless act or mistake of a servant in the course of employment fastens liability on the master. This apart, when a servant does an act which he is only conditionally authorised to do, without or beyond the conditions, the master or employer is liable for the wrongful act. The mere fact that the driver had consumed liquor against rules contrary to the terms of contract would not exempt the master from liability.

(iii) Thus, principle of vicarious liability is applicable in motor accident cases.

19. The above proportions of law find place in number of cases including a Privy Council decision in AIR 1945 168 (Privy Council) and *State of Assam v. Urmila Datta* 1974 ACJ 414 (Gau).

DOCTRINE OF SOVEREIGN IMMUNITY - APPLICABILITY TO CLAIMS UNDER THE M.V. ACT:

20. The doctrine of sovereign immunity is based on the common law principle

that the king commits no wrong. Accordingly, it was not possible to sue the crown in tort, either for wrongs which it had expressly authorised or for wrongs committed by its servant in the course of their employment.

21. The point as to how far the State was liable in tort first directly arose before the Hon'ble Supreme Court in *The State of Rajasthan Vs. Mst. Vidhyawati and Another*. In that case, the claim for damages was made by the dependants of a person who died in an accident caused by the negligence of the driver of a jeep maintained by the Government for official use of the Collector of Udaipur while it was being brought back from the workshop after repairs. The Rajasthan High Court took the view that the State was liable, for the State is in no better position in so far as it supplies cars and keeps drivers for its Civil Service. In the case of *State of Rajasthan v. Mst. Vidyawati* (supra), Hon'ble Supreme Court has held as under:

"Act done in the course of employment but not in connection with sovereign powers of the State, State like any other employer is vicariously liable."

22. Thus, it can be said that the Hon'ble Supreme Court made the position clear that there was no justification, in principle or in public interest, that the State should not be held liable vicariously for the tortious act of its servant.

23. The Hon'ble Supreme Court in the case of *Pushpa Thakur v. Union* 1984 ACJ 559, has held that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act are concerned. That apart, after the amending Act 100 of 1956, by which section 110A of the Motor Vehicles Act, 1939, was inserted, the distinction of sovereign and non-sovereign acts of the State no longer existed as all owners of vehicles were brought within the scope of that section. Sec. 166 of the new Act of 1988 reproduces Sec. 110A of the old Act. Whether the State is bound by the provisions of the Motor Vehicles Act is no longer *res integra*.

24. Thus, the Hon'ble Supreme Court has set at rest all the conflicts and distinction between sovereign and non-sovereign acts no longer exists.

25. Further more, the Hon'ble Supreme Court in the case of *N. Nagendra Rao and Co. Vs. State of Andhra Pradesh*, has observed that *maxim lex non protest peccare* that is the King can do no wrong has no place and has held as under:

"Sovereignty" and "acts of State" are thus two different concepts. The former vests in a person or body which is independent and supreme both externally and internally whereas latter may be act done by a delegate of sovereign within the limits of power vested in him which cannot be questioned in a Municipal Court. The nature of power which the East India Company enjoyed was delegation of the "act of State". An exercise of political power by the State or its delegate does not furnish any cause of action for filing a suit for damages or compensation against the State for negligence of its officers. Reason is simple. Suppose there is war between two countries or there is outbreak of hostilities between two

independent States in course of which a citizen suffers damage. He cannot sue for recovery of the loss in local Courts as the jurisdiction to entertain such suit would be barred as the loss was caused when the State was carrying on its activities which are politically and even jurisprudentially known "acts of State". But that defence is not available when the State or its officers act negligently in discharge of their statutory duties.

That a part, the doctrine of sovereign immunity has no relevance in the present day context when the concept of sovereignty itself has undergone drastic change. Further, whether there was any sovereign in the traditional sense during British rule of our country was not examined by the Bench in *Kasturi Lal (supra)*, though it seems it was imperative to do so, as the Bench in *Vidhyavati (supra)*, had not only examined the scope of Article 300 of the Constitution, but after examining the legislative history had observed.

The old and archaic concept of sovereignty thus does not survive. Sovereignty now vests in the people.....

But there the immunity ends. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy..... ."

26. Thus, it can be said that now sovereignty lies with the people and no-one whatsoever may be can say that he is immuned from the liability and thus, suit for damages for negligence of officers of the State in discharging the statutory duties is maintainable.

27. The Hon"ble Supreme Court in the case of *Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others*, has held that the State would be liable to pay compensation for tortious act of its employees.

28. The Hon"ble Supreme Court in the case of *State of Maharashtra and Others Vs. Kanchanmala Vijaysing Shirke and Others*, has observed that if the vehicle was used in connection with the affairs of the State and for official purpose, the State cannot escape its vicarious liability to pay compensation to the heirs of the victim on the ground that it had never authorised the clerk to drive the vehicle.

29. In view of the above proposition of law, the maxim "lex non protest preceare" has no place today and now sovereignly vests in the people and from this point of view, the State is liable for the act done by its employees and there exists no distinction between sovereign and non-sovereign acts and like ordinary citizen, the State would be liable for the act done by its employees.

30. Applying the above principle to the facts of the present case, since jeep in question was being driven by the respondent No. 5 (*Achla Ram*) who was under

the employment of Collector, Banner and the jeep was belonging to the Collector, Banner (State Government) therefore, the State would be liable for the act done by Achla Ram (respondent No. 5) and the State cannot plead any immunity for that and thus, the learned Tribunal has rightly decided issue No. 3 and point No. 2 raised by the learned counsel for the appellant also stands rejected and findings on issue No. 3 recorded by the learned Tribunal are liable to be confirmed one.

POINT NO. 3.

31. On point of compensation, it may be Mated that there is no dispute on the point that at the time of accident, the deceased was only 20 years of age and learned Tribunal has observed that he would have been earning Rs. 60/- per day and out of Rs. 60/-, the deceased was spending Rs. 20/- on himself and Rs. 40/- was to be given by him to his parents and thus, the learned Tribunal came to the conclusion that loss of dependency was Rs. 40/- per day and in this way, loss of dependency was Rs. 1200/- per month and he applied the multiplier of 15 years after taking into consideration the age of parents of the deceased and thus, the learned Tribunal came to the conclusion that respondents were entitled to Rs. 2,36,000/- as compensation and in my considered opinion the amount of compensation awarded by the learned Judge, Motor Accident Claims Tribunal in favour of the claimants - respondent No. 1 to 4 appears to be just and reasonable and has been passed after taking into consideration all the aspects of case and thus it cannot be said that the award passed by the learned Tribunal is arbitrary and hence, the prayer for- reduction of amount of compensation made by the learned counsel for the appellant stands rejected.

CROSS-OBJECTIONS

32. So far as cross-objections filed by the respondents - claimants for enhancement of amount of compensation on 15.7.97 are concerned, when the amount of compensation awarded by the learned Tribunal has been found to be just and reasonable in para 31, hence, the prayer for enhancement of the amount of compensation made by the claimants - respondents No. 1 to 4 cannot be appreciated and deserves to be rejected. Point No. 3 is decided accordingly.

33. For the reasons mentioned above, the judgment and award dtd. 25.7.1995 passed by the learned Judge, Motor Accident Claims Tribunal do not suffer from any basic infirmity or illegality and hence the same do not require any interference by this Court and this misc. appeal deserves to be dismissed.

Accordingly, the present misc. appeal is dismissed after affirming the judgment and award dtd. 25.7.1995 passed by the learned Judge, Motor Accident Claims Tribunal, Barmer and the cross-objections filed by the respondents No. 1 to 4 - claimants are also rejected.