
(1956) 03 MAD CK 0018
In the Madras High Court

The Managing Director, Rasipuram Union Motor Service

APPELLANT

Vs

Ramaswamy Goundan

RESPONDENT

Date of Decision : 02-03-1956

Acts Referred:

Citation : AIR 1956 Mad 641 : (1957) ILR (Mad) 513 : (1956) 69 LW 600 :
(1956) 2 MLJ 230

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Judgement

Krishnaswami Nayudu, J.—This appeal arises out of a suit for damages for the injuries sustained by the plaintiff when he was travelling in the

defendant's bus, consequent on the negligent driving of the bus.

2. On 4th July, 1948, the plaintiff was travelling in the bus of which the defendant was the Managing Director of the Rasipuram Union Motor

Service, Ltd., Rasipuram, who were the owners. The accident in this case is stated to have happened after the bus left Namagiripet, at a place 12

miles from that place. The bus in which the plaintiff was travelling dashed against another bus, with the result that his left hand little finger, according

to the plaintiff, had been disfigured, and he had received other minor injuries on his body. His case was that he was prevented from doing any

work for four months and he claimed Rs. 1000 as and for damages.

3. The defence was that at the time when the accident happened, it was not the driver of the bus that drove the bus but it was the conductor that

drove the same and the accident not having occurred by the rash and negligent driving on the part of the driver but by the conductor, it could not

be said that the accident happened in the course of the employment as the

conductor's duties were not to drive the bus but to look after other work and the driving not being within the scope of his employment, it is urged that, the master, in this case the defendant is not able.

4. The trial Court accepted the defendant's contention, following the decision of the Privy Council in *Canadian Ry. Co. v. Lockhart* (1943) A.L.J.

277 : AIR 1943 P.C. 63 and *Oma Parshad v. Secretary of State* ILR (1937) Lah. 380 : AIR 1937 Lah. 572. In the latter case it was observed:

Where, however, the servant, merely avails himself of the opportunity afforded by his employment to commit the tort solely for his own purposes,

the master is not liable.

The trial Court therefore held that the defendant could not be made responsible for what had happened though on account of the act of the servant,

but the same not being the result of the act of the servant within the scope of his employment, as the conductor was not charged with the duty or

employed by the defendant for the purpose of driving the bus.

5. In appeal the learned District Judge found that in any event the defendant as the master was responsible. He also found that the plaintiff has

established that he is entitled to damages and has fixed the amount of damages at Rs. 500 and granted a decree.

6. In second appeal on behalf of the defendant appellant reliance is placed on the decision in *Beard v. London General Omnibus Co.* (1900) 2

Q.B.D. 530, of the Court of Appeal. In that case at the end of a journey the conductor of an omnibus belonging to the defendants, in the absence

of the driver, and apparently for the purpose of turning the omnibus in the right direction for the next journey, drove it through some by-streets at a

considerable pace, and while so doing negligently ran into and injured the plaintiff. At the trial the plaintiff gave no evidence that the conductor was

authorised by the defendants to drive the omnibus in the absence of the driver. At the close of the plaintiff's case judgment was entered for the

defendants. A.L. Smith and Romer, L. JJ., took the view that the plaintiff had not discharged himself from the burden cast upon him of showing

that the injury was due to the negligence of a servant of the defendants acting within the scope of his employment and that the defendants were

entitled to judgment. Vaughan Williams, L.J., observed that in general, if, in the absence of the driver of an omnibus, an accident occurs while the

conductor is driving, it would be for the proprietor to show that the act was unauthorised, but that the facts of the particular case negated the

giving of authority, and that the defendants were entitled to retain the judgment.

7. In a later decision of the Court of Appeal in *Ricketts v. Thos. Tilling Ltd.* (1915) 1 K.B. 644, the decision now cited, *Beard v. London General*

Omnibus Co. (1900) 2 Q.B.D. 530, was distinguished. In that case the facts were that at the end of a journey the conductor of an omnibus

belonging to the defendants, in the presence of the driver, who was seated beside him, for the purpose of turning the omnibus in the right direction

for the next journey drove it through some by-streets so negligently that it mounted the foot pavement and knocked down and seriously injured the

plaintiff, who was standing there. The trial Judge, upon the authority of *Beard v. London General Omnibus Co.* (1900) 2 Q.B.D. 530, held that

there was no evidence that the conductor had any authority from the defendants to drive the omnibus and entered judgment for the defendants. It

was held in that case that there was evidence of negligence on the part of the driver in allowing the omnibus to be negligently driven by the

conductor, and that there should therefore be a new trial. The facts of the case as appearing from the judgment of Buckley, L.J., further show that

the motor omnibus was being driven by the conductor, a person not authorized to drive, the proper driver being seated beside him on the box; and

under those circumstances, the conductor being an inexperienced person and incompetent to drive, the motor omnibus mounted the pavement,

killed a man (for which the conductor was convicted of manslaughter), and injured others. In the present case also it may be mentioned that a

criminal case was filed against both the conductor and the driver, and the conductor was sentenced to one year's rigorous imprisonment and the

driver fined Rs. 20 for causing the death of a person by a negligent act besides injuring the plaintiff. In the case before the Court of Appeal the

plaintiff who was one of those injured brought an action against the company for damages for personal injuries. It was found on the evidence that

the driver was seated beside the conductor and the driving by the conductor was conducted in his presence, as in the present case. From the

evidence of D.W. 1 himself it is seen that from Namagiripet where the bus stopped and the driver got down, and afterwards, the conductor sat at

the wheel by the side of the driver and continued the driving, and the accident of dashing against another bus happened 12 miles away from

Namagiripet. It is therefore evident that the conductor was permitted by the driver to drive the bus for a distance of 12 miles and there is also the

fact that the driver was seated by the side of the conductor.

8. The question now is whether, in the circumstances, the master, the defendant, could be made liable for what has happened. If the act which was

done by the conductor who ought not to have done it, was not done by reason of any act of negligence on the part of the person, viz., the driver

who authorised him to do that act, then alone it must be proved that the person who did the act was the agent of the master and was doing that act

in such capacity. But here, the driver being seated by the side of the conductor and he being the proper person authorised to do his job, his

permitting the conductor to drive in a negligent manner is an act on the part of the driver employed for the purpose by the master and for which act

the master would be liable. That is the view taken by the Court of Appeal in *Ricketts v. Thos Tilling Ltd.* (1915) 1 K.B. 644, and the following

passage of Pickford, L.J., at page 650 may be extracted:

But it seems to me that, where a man is entrusted with the duty of driving and controlling the driving of a motor omnibus and is sitting along side a

person who is wrongfully driving and the motor omnibus is negligently driven and thereby an accident happens, there is evidence at any rate of

negligence on the part of that driver in having allowed that negligent driving.

So the material question for consideration is whether the servant who was charged by the master with the duty of driving was responsible for

allowing the other man to drive and if he was so responsible, he must be equally responsible for the negligent driving by the person who was

permitted to drive. It may be that on an examination of particular facts in cases, it may be proved that there was no negligence, but when

negligence has been established, as in the present case, on the part of the conductor who was actually driving, that negligence must be attributed to

the driver who was the person who was lawfully authorised to drive, the negligence arising in allowing the conductor to drive in a negligent manner.

The driver who was by the side of the conductor and had permitted the latter to drive, had the further duty of controlling the driving by the

conductor and to see that he did not negligently drive; and if in the circumstances an accident happened and it is found that it was due to the negligence of actual driving of the bus, the driver cannot escape liability for such negligence, and consequently the master who employed the driver would also equally be liable since it must be held that what has been done must be deemed to be in the course of the employment of the driver who had directed the conductor to drive. In that view I would support the view taken by the lower appellate Court that the defendant company would be liable.

9. I am not, however, satisfied that the plaintiff has established his case as regards damages. He has failed to prove that, in fact, he was prevented from attending to any work for a period of four months or that he had spent any amount for expenses of medical treatment. From, the evidence furnished by Exhibit A-z the entries showing the description of the wounds, page 38 of the Accident Register, Exhibit A-1, maintained in the Rasipuram Government Hospital, and from the evidence of the compounder, P.W. 2 who produced the register, it is seen that the plaintiff was examined at 5:30 P.M. on 4th July, 1948, by the medical officer of the hospital and the particulars regarding the injuries are noted, they being three injuries on the person of the plaintiff, one of them being a lacerated wound on the outer aspect of the left little finger and the other two being abrasions. There is no mention of any fracture or other serious injury and the "nature of the injury" is noted as "simple". On the other hand, the plaintiff attempted to show that he was further treated by another doctor, Dr. Thiruvenkitam, of which except his evidence there is nothing else in support. In the circumstances the learned Judge of the lower appellate Court fixed the damages at Rs. 500. But I think in view of all the circumstances, a sum of Rs. 100 would be reasonable.

10. While upholding the decision of the lower appellate Court the decree is modified by the compensation amount being reduced to Rs. 100 instead of Rs. 500 with proportionate costs throughout.

11. No leave.