

(1961) 11 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil First Appeal No. 281 of 1957

Union of India

APPELLANT

Vs

Jasso and Others

RESPONDENT

Date of Decision : 13-11-1961

Acts Referred:

Constitution of India, 1950 — Article 300

Citation : AIR 1962 P&H 315 : (1962) 1 ILR (P&H) 708

Hon'ble Judges : Mehar Singh, J;D. Falshaw, J;A.N. Grover, J

Bench : Full Bench

Judgement

D. Flashaw, J.

(1) The following question arising out of a first appeal in this Court has been referred to a Full Bench:

"Whether the Union of India is liable to be sued in respect of tort committed by a military driver while transporting coal to General Headquarters at Simla in discharge of his duties".

(2) Briefly the facts are that on the morning of the 7th of December 1954 Rakha Ram deceased was run down and fatally injured by a military truck which was carrying coal and being driven by an army driver to the Army General Headquarters" building in Simla. His depends, a widow and two children, instituted a suit for the recovery of Rs. 20,000/- as damages against the Union of India alleging that the death of the deceased was due to the rash and negligent driving on the part of the soldier who was driving the truck, and that the Union of India was liable to pay the damages caused by the rashness and negligence of its employee.

(3) The Government's defence was two-fold, firstly a denial of any negligence on the part of the driver of the truck and secondly that the Union was not liable for the tortious acts of its servants. The quantum of damages was also challenged, but the lower Court held that the death of the deceased was due to rash and

negligent driving and that the Union was liable. The damages were computed at Rs. 5,000/- and a decree for that amount was passed. The learned Judges who first heard the appeal of the Government against this decree, and who are now sitting with me in this Bench, felt some difficulty regarding the question of the liability of the Union of India for damages in these circumstances and hence they formulated the question set out above for reference to a larger Bench.

(4) It is clear from the order of reference that the difficulty in deciding the question raised arose mainly out of a decision of two of us, Mehar Singh, J. and myself, in the case of Union of India (UOI) Vs. Harbans Singh and Others, in which we allowed an appeal by the Union of India against a decree for damages passed in favour of the dependents of a man who had been fatally injured by a military vehicle. We held that the Union of India can be sued as provided under Article 300 of the Constitution, in relation to its affairs in the like cases in which the Dominion of India could be sued and that when the various Government of India Acts are referred to, ultimately it is found that the Union of India can be sued on the same basis as the East India Company could be sued.

The facts in that case were that a driver of the military department was driving a motor vehicle of the department under the order of his superiors of the Defence Forces and was using the vehicle to supply meals to military personnel on duty. It appears that in fact a situation has arisen in consequence of which some detachment of troops were posted at various places in the city of Delhi and the truck concerned, driven by a military driver, was in the course of a round for delivering ration to these soldiers when the accident occurred and the deceased received his fatal injuries. In these circumstances we held that the driver was acting in the exercise of the sovereign powers of the Union Government and therefore no action could be taken against Government.

(5) A study of the authorities as a whole appears to indicate that the law on the point is fairly clear and well-settled, and that the decision of any case of this kind must depend on its own facts. The first of these decisions is in the case of the Peninsular and Oriental Steam Navigation Co. v. Secy. of State, 5 HCR App 1. It was in that case that it was laid down that the Government of India would be liable for damages in the same circumstances as would have been the East Indian Company and this proposition has never been disputed. It was held that the Secretary of State in Council of India is liable for the damages occasioned by the negligence of servants in the service of Government if the negligence is such as would render an ordinary employer liable. The test of in what circumstances the Government is liable was laid down by Peacock, C. J. in the following words:

"But where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by sovereign, or private individual delegated by a sovereign to exercise them no action will lie..... There is a great and clear distinction between acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them."

On the facts of the case the Government was held to be liable for damages. The facts briefly were that some damages was caused to the horses and carriage of the plaintiff while they were passing along a public road on either side of which Government dockyard premises lay when a heavy iron casting was dropped by some dockyard servants as it was being conveyed along the road from one part of the dockyard to another. In *Secy. of State v. Hari Bhanji* ILR 5 Mad 273, it was even held by Sir Charles A. Turner, C. J. and Muttusami Ayyar, J. that where an act complained of is professedly done under the sanction of municipal law, and in the exercise of powers conferred by that law, the fact that it is done by the sovereign power and is not an act which could possibly be done by a private individual, does not oust the jurisdiction of the civil Courts. That case referred to the imposition of some kind of duty on Salt.

(6) From these authorities it would appear that the Government's immunity from actions in respect of the acts of its servants is limited to cases involving acts of State and cases involving the use of sovereign powers. In a case like the present no question of any act of State can arise since acts of State can only be taken against persons not subjects of the Government concerned, and the question which thus arises, in this case is whether the act of the servant which gave rise to the suit for damages is one which was carried out in exercise of the sovereign powers of the State.

(7) A more or less similar question arose recently in this Court, *Rup Ram Kalu Ram Aggarwal Vs. The Punjab State and Another*, , in respect of an accident involving a motor vehicle owned by the Public Works Department of the Punjab which was being driven for the purpose of the Department as the result of which a suit was brought by the injured plaintiff. The suit was decreed to the extent of Rs. 7000/- against Durga Das, the driver of the vehicle who was impleaded as a defendant, but dismissed as against the State of Punjab. In the resultant appeal by the plaintiff two questions were referred to a Full Bench (i) does the tortious act of defendant No. 2 (Durga Das driver) in the present case fall within the category of acts done in the course of exercise of what are usually called sovereign powers of the State and (ii) Can the Punjab State be held liable for damages for the tortious act in question. The leading judgment with which my lord the Chief Justice and Harbans Singh, J. agreed was delivered by Dumat, J. who after discussing the authorities observed:

"The decided cases thus show that the State is in certain circumstances liable for the tortious act of its servant, but that the circumstances must be such as to make the relation between the case and that particular servant identical with the circumstances of private employment. The liability would depend not only on the nature of the act in which the servant may have been engaged but also on the nature of the employment and, of course, the nature of the tort committed. The mere fact that the act may or may not have been done in the course of governmental activity is not one way or the other conclusive.

It now remains to consider whether on the facts of the present case the State is

liable for the negligent act of the truck driver. It is not suggested that the truck driver had any peculiar duties assigned to him by any law or rule, nor that there was anything special about his employment. On the facts of it, therefore, there seems no reason why his employer, although the State, should not shoulder the responsibility for his negligent act an ordinary employer would. No consideration of public policy points to the contrary."

In these circumstances after discussing a decision of the Rajasthan High Court in *Mst. Vidhyawati v. Lokumal* AIR 1951 Raj 305, he went on:

"Mr. Doabia"s main contention regarding the facts of the present case is that the Public Works Department of the State is not a commercial department in the sense that it is not concerned with making profits. That matter is, in my opinion too far removed from the tortious act complained of in the present case to be of any help. As I have said, there was nothing peculiar about the employment or about the acts in which the driver was at the moment engaged. Neither on principle, therefore, nor on authority, am I persuaded that the State should not be held liable for the tortious act of its servant in the same way as an ordinary employer would be. I would, in the result, answer the second question referred to us in the affirmative. The first question the would not arise."

In the Rajasthan case referred to above the deceased was killed by being run down by a motor vehicles owned by the State of Rajasthan and driven by a driver employed by the State. The appeal was heard by Wanchoo, C. J. and Dave, J. who after considering the standard authorities held the State to be liable for damages for the rash and negligent driving of its employee. It was observed by Dave, J.

"There is a great and clear distinction between acts done in exercise of what are usually called sovereign powers and acts done in the conduct of undertakings which may as well be carried on by private individuals."

(8) Applying this test to the present case it is difficult to see how it can possibly be held that such a routine task as the driving of a truck loaded with coal from some depot or store to the General Headquarters" building at Simla presumably for the purpose of heating the rooms, is something done in exercise of a sovereign power, since such a thing could obviously, be done by a private person. Such being the case, I do not consider that the mere fact that the truck happened to be an army truck and the driver a military employee can make any difference to the liability of the Government for damages for the tortious act of the driver.

As I have observed earlier I do not think that any difficulty would have been felt by my learned brothers in this case, but for the decision in *Union of India (UOI) Vs. Harbans Singh and Others*, which happened to involve a military truck and in which on the peculiar facts of that case we came to the conclusion that the driver was acting in exercise of a sovereign power and doing something which could not be said done by private individuals. It can be said regarding that case that the

truck was being driven for supplying the needs of army personnel engaged on military duties which could not be performed by civilians.

It is at any rate safe to say that that case cannot be regarded as an authority for the general proposition that in no case can an action for damages be brought against the Government merely because the vehicle involved in the accident is an army truck driven by a military employee in the performance of some duty or other. The result is that I would answer the question referred to a Full Bench in the affirmative. The case may be returned to the Division Bench for consideration of any other point which may arise.

Mehar Singh, J.

(9) I agree.

A.N. Grover, J.

(10) I concur.

(11) Answer in the affirmative.