
(1957) 09 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 52-D of 1953

Union of India (UOI)

APPELLANT

Vs

Harbans Singh and Others

RESPONDENT

Date of Decision : 14-09-1957

Acts Referred:

Constitution of India, 1950 — Article 300

Citation : AIR 1959 P&H 39

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

Bench : Division Bench

Advocate : Bishamber Dayal and Kashav Dayal, for the Appellant; Radhe Mohan Lal, for the Respondent

Final Decision : Allowed

Judgement

Mehar Singh J.—This is an appeal by the Union of India, defendant, from the decree, dated 24-7-1953, of the First Class Subordinate Judge of Delhi. The plaintiff's Nos. 1 to 3 are the sons and No. 4 is the daughter of Khushial Singh deceased and defendant No. 3 is his widow. The plaintiffs brought a suit to recover an amount of Rs. 50,000/- as damages on account of the death of their father resulting from defendant No. 2 (Sohan Chand) a driver of the Military Department of defendant No. 1 (Union of India), knocking him down and running over him when he was riding his cycle. The plaintiffs alleged that it was the rash and negligent act of defendant No. 2 in driving the military vehicle in such a manner as to cause the accident that resulted in the death of their father. The accident took place, at about 9. 30 a. m., on 27-9-1949. The suit was permitted to be brought in forma pauperis. It was mainly contested by defendant No. 1 and a number of defences were taken, among them being that defendant No. 1 (Union of India) is not liable to damages for any act of its servant done in pursuance to the exercise of the sovereign powers of this defendant.

2. The learned trial Judge has found against defendant No. 1 and granted a decree in the amount of Its. 30,000/-, with proportionate costs to the plaintiffs

and defendant No. 3.

3. In this appeal no other question is raised, not even as to the quantum of the damages allowed, except the one as regards the liability of the Union of India for damages for the act of defendant No. 2, its driver in the Military Department, in running over the father of the plaintiffs and husband of defendant No. 3 and causing his death.

4. It is stated in para No. 8 of the plaint that as defendant No. 2 was on duty and was driving the military truck during the course of his employment, defendant No. 1 is liable for the damages claimed by the plaintiffs. In its written statement defendant No. 1 pleads that it is not liable for the tort committed by its driver defendant No. 2 and accepts that on the particular morning defendant No. 2 was driving the military vehicle from the Town Hall, Delhi, towards Lahori Gate. When the vehicle was just approaching Novelty Cinema, the accident took place. Talwar Sharma D. W. 1, a military engineer, was travelling on the truck at that time and he has deposed that the truck had brought meals from the Cantonment and it was going about distributing the same where military personnel were working. It is obvious from this material that a truck of the Military Department of defendant No. 1 was driven by defendant No. 2, its employee, and that truck was used for distribution of meals to military personnel, and when it was being thus used that the accident took place resulting in the death of the father of the plaintiffs and husband of defendant No. 3. The learned trial Judge, while appreciating that defendant No. 1 is not liable for the tort of its servants when the act is done in exercise of its sovereign power came to the conclusion that distribution of meals for the employees of the Government could hardly be said to be an act done in exercise of any sovereign power. So the learned trial Judge repelled the one contention on behalf of defendant No. 1, that is now the main contention on its behalf, and decreed the suit

5. The learned counsel for defendant No. 1 takes the same position in this respect as was done on behalf of this defendant in the trial Court and urges that there is no cause of action against that defendant. The reply of the learned counsel for the plaintiffs and defendant No. 3 is that the act of the military driver in running over the father of the plaintiffs and causing his death cannot be said to have been occasioned by him when he was doing work which may be described as something that was done in exercise of sovereign powers of defendant No. 1. He relies, in this behalf, on the *P. and O. Steam Navigation Co. v. Secy, of State for India*, 5 Bom HCR Appendix A p. I(A), of which the head-note says that

"The Secretary of State in Council of India is liable for damages occasioned by the negligence of servants in the service of the Government if the negligence is such as would render an ordinary employer liable."

The Union of India, defendant No. 1, can be sued according to Article 300(1) of the Constitution in relation to its affairs in the like cases in which the Dominion of

India could be sued. When the various Government of India Acts are referred to, ultimately it is found that defendant No. 1 can be sued on the same basis as the East India Company could be. Section 32 of the Government of India Act, 1915, provided:

(1) "The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council as a body corporate.

(2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, and this Act had not been passed."

It was in relation to similar provisions of the Government of India Act of 1858 that the learned Chief Justice was considering the liability of the Secretary of State for India in the case already referred to above. The learned Chief Justice observes:

"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 exercise of what are usually termed sovereign powers, and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them." In that particular case, as it appears from the head-note and also from the main body of the judgment, the learned Judges came to the conclusion that the act was the type of act that could be carried on by private persons without reference to any delegation of powers by the sovereign for carrying it out. A few subsequent cases have been referred to by the learned counsel on both sides but all follow the dictum of Sir Barnes Peacock in the above case which was approved by the Privy Council in *Secy, of State v. Moment* ILR Cal 391 (B), and no authority taking any different view has been referred to.

6. The learned counsel for the plaintiffs and defendant No. 3 urges the same view of the circumstances of the case as adopted by the learned trial Judge that the distribution of meals to the military personnel was not an act done by an employee of defendant No. 1 in the exercise of the latter's sovereign powers, and that it is the type of act which, without any delegation of sovereign powers to him, might just as well be done by a private individual employing his driver on a private motor vehicle. The contention is obviously untenable and unsound for (a) it was the motor vehicle of the Military Department of defendant No. 1 that was being used, (b) it was being used by the driver, defendant No. 2. under orders of his superiors of the Defence Forces, and (c) it was being used under these orders to supply meals to military personnel on duty, as has been admitted by the plaintiffs even in their plaint.

It is obvious that what was being done was that the military personnel of defendant No. 1 were carrying on their duty, which must necessarily be that what

was being done in exercise of the sovereign powers of defendant No. 1, and it was in those circumstances, that they were being supplied with their meals, again an act done by another military man in pursuance to his duty and under orders of his superiors. Obviously that is what could not be described as something which could be done by a private individual. In fact in the very case upon which the learned counsel for the plaintiffs and defendant No. 3 has placed reliance the learned Chief Justice at pages 14 and 15 of Appendix A (A), observes:

"It is clear that the East India Company would not have been liable for any act done by any of its naval officers or soldiers in carrying on hostilities, or for the act of any of its naval officers in seizing as prize property of a subject, under the supposition that it was the property of an enemy, nor for any act done by a military or naval officer, or by any soldier or sailor, whilst engaged in military or naval duty, nor for any acts of any of its officers or servants in the exercise of judicial functions." It is thus evident that the act of defendant No. 2 was done whilst he was engaged in military duty in supplying meals to military personnel on duty and for tort committed by him while performing that duty, the East India Company could not have been liable and could not be sued. The position of defendant No. 1 is in this respect the same and thus no action lies against it.

7. The appeal therefore, succeeds, on this, what may be described as a somewhat technical plea, and the suit of the plaintiffs has to be dismissed. But it is obvious that it was the negligence of the driver of defendant No. 1 which caused the death of the father of the plaintiffs and husband of defendant No. 3 and, but for the technical rule of law of which advantage has been obtained by defendant No. 1, their claim was unanswerable.

Now that their suit fails, and as it has been brought in forma pauperis, the plaintiffs would be liable for the amount of the court-fee, but in the circumstances of the case, though this Court cannot pass an order in this respect, we recommend to the authorities that they may forbear recovery of the court-fee from the plaintiffs. With this recommendation the appeal of defendant No. 1 is accepted and the suit of the plaintiffs in so far as defendant No. 1 is concerned, is dismissed, though the decree remains against defendant No. 2; but there is no order as to costs in this appeal.

D. Falshaw J.

8. I agree.