
(1985) 08 AP CK 0006

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 604 of 1981

Vijayanagaram Narasimha Rao and Others

APPELLANT

Vs

Ghanashyam Das Tapadia and Others

RESPONDENT

Date of Decision : 14-08-1985

Acts Referred:

Citation : (1986) ACJ 850 : (1986) 60 CompCas 697

Hon'ble Judges : K.R. Ramaswamy, J

Bench : Single Bench

Judgement

K. Ramaswamy, J.—The appellants are the unsuccessful claimants. One Mr. Rama Rao, the husband of the fifth appellant and father of appellates Nos. 1 to 4, died in an accident which occurred on December 16, 1979, at about 4.00 p.m. near municipal stadium on Kasthuribapet Road in Vijayawada town in which car ADX 3999 driven by a mechanic, the second respondent, was involved. The Tribunal below found that the occurrence has taken place as a result of rash and negligent driving by the mechanic, the second respondent. It found that the first respondent-owner entrusted the car for repairs to the second respondent; the accident occurred while the car was taken out for testing after repairs were effected and it is not during the course of the employment of the second respondent by the first respondent. Therefore, neither the owner nor the insurance company is liable to pay compensation. So, a sum of Rs. 20,000 was awarded against the mechanic, the second respondent. The appeal is filed against the quantum as well as the dismissal of the claim against the first and the third respondents.

2. Admittedly, the first respondent is the owner of the car. He entrusted the vehicle to the second respondent who is a licensed mechanic. The latter effected the repairs. He has taken out the car for testing and while he was driving the vehicle for testing, the accident has occurred. The question, therefore, is whether the owner and, consequently, the insurance company are liable to pay the compensation. The finding that the occurrence has taken place as a result of rash

and negligent driving of the mechanic is not assailed. Therefore, I confirm the same. The Tribunal below found that the deceased, Rama Rao, is a P.W.D. contractor and his monthly earning are Rs. 500. It also held that he would have spent Rs. 150 for his maintenance and Rs. 350 would be the amount spent on the dependents of the appellants. At that rate it applied the necessary multiplier and granted Rs. 21,000 and deducted Rs. 3,000 towards lump sum payment and awarded Rs. 18,000. It also granted Rs. 2,000 towards loss of consortium and rejected Rs. 1,000 which was claimed for mental shock and agony and medical expenses, since the deceased died about three days after the occurrence. Accepting the finding the Tribunal below that the deceased was aged about 55 years and applying the suitable multiplier of seven years as per the Bench judgment of this court, the total compensation to which the appellants are entitled is Rs. 29,400. The lower Tribunal has awarded Rs. 2,000 towards loss of consortium. Though the first appellant claimed Rs. 6,000 towards mental agony shock and pain, I feel that Rs. 1,000 would be the reasonable amount. Therefore, the total amount to which the appellants are entitled to is Rs. 32,000.

3. The next question is who are liable to pay the compensation. In view of the established facts that the owner, the first respondent had entrusted the vehicle to the licensed mechanic to effect repairs, it must be held that the second respondent is authorised on behalf of the owner to effect repairs. Testing after repairs is an incidental and integral part of effecting repairs during the course of employment and the second respondent has taken the vehicle on the road for testing during the course of which the occurrence had taken place. When the second respondent has taken the vehicle on behalf of the owner and the occurrence has taken place during the course of effecting repairs, the necessary conclusion is that the owner shall be vicariously liable for the payment of the compensation. Admittedly, the vehicle is insured and the second respondent is a licensed mechanic and, therefore, the insurance company is also liable to pay compensation. There are two lines of decisions in this regard. In *B. Govindarajulu Chetty Vs. M.L.A. Govindaraja Mudaliar and Others*, , a Division Bench of the Madras High Court held that the owner is not vicariously liable and the insurance company is also not liable. That was followed by the same court in *D. Rajapathi Vs. The University of Madurai and Others*, . But, that is the case independent contractor entrusting the vehicle to a third party. Therefore, the ratio therein does not apply. Equally, there is another decision of the Punjab and Haryana High Court in *Devinder Singh v. Mangal Singh* [1981] ACJ 448. In this case, it was held that neither the owner nor the insurance company is vicariously liable for the accident occurred as a result of rash and negligent driving of the driver after effecting repairs. Contra view has been taken in *Gopalakrishnan Embrandiri v. Krishnankutty* [1966] ACJ 262 ; *Gopalakrishnan Embrandiri Vs. Krishnankutty and Others*, , *Shantibai v. Principal, Govindram Sakseria* [1972] ACJ 354 (MP). In *Jogindernath v. Shanti Devi* [1967] ACJ 150 (Punj), it was held that the owner is liable.

4. I have carefully considered the respective lines of decisions. I am inclined to

agree with the latter view for the reasons that once the owner has entrusted the vehicle to effect repairs to a licensed mechanic, testing being integral part of effecting repairs and the accident has taken place during the course of testing the vehicle, the necessary conclusion is that the mechanic acted within his limits of authority and in the course of his employment for and on behalf of the owner. Therefore, the owner shall be vicariously liable for the acts of the mechanic. This view is consistent with the general doctrine of tortious liability of the owner for the vicarious liability of the owner for the vicarious liability of the servant. Accordingly, I hold that both the owner and the insurance company are jointly and severally liable for the payment of compensation referred to earlier. The appeal is accordingly allowed. The appellants are entitled to interest on the above amount at 6% from today till the date of payment and costs are directed to be paid to the fifth appellant and Rs. 8,000 and interest thereon shall be credited to the account to be opened by fifth appellant in a nationalised bank or in a nearest post office convenient to her. The balance amount shall be equally distributed among appellants Nos. 1 to 4 and the shares of the minor appellants shall be deposited in a nationalised bank in fixed deposit and the interest accrued thereon shall be paid over to the fifth appellant.

5. The appeal is accordingly allowed with costs.