

Gambli Vs. K. Ramakrishnappa and ors.

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Court : Karnataka

Decided On : Jun-12-1968

Reported in : [1968]38CompCas272(Kar)

Judge : A.R. Somnath Iyer, J.

Acts : Companies Act

Appeal No. : Regular Second Appeal No. 823 of 1963

Appellant : Gambli

Respondent : K. Ramakrishnappa and ors.

Advocate for Def. : K.S. Puttaswamy and ;N. Bheemacharya, Advs.

Advocate for Pet/Ap. : V. Tarakaram, Adv.

Judgement :

1. On August 26, 1952, a motor vehicle belonging to a company affording transport facilities known as the Chikkamagalur Public Conveyance Motor Service, Chikkamagalur, which will be referred to as C.P.C.M S. and which has been referred to as C.P.C.M.S. in both the courts below, dashed against a culvert and during that accident, one of the passengers, Putta Naika, was killed. His wife brought a suit against the three partners of the C.P.C.M.S., the driver of the bus, defendant No. 4, and the Canara Motor and General Insurance Co. Ltd., which

was defendant No. 5, for the recovery of a sum of Rs. 8,000 as compensation on behalf of herself and on behalf of her daughter, Devali Bai, and also Putta Naika's mother, Ammanibai. She also claimed a sum of Rs. 10 as notice charges. She charged defendant No. 4 with rash and negligent driving.

2. In their defence, the defendants repudiated the allegation that defendant No. 4 drove the motor vehicle rashly or negligently. They contended that the compensation claimed was excessive and, although defendants Nos. 1 to 3 did not raise any such plea, defendant No. 5, which is an insurance company, very curiously urged that the suit was defective for non-joinder. It was stated that, since under an agreement between C.P.C.M.S. and another company called the C.P.C. Company executed on August 31, 1932, the management of the C.P.C.M.S. had been entrusted to the C.P.C. Company, the suit which was brought without impleading the C.P.C. Company as a party was not maintainable.

3. The civil judge upheld the plea of actionable negligence and repelled the contention that the C.P.C. Company was a necessary party. He made a decree in favour of the plaintiff for the amount claimed by her.

4. There was an appeal by the three partners of the C.P.C.M.S. and the insurance company and the district judge who heard that appeal accepted the contention that the C.P.C. Company was a necessary party and dismissed the suit on the ground that it was not maintainable. The plaintiff appeals.

5. It should be observed that the finding of the civil judge on negligence was not assailed before the district judge. Similarly, the assessment of the compensation made by the civil judge was also not questioned and the limited contention urged before the district judge was that the compensation claimed on behalf of the daughter was not payable. This contention rested on the argument that she was not the daughter of Putta Naika.

6. The relevant part of the district judge's judgment which refers to the restricted argument advanced before him reads :

'The learned counsel for the appellants at the outset submitted that he was not urging anything about the rash and negligent driving of the bus by defendant No. 4 and conceded that position. In regard to issue No. 2, he stated that the only point that he would urge was that the daughter who is now according to the amended plaint made to appear as a dependant of the deceased was not at all even in the womb of the plaintiff at the time of the accident and as such proportionate quantum of the damages would have to be reduced.'

7. But it is clear that the reference to issue No. 2 is a mistake since issue No. 2 refers to the maintainability of the suit and non-joinder and non-joinder of parties and the issue which refers to the amount of damage is the fourth issue.

8. So, on behalf of the appellant, only two submissions were made. The first was that the suit was not maintainable since the C.P.C. Company was not made a party and the second was that no damages could be claimed on behalf of the daughter and there should be a proportionate abatement in regard to damages. The quantification of the damages made by the civil judge was not questioned.

9. But the district judge did not consider the second submission concerning the claim on behalf of the daughter. His judgment only rested on the first and on his finding on that matter that the omission on the part of the plaintiff to make the C.P.C. Company a defendant made her suit unsustainable.

10. It is clear that the view taken by the district judge is plainly unsupportable. His own finding was that defendant No. 4, who was the driver who drove the motor vehicle in a rash and negligent manner, was a servant of the C.P.C.M.S. and that all that was done by the C.P.C. Company which was entrusted with the management of the business of the C.P.C.M.S. was to select defendant No. 4 to work as a driver under the C.P.C.M.S. Defendant No. 4 gave evidence as D.W. 5 and his evidence was to the effect that he was a servant of the C.P.C.M.S. After referring to this evidence, the district judge observes :

'This makes it abundantly clear that he is an employee in C.P.C.M.S. appointed by C.P.C. Co., after coming into existence of exhibit D-2. He has been selected to work as a driver not by defendants Nos. 1 to 3 but by C.P.C. Co.'

11. It is difficult to understand how, after reaching the conclusion that defendant No. 4 was an employee of the C.P.C.M.S., the district judge found it possible to say that C.P.C. Company was a necessary party to the suit and that, unless that company was impleaded as a defendant, no suit could be brought against the three partners of the C.P.C.M.S.

12. Mr. Panduranga Prabhu, who was the manager of the C.P.C.M.S. under the C.P.C. Company, gave evidence that the salary of defendant No. 4 was paid out of the monies belonging to the C.P.C.M.S. I should observe here that C.P.C.M.S. is also referred to in the course of his evidence as C.P.C., Chikkamagalur. This is what Panduranga Prabhu, who was examined as D.W. 1 for defendants Nos. 1 to 3, stated :

'The accounts of the C.P.C., Chikkamagalur are entirely different from those of C.P.C., Mangalore. Defendant No. 4's salary is given from the amounts of the C.P.C., Chikkamagalur. The insurance premium for the bus was paid from C.P.C., Chikkamagalur's funds.'

13. Now, the C.P.C. Company, Mangalore, to which this witness refers, is no other than the C.P.C. Company and that that is so is not disputed. So, what is clear from the evidence of this witness is that the salary of defendant No. 4 was paid by the C.P.C.M.S. and it is quite intelligible that it should be so, since, as stated by defendant No. 4, whose evidence was accepted by the district judge, he was an employee of the C.P.C.M.S.

14. The district judge appears to have thought that, since under the agreement, exhibit P-2, which was executed between C.P.C.M.S. and C.P.C. company, the C.P.C. Company was entrusted with the management of the C.P.C.M.S. with the authority to appoint servants for the C.P.C.M.S., the fact that defendant No. 4 was appointed as driver by the C.P.C. Company absolved the C.P.C.M.S. from liability for the negligence of defendant No. 4. The district judge appears to have thought that, although C.P.C.M.S. was the master and defendant No. 4 was the servant, C.P.C.M.S. was not liable for the negligence of defendant No. 4, since his selection was made by the C.P.C. Company. What was overlooked by the district judge was that the relationship of master and servant to no extent depends upon

the instrumentality through which the selection of the servant is made. That relationship comes into existence when the person selected as servant becomes the servant of the master, and the master then becomes liable for negligence in a case like the present one, where the negligence of the servant was in the course of his employment. The view taken by the district judge that the C.P.C. Company was a necessary party and that the suit brought without the C.P.C. Company being impleaded as a defendant was not maintainable, cannot, therefore, be supported.

15. Although the district judge recorded no finding on the question whether compensation was also claimable on behalf of the daughter, a full argument was addressed in this court in regard to that matter. The argument presented on behalf of defendants Nos. 1 to 3 was that the daughter, Devali Bai, named in the plaint was not the daughter of the deceased, Putta Naika, and that no claim on her behalf could, therefore, be made. The extremely slender foundation on which this argument was constructed was an answer given by the plaintiff in her cross-examination that the daughter was born eight months after the date of the institution of the suit. The suit was brought in forma pauperis and the date of the application for permission to sue in forma pauperis is June 18, 1953. The civil judge was of the opinion that the plaintiff, who is an illiterate lambani, could not be taken too literally when she stated that the daughter was born eight months after the date of the institution of the suit, and that, since in the affidavit she produced very soon after the date of the presentation of the application Devali Bai was named as the daughter of Putta Naika, that affidavit was more dependent than the evidence given by the illiterate plaintiff in the course of her cross-examination. I am inclined to concur in the view taken by the civil judge. One good reason why I should concur in that view is that when the plaint was amended on March 19, 1956, the plaintiff stated in the plaint that Devali Bai was the daughter of Putta Naika. The written statements of the defendants were produced only subsequently, and, in none of the written statements, was there a repudiation of the allegation that Devali Bai was the daughter of Putta Naika. None of the defendants denied that she was his daughter. Not unnaturally there was no issue covering the question whether Devali Bai was the daughter of Putta Naika. Since the fact that Devali Bai was not the daughter of Putta Naika was not disputed by

any of the defendants, it should be taken as admitted. The extreme argument that Devali Bai was not the daughter of Putta Naika was advanced for the first time during the course of the arguments before the civil judge, only, when in the course of her cross-examination the plaintiff stated that she gave birth to Devali Bai eight months after the date of the institution of the suit. It is on this precarious foundation that the argument that no compensation could be claimed on behalf of Devali Bai was constructed and it is not surprising that the civil judge discarded it and the district judge did not even refer to it in the course of his judgment.

16. On the discussion so far made, it becomes clear that the suit brought against defendants Nos. 1 to 5 was perfectly maintainable and that it was not necessary, to sustain the suit, to implead the C.P.C. Company which merely managed the affairs of the C.P.C.M.S. under an agreement executed between them.

17. I, therefore, allow this appeal and reverse the decree of the district judge and restore that of the civil judge with costs throughout.

DATED 12TH DAY OF JUNE, 1968.

ORDER

18. I make a direction which was not made when my judgment was pronounced in this second appeal that the court fee payable on the memorandum of appeal, which was preferred by the plaintiff in forma pauperis, shall be paid by the defendant to the Government.

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