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Court : Rajasthan

Decided On : Nov-01-2007

Reported in : 2009ACJ858

Judge : Munishwar Nath Bhandari, J.

Appellant : Rani Devi and ors.

Respondent : Devilal and ors.

Disposition : Appeal dismissed

Judgement :

Munishwar Nath Bhandari, J.

1. The appellants have preferred this appeal to challenge the judgment dated 26.3.1991, passed by the Motor Accidents Claims Tribunal, Sri Ganganagar in Claim Case No. 40 of 1989.

2. Claimants-appellants claimed a sum of Rs. 11,70,000 stating the fact that on 20.11.1988 at about 5 p.m., when Rajendra Kumar was near Telephone Exchange building and moving towards Padampur, then jeep bearing No. RSC 9170 driven by Devilal, caused accident, resulting in death of Rajendra Kumar. It was urged that accident took place due to rash and negligent driving of Devilal.

3. Reply was filed by the respondent Nos. 3 and 4 before the Tribunal, denying their liabilities.
4. It is contended that authorised driver of the jeep involved in the accident was Diwan Chand but jeep was unauthorisedly driven by Devilal, as nobody authorised Devilal to drive the said jeep. It was further contended that the owner of the jeep is only Panchayat Samiti and not the government. It was lastly contended that jeep was being driven on a moderate speed, thus accident had not taken place due to rash and negligent driving.
5. The Tribunal framed five issues and, thereafter, awarded a sum of Rs. 1,39,000 along with interest. However, the respondent Nos. 3 and 4 before Claims Tribunal were absolved from their liabilities on the ground that Devilal was not authorised to drive the vehicle and it was not otherwise for owner's purpose or his business the vehicle was used at the time of accident.
6. The appellants have preferred this appeal, not only to challenge the award of compensation to the tune of Rs. 1,39,000, but also to challenge the finding of the Tribunal in regard to the liability of respondent Nos. 3 and 4 before the Tribunal. The claimants have claimed original amount demanded by them in the claim petition, i.e., a sum of Rs. 11,70,000, on the ground that the income of the deceased was not properly assessed and thereby, quantum of compensation awarded to the claimants is not proper. It has further been pleaded that the Panchayat Samiti as well as government were liable for compensation as they were vicariously liable for any act of the driver. Thus, challenging the finding of the Tribunal, it was prayed that the Panchayat Samiti and State Government should also be made liable for payment of compensation.
7. During the course of arguments in the appeal, learned Counsel for the appellants pressed only one ground which pertains to absolving Panchayat Samiti and government from their liabilities. Learned Counsel urged that the jeep was belonging to the Panchayat Samiti and as Panchayat Samiti is financed by the State Government, thus Panchayat Samiti as well as government are liable for payment of compensation. The owner of the jeep is necessarily liable for all acts of its driver, in view of the fact that the owner of the vehicle is vicariously liable for all

acts and omissions of the driver who is authorised to drive the vehicle not only for the purpose of business, but also where the vehicle is used on the instructions of the owner. It was contended that in the present matter, Devilal was driving the jeep having been authorised by Diwan Chand, hence the respondent Nos. 2 and 3 in appeal are liable for the acts and omissions of Devilal, because he was otherwise authorised to drive the vehicle. Referring to the judgment of the Tribunal, it was projected that the jeep was driven by Devilal with permission of Diwan Chand as the Tribunal has already recorded this finding. Thus, in such cases, the owner of the vehicle cannot be absolved from their liability.

8. To support the argument, the learned Counsel for the appellants has referred to the cases of *State of Madhya Pradesh v. Premabai* 1979 ACJ 503 (MP); *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.* 1977 ACJ 343 (SC); *Ajoy Kumar Singh v. Pata Dei* 1982 ACJ 45 (Orissa); *Union of India v. Marcia E. Dutta* 1982 ACJ 31 (Gauhati); *Mariyam Jusab v. Hematlal Ratilal* : AIR1982 Guj23 ; *Sita Bai v. Purshottam* 1988 ACJ 485 (Rajasthan); *Kota Sand Co. v. Santosh Talwar* 1985 ACJ 98 (Rajasthan) and *Gujarat State Road Trans. Corporation v. Haribhai Vallabhbhai Darji* 1984 ACJ 72 (Gujarat).

9. According to the learned Counsel for the appellants, judgments referred to above are on the same issue, wherein different courts as well as Apex Court have taken a view that the owner of the vehicle is vicariously liable if accident took place due to negligence of driver who was either an authorised driver or driving the vehicle on instructions.

10. Per contra, the learned Counsel appearing for the government, urged that the government and Panchayat Samiti are not liable to pay compensation as Devilal was not their authorised driver and nor he was directed or authorised to drive the vehicle. Referring to the facts of this case, it was contended that only Diwan Chand was an authorised driver on the day of accident, Vikas Adhikari was not in the office so as to permit movement of vehicle, because vehicle is permitted to move only for the purpose of business of the office. Referring to the statement of Devilal, it was further contended that admittedly, Devilal had taken the vehicle for his personal use in an unauthorised manner, hence in such circumstances, when

the vehicle was used by unauthorised person without instructions and authority, coupled with the fact that the use of vehicle was not for the purpose of owner's business or with the consent of the owner of the vehicle, owner cannot be held liable to pay compensation. Referring to the judgment in the case of Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt 1966 ACJ 89 (SC), it was submitted that the liability of the owner cannot be fastened in case the vehicle was not driven under the authority of the owner, more specifically when the vehicle was not used for the purpose of owner or for owner's business. Learned Counsel for the State thus, prayed that the judgment of the Tribunal deserves to be maintained.

11. I have considered the rival submissions of the learned Counsel for the parties and scanned the matter carefully.

12. Learned Counsel for the appellants has referred to the judgment of State of Madhya Pradesh v. Premabai 1979 ACJ 503 (MP), wherein it was held that the driver is primarily liable for compensation for causing death or injuries by his rash and negligent driving of vehicle. His master is also vicariously liable for the act of the servant. If the vehicle is entrusted to an independent person and it is in complete control of that independent person, then owner cannot be made liable for the act of that independent person or his servant. Referring to the facts of the case, the court held that 'in any case, the vehicle continued to be in the ownership of UNICEF'. The government though not the owner of the vehicle is liable under the general law for the acts of its servant in causing death of the two pedestrians, by his rash and negligent driving.

13. Perusal of the judgment does reveal that the facts of the case are same as in the present matter, because in the present case the jeep was driven by an unauthorised person for his private purposes. Hence, even if the ratio of the judgment referred to above is applied, Panchayat Samiti, being the owner of the vehicle, can be held liable for the acts of its servant, but here, accident has not been caused by the servant of the Panchayat Samiti, therefore, the judgment rendered by Madhya Pradesh High Court has no application in the present matter.

14. The second case referred to by the learned Counsel is Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343 (SC). In the said case, the Hon'ble Apex Court held in para 9 as under:

(9) We will now refer to the three cases relied on by the High Court for coming to the conclusion that the accident did not take place during the course of employment. The first case referred to is Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt 1966 ACJ 89 (SC). The owner of a vehicle entrusted it to A for plying it as a taxi. B who used to clean the taxi was either employed by the owner or on his behalf by A. A trained B to assist him in driving the taxi and took B for obtaining a licence for driving. While taking the test B caused bodily injury to the respondent. A was not present in the vehicle at the time of the accident. On the question whether the owner was liable the majority held the view that the owner was not liable. On the facts the court found that the person who had borrowed the taxi for taking out a licence and the driver who had lent the same was not acting in the course of his business. The court on an application of the test laid down in various decisions held that there is no proof that the second defendant, the driver, was authorised to coach the cleaner so that the cleaner might become a driver and drive the taxi and that it appeared more probable that the second defendant wanted someone to assist him in driving the taxi for part of the time and was training the third defendant to share the task of driving. The owner's plea that it had not given any such authority was accepted by the court. Holding that it had not been proved that the act was impliedly authorised by the owner or to come within any of the extensions of the doctrine of scope of employment the court held that the owner is not liable. This Court has therefore held that the test is whether the act was done on the owner's business or that it was proved to have been impliedly authorised by the owner. At page 537 it is stated that the law is settled that master is vicariously liable for the acts of his servants acting in the course of his employment. Unless the act is done in the course of employment, the servant's act does not make the employer liable. In other words, for the master's liability to arise, the act must be a wrongful act authorised by the master or a wrongful and unauthorised mode of doing some act authorised by the master. The extension of the doctrine of the scope of employment noticed in the judgment refers to the decision of *Ormrod v. Crosville Motor Service Ltd.* (1953) 2 All ER 753, where Lord

Denning stated: 'It has often been supposed that the owner of a vehicle is only liable for the negligence of the driver if that driver is his servant acting in the course of his employment. This is not correct. The owner is also liable if the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes'. The Supreme Court accepted the test and to that extent this may be taken as an extension of the doctrine of scope of employment. Thus, on the facts as we have found that the accident took place during the course of employment the decision in *Sitaram Motilal Kalal's case* (supra) is of no help to the respondents.

15. The perusal of the para, referred to above, reveals that the owner is liable for payment of compensation if the driver is with the owner's consent driving the car for the owner's business or for owner's purpose, therefore, outcome of the judgment is that if the vehicle is used for the purpose of owner or for owner's business purposes, then the servant's act would make owner vicariously liable for payment of compensation, but again, the case in hand is not such where the vehicle was used for owner's purpose or for owner's business through authorised driver. But, it is clear from the fact that not only vehicle was unauthorisedly used by Devilal, but the same was for his personal purposes and not for the purposes of the owner or for its business. Hence, the import of the judgment referred to above, goes against the appellant instead of supporting, looking to the facts of present case.

16. Learned Counsel for the appellants further referred the judgment rendered in *Ajoy Kumar Singh v. Pata Dei* 1982 ACJ (Supp) 45 (Orissa). In the said judgment, the issue was altogether different than as it exists in the present matter. The issue involved in the said matter was pertaining to liability of the insurance company on account of alleged breach of policy, on the ground that vehicle was not driven by the named driver. The present matter is not concerned with the issue of the liability of the insurance company. Thus, the aforesaid judgment has no application in the present case.

17. The next case referred to by the learned Counsel for the appellant is *Union of India v. Marcia E. Dutta* 1982 ACJ 31 (Gauhati), wherein the issue was that if a

person is given lift while the government vehicle was driven by the employee for official work, then as to whether the government would be liable to pay compensation or not. Again, the facts of the said case are not akin to this case, because in the case decided by Gauhati High Court, the vehicle was driven by authorised person, whereas in the present matter, it was driven by the unauthorised person and that too, vehicle was not transacted for owner's purpose or for his business. Therefore, I am unable to accept the application of the judgment referred to above on the facts of present case.

18. The judgment rendered in *Mariyam Jusab v. Hematlal Ratilal* : AIR1982 Guj23 , is again almost on the same facts as were existing in the case decided by Gauhati High Court in the matter of *Marcia E. Dutta* 1982 ACJ 31 (Gauhati), therefore, the judgment rendered by Gujarat High Court in *Mariyam Jusab's* case (supra) cannot have any bearing on the present matter.

19. Learned Counsel for the appellants further referred to two judgments of this Court rendered in *Sita Bai v. Purshottam* 1988 ACJ 485 (Rajasthan) and *Kota Sand Co. v. Santosh Talwar* 1985 ACJ 98 (Rajasthan). In the first case, jeep was under the charge of Executive Engineer. Hari Prasad was the driver who was assigned official work and while discharging the said work, accident took place, but it was found that at the time of accident, jeep was driven by one Purshottam. The court held that vehicle was sent by the State Officer and was used for official purposes and, in those cases, the government cannot plead immunity from payment of compensation and otherwise, the vehicle was being driven under the express permission of the authorised driver of the State. Again, the facts of the aforesaid case are not same as the present case, because the vehicle was not used for the official purposes but was used by Devlal for his own purpose, thus cannot be said to be with the permission of the authorised driver. It is also clarified that in view of the judgment of the Apex Court referred to in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.* 1977 ACJ 343 (SC), owner cannot be held liable, unless the vehicle is used for owner's purpose or owner's business and the vehicle is being driven by authorised person under instructions of the owner. In the second case, the State vehicle met with an accident at the time when same was driven by Executive Engineer, while the regular driver was also travelling in

the jeep but not driving the vehicle. In those circumstances, the State was made liable because the Executive Engineer was incharge of the vehicle and such incharge was driving the vehicle accompanied by the regular driver, hence, looking to the fact that a person authorised to give direction for use of vehicle was found driving the vehicle by himself, then the government is made liable. However, again, the facts of this case are not at par with the facts of the judgment rendered by this Court in the case of Kota Sand Company, 1985 ACJ 98 (Rajasthan).

20. Last judgment referred to by the learned Counsel for the appellant is rendered in Gujarat State Road Trans. Corporation v. Haribhai Vallabhbhai Darji 1984 ACJ 72 (Gujarat), wherein it was held that where even third person unauthorisedly drove the bus and caused a serious accident, then driver was held negligent in leaving the bus unattended as the facts of the case show that if the driver was negligent, then owner can be made liable to pay compensation for the negligence of his employee. I am not impressed by the judgment rendered by the Hon'ble Gujarat High Court as the same goes contrary to the judgment of the Hon'ble Apex Court, because unauthorised person driving the vehicle not for business purposes or owner's purposes, then owner cannot be held liable.

21. The learned Counsel appearing for the State, respondents, placed reliance on the judgment rendered in Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt 1966 ACJ 89 (SC). Dealing with the case, the Hon'ble Apex Court held thus:

(9) In Ricketts' and Engelhart's cases, (1915) 1 KB 644 and (1897) 1 QB 240 (respectively) each servant was acting on the master's business at the time. If the two servants in Engelhart's case had gone for a picnic or the boy had borrowed the cart to give a joyride to his friends, the master would not have been liable although the effective cause would still have been the elder servant's negligence. The difference lies in this that in the two cases the negligent act took place in the execution of the master's business and in the examples suggested by us, no question of master's business or the scope of the servant's or agent's employment arises, because the acts are clearly outside that scope. Going for a picnic or lending the cart so that the co-servant's friends may go for an outing is not in the course of the master's employment. Beard's case, (1900) 2 QB 530, when

compared with Ricketts' case, (1915) 1 KB 644 brings out the difference. In *Britt v. Golmoye and Nevill* (1927-28) 44 TLR 294, the master himself lent the car to the servant for the latter's private work and the master was not held responsible for the negligence of the servant in causing injury because neither was the journey on the master's account nor was the master in control at the time. Sir John Salmond (13th Edn., p. 124) has summed up the law thus:..a master is not responsible for the negligence or other wrongful act of his servant simply because it is committed at a time when the servant is engaged on his master's business. It must be committed in the course of that business, so as to form a part of it, and not be merely coincident in time with it.

(10) The scope of employment of a servant need not of course be viewed narrowly, but' the essential element that the wrong must be committed by the servant during the course of employment, i.e., in doing the master's business ought always to be present. In *Century Insurance Co. v. Northern Ireland Road Transport Board* (1942) AC 509, the driver of a petrol lorry while transferring petrol from the lorry to an underground tank, struck a match to light a cigarette and threw it on the floor and thereby caused a fire and explosion which did great damage. The masters were held liable because the negligence was in the discharge of the duty by the servant. Although the act of lighting the cigarette was something the driver did for himself and was by itself quite harmless, it could not be regarded in the abstract and was a negligent method of conducting the master's work. Similarly in *Smith v. Martin* (1911) 2 KB 775 at p. 784, a school authority was held liable when a teacher during school hours sent a girl aged 14 wearing a print pinafore to poke the fire and to draw out the damper in a grate in the teacher's common room and the child was burnt. It was held that the teacher's duty was to provide education in the widest sense and included expecting obedience from the pupils and this was an act of negligence in the discharge of such duty.

22. The facts of the case referred to above, show that the same are similar to that of the present matter. In the aforesaid case also, vehicle was driven by unauthorised person. In the present matter, not only the vehicle was driven by unauthorised person, but same was not even for owner's purpose or his business, therefore, in those circumstances, even owner cannot be held liable for vicarious

liability.

23. In view of the above, I am not inclined to accept the appeal as the judgment cited by the learned Counsel for the appellants have no application in the present matter, more so, the judgment referred to by the learned Counsel appearing for the State respondents, in the case of Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt 1966 ACJ 89 (SC), covers the controversy of the present matter.

24. The appeal¹ is thus having no force and the same is dismissed on the ground urged at the time of hearing because the learned Counsel for the appellants has not pressed any other argument. Costs made easy.

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