

D. Rajapathi Vs. the University of Madurai, Represented by the Registrar and ors.

D. Rajapathi Vs. the University of Madurai, Represented by the Registrar and ors.

SooperKanoon Citation : sooperkanoon.com/822127

Court : Chennai

Decided On : Mar-29-1979

Reported in : (1979)2MLJ246

Appellant : D. Rajapathi

Respondent : The University of Madurai, Represented by the Registrar and ors.

Judgement :

ORDER

V. Balasubrahmanyam, J.

1. The facts giving rise to this civil miscellaneous appeal may be briefly stated.
2. The University of Madurai had obtained the State Government's permission to raise buildings for staff quarters at Madurai. The actual work of construction of the buildings and their supervision were with the Directorate of Technical Education, Technical Division, Madras which is a Department of the State, Government. Rajapathi, the appellant in this civil miscellaneous appeal, is an Assistant Engineer, Public Works Department, Madras. It was part of his duty to supervise the construction of the staff quarters in the Madurai University, for he was attached, in that capacity, to the office of the Directorate of Technical Education. For going on official inspection duty, the appellant was given the use of a jeep

belonging to the University The driver of the jeep, however, was an employee of the State Government under the control of the Director of Technical Education, Madras.

3. One day at about 7 A.M., the appellant travelled in this Jeep to go to some place in connection with his inspection duty. The vehicle was driven by the Department's driver. On the way, the vehicle met with an accident. The appellant fell from the jeep and sustained injuries. He was treated in a hospital as an inpatient. The accident left him with a disability in his right hand.

4. The appellant thereupon moved the Motor Accidents Tribunal, Tiruchirapalli for compensation under different heads such as medical expenses for treatment of the injury, pain and suffering loss of earnings etc He sought to make liable: (i) the Madurai University who was the owner of the jeep; (ii) the driver of the jeep, and (iii) the insurance company who had covered third party risks for the vehicle. These were the only respondents to the appellant's claim application before the Tribunal. The appellant did not implead or seek any relief against the State Government or the Directorate of Technical Education as the employer of the jeep driver.

5. The Claims Tribunal on inquiry found that the accident occurred owing to the negligence of the jeep driver. The Tribunal computed the quantum of compensation at Rs 9,734 in the aggregate under the several heads under which damages were claimed. The Tribunal held that the appellant was entitled to this amount. In fixing the liability for payment, however, the Tribunal held that the University and the Insurance company were not liable. The award was made as against the jeep-driver alone.

6. In making the award in the manner aforesaid the Tribunal accepted the University's contention to the effect that the jeep driver was not their employee, but a servant of the State Government, and hence they cannot be made liable for damages on any principle of vicarious liability, even though the vehicle which was involved in the accident belonged to them. The question was posed before the Tribunal as to whether the Directorate of Technical Education was an agent of the University, so that the fault of the driver may be visited on the University as that of

the agent's servant. The Tribunal, however, held that the Directorate of Technical Education was not the University's agent, but quite an independent contractor. On the basis of this finding the Tribunal also dismissed the appellant's claim against the insurance company.

7. In this appeal, the appellant challenges the correctness of the Tribunal's finding as to the jural relationship between the Madurai University and the Directorate of Technical Education. This question is a mixed question of fact and law, which means that on the factual findings the proper legal inference has to be drawn. A few reported cases were cited in the course of argument, but the basic question whether the Directorate of Technical Education is the University's agent or an independent contractor has to be determined primarily on facts. The evidence before the Tribunal was that the construction of buildings was done purely on the responsibility of the State Government. The tender calling for construction contract was issued by the Directorate of Technical Education, Construction Wing, which is a department of the Government of Tamil Nadu. The actual supervision of construction work was fully retained with that Directorate as its responsibility. The jeep driver as well as the technical and supervising staff, including the appellant, were all employees of the State Government answerable to the Directorate of Technical Education. They were not University employees, nor were their service lent to the University even for the duration. The jeep in question, no doubt, belonged to the University but it was left fully under the control of the Directorate of Technical Education. The petrol, bills and minor repair bills were all being paid by the Government Department. In these circumstances, I must fully endorse the Tribunal's finding that the Directorate of Technical Education had merely undertaken to build an administrative block in the University of Madurai, independent of any control or interference from that University.

8. The test applied by the law to find whether some one is an agent of another or is an independent contractor is to find out whether there is any degree of control by the one over the other. In this case there was no control of any such kind.

9. One of the cases cited in argument was *Govindarajulu v. Govindaraja* : AIR1966 Mad332 a decision of a division bench of this Court. In that case, a lorry was

entrusted by its owner to an automobile workshop for repairs. A mechanic employed by the workshop-proprietor took out the vehicle for a trial run, when it got involved in an accident. The injured third party sought to make the lorry-owner liable for the negligence of the garage mechanic. It was held that the relationship between the lorry-owner and the workshop-proprietor to whom it was entrusted for repairs was that of independent contractors and not that of a master and servant or principal and agent.

10. Following the principle of this decision, but primarily taking a firm stand on the facts disclosed by the evidence in this case, I must hold that the University, albeit the owner of the jeep, cannot be rendered liable to pay compensation for injuries caused by the negligence of the driver who was not the University's servant but the State Government's. The principle of respondent superior or vicarious liability can be applied to a vehicle-owner where the negligence is that of the owner's servant or of the servant of owner's agent. The doctrine cannot be extended and applied to a case where the negligence is that of a driver employed by an independent contractor. In the present case, the appellant had not impleaded the right party namely the State Government on whom he could enforce vicarious liability. The negligence is that of a driver employed by an independent contractor. In the present case, the appellant had not impleaded the right party namely the State Government on whom he could enforce vicarious liability.

11. The correctness of the Tribunal's decision absolving the insurance company from liability was also questioned in this appeal. This point falls to be determined on the terms of Section 95 of the Motor Vehicles Act, 1939. As a general rule, the insurance company's liability for third party risks is severely restricted under Section 95 to the death of or bodily injury to a third party, or to property of the third party not exceeding Rs. 2,000 in value. A third party is not defined by the Act in clear terms. The statute merely carries an inclusive definition just to say that a third party includes a Government. But this is no definition at all. It does not help us in any way to find out whether a passenger in a motor vehicle is a third party within the meaning of the Motor Vehicles Act.

12. The question in the present case is whether the appellant who travelled in the jeep as a passenger can be regarded as a third party so as to brought within the insurance coverage. A look at Section 95 of the Act which deals with the ambit of third party risks insurance shows that the Legislature has made an express provision in Clause (1)(b)(ii) of that section specifically referring to the covering of risks of passengers. But the reference to passengers, even in this Clause, is limited, in terms, only to passengers in public carriage vehicles. The obvious inference is that the Legislature was minded to protect only the lives and limbs of passengers in public carriage vehicles under the system of third party insurance, and not any other class of passengers. This is based on the well-known canon of statutory construction *expressio univs est exclusio alterius*. This position is, now settled by a decision of the Supreme Court in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co* : [1977]3SCR372

13. The jeep in this case cannot be brought within the conception of a public carrier vehicle within the meaning of Section 95 (1)(b)(ii) Although owned by a public body like a University, the jeep is only their own private vehicle As a passenger in that vehicle, there fore, the appellant cannot seek to demand compensation from the insurance company having regard to the terms of Section 95 (1) of the Act.

14. In the result, this appeal is dismissed and the award of the Tribunal is confirmed. There will, however, be no order as to costs.