

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.7019 of 2018

Date of Decision: November 13, 2018

Top Bahdur Thapa

.... Petitioner

Versus

Maya Devi & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Surinder Gandhi, Advocate for the Petitioner.

Mr. Vikas K. Gupta, Advocate for Respondents No.1 and 2.

Mr. Raj Bahadur, Advocate for Respondent No.4.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the Order passed by Ld. MACT, Mohali dated 4.10.2018, whereby the Application moved by Petitioner alongwith the Project Director Regional Spinal Injuuries Centre Proforma Respondent/Respondent No.2 in the MACT case, for framing the issues as per their pleadings in MACP No.2095 of 2018 was disposed off, without impleading the employer of the Petitioner namely Good House Keeping (Regd.) Facility Management Services, Head Office Palam Colony, New Delhi-110077 and the Branch Office, General Manager, Good House Keeping (Regd.) SCO No.7, Star Complex, Sector 41-B, Village Butela, Chandigarh, nor framing any issue regarding the liability of the said employer.

2. The Petitioner happens to be Driver of the Offending Vehicle

involved in the accident, which is the subject matter of the Compensation Claim before the Ld. Tribunal. His contention is that he was driving the vehicle at the relevant time in the course of his employment when it had been temporarily made over by its Registered Owner (Respondent No.4) in favour of Petitioner's Employer namely Good House Keeping (Regd.) Facility Management Services, Head Office Palam Colony, New Delhi-110077 and the Branch Office, General Manager, Good House Keeping (Regd.) SCO No.7, Star Complex, Sector 41-B, Village Butela, Chandigarh. He therefore, contends that his aforesaid Employer would be a necessary party, being vicariously liable to pay any compensation if claimed on behalf of victim, and had therefore, sought impleadment of his said Employer as an additional Respondent in the Compensation Case.

3. The Ld. Tribunal however, was not convinced by his reasoning and rejected his prayer after observing inter-alia -

“The claim petition is filed by the claimants and they are not bound to implead all the joint tortfeasor as apportionment of compensation between various tortfeasor is not the concern of the claimants. The claim petition is filed against the driver on the allegation that he was driving the offending vehicle rashly and negligently. His rashness and negligence can be proved by eye witnesses and his license is to be proved from official witnesses. Moreover, no document has been produced on record by the applicant along with the application to show that as per the alleged contract between respondent no.2 and Good House Keeping Services, the liability arising out of any accident committed by the respondent no.1 shall be of Good House Keeping Services.

Therefore, for the want of sufficient documents, this court is not inclined to frame the issue with regard to its liability or impleading the same as party.”

4. The Petitioner assails the aforesaid observations of the Tribunal and has also placed two Citations in support of his contentions i.e. '**Pushpabai Parshottam Udeshi and others Versus Ranjit Ginning and Pressing Co. Pvt. Ltd. and another**' 1977 (2) SCC 745, in which the Supreme Court had observed inter-alia -

*“14. Before we conclude, we would like to point out that the recent trend in law is to make the master liable for acts which do not strictly fall within the term "in the course of the employment" as ordinarily understood. We have referred to Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhat where this Court accepted the law laid down by Lord Denning in Ormrod and Another vs. Crosville Motor Services Ltd. (supra) that the owner is not only liable for the negligence of the driver if that driver is his servant acting in the course of his employment but also when the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes. This extension has been accepted by this Court. The law as laid down by Lord Denning in Young v. Edward Box and Co. Ltd. already referred to i.e. the first question is to see whether the servant is liable and if the answer is yes, the second question is to see whether the employer must shoulder the servant's liability, has been uniformly accepted as stated in Salmond Law of Torts, 15th Ed., page 606, in Crown Proceedings Act, 1947 and approved by the House of Lords in Staveley Iron and **Chemical Co. Ltd. v. Jones**, 1956 AC 627 and **I.C.I. Ltd. v. Shatwell**, 1965 AC 656. The scope of the course of employment has been extended in Navarro v. Moregrand Ltd. where the plaintiff who wanted to acquire the tenancy of a certain flat, applied to the second*

*defendant, a person with ostensible authority to conduct the business of letting the particular fiat for the first defendant, the landlord. The second defendant demanded from the plaintiff a payment of Pound 225 if he wanted the flat and the plaintiff paid the amount. The plaintiff sought to recover the sum from the landlord under the Landlord and Tenant (Rent Control) Act, 1949. The Court of Appeal held that the mere fact that the second defendant was making an illegal request did not constitute notice to the plaintiff that he was exceeding his authority and that, though the second defendant was not acting within his actual or ostensible authority to asking for the premium, as the landlord had entrusted him with the letting of the flat, and as it was in the very course of conducting that business that he committed the wrong complained of; he was acting in the course of his employment. Lord Denning took the view that though the second defendant was acting illegally in asking for and receiving a premium and had no actual or ostensible authority to do an illegal act, nevertheless, he was plainly acting in the course of his employment, because his employers, the landlords, had entrusted him with the full business of letting the property, and it was in the very course of conducting that business 'that he did the wrong of which complaint is made. This decision has extended the scope of acting in the course of employment to include an illegal act of asking for and receiving a premium though the receiving of the premium was not authorized. We do not feel called upon to consider whether this extended meaning should be accepted by this Court. It appears Lord Goddard, Chief Justice, had gone further in **Barker v. Levinson**, (1950)66 TLR (Pt 2) 717 and stated that "the master is responsible for a criminal act of the servant if the act is done within the general scope of the servant's employment." Lord Justice Denning would not go to this extent and felt relieved to find that in the authorized Law Reports (1951) 1 K.B. 342, the passage quoted above was struck out. We respectfully agree with the view of Lord Denning that the passage*

attributed to Lord Chief Justice Goddard went a bit too far.”

5. In **Malati Goon Vs. Union Of India (Uoi) 2005 (28) R.C.R. (Civil) 34**, a Division Bench of Calcutta High Court had held that where the Ministry of Decence which was the owner of the Offending vehicle involved in the concerned accident, and was already a party to the proceedings, it was not necessary for the claimants to implead the Driver of the vehicle as well.

6. In the opinion of this Court however, neither of the two decisions relied upon by the Petitioner come to his rescue. It is to be noted that the Registered Owner of the Offending Vehicle (Respondent No.4) is already on record, and it is immaterial whether the Petitioner who was driving the vehicle at the relevant time, was directly under employment of the said owner, or under someone else who was not a party. Suffice it to say that the Registered Owner of the vehicle is certainly the most necessary party in a Compensation Claim even by relying upon the Calcutta decision cited above. But according to the Claimants, the Petitioner was impleaded while driving the offending vehicle, he was responsible for causing the accident. So there is no impropriety in his own impleadment as has been done in the present case. The claimant is under no obligation to implead any third person, who does not happen to be the Registered Owner of the vehicle notwithstanding that under some special commercial arrangement, such vehicle was temporarily handed over to him or that the Petitioner who incidentally happens to be his employee, was driving it at the relevant time. Also, the claimants being the '*dominus litus*' in the compenstion claim

cannot be compelled to press their claim against any third person even by the normal principles of jurisprudence.

7. For the aforesaid reasons, this Court finds no substance in the contentions raised on behalf of the Petitioner.

8. The Revision Petition is therefore, dismissed and the impugned order passed by the Ld. Tribunal is sustained.

(SUDIP AHLUWALIA)
JUDGE

November 13, 2018
AS

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |