

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

**CWP No.17911 of 1997
Date of Decision: 03.12.2018**

Lal Chand

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. O.P.S. Tanwar, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

RITU BAHRI, J. (ORAL)

Vide award dated 13.06.1988 (Annexure P-1) passed by the Motor Accident Claims Tribunal, Ambala, State of Haryana and Lal Chand-respondent No.3 (petitioner herein) were held liable to pay compensation jointly and severally to the claimants on account of death of Om Parkash in a motor vehicle accident, which took place 09.02.1987.

Initially, the petitioner was appointed as Cleaner with respondent-department (PWD, B&R, Haryana) and was later on, promoted as driver in the year 1986. The petitioner was issued charge-sheet along with other documents (Annexures P-7 to P-11) alleging therein that he had taken truck No. HNA-5149 unauthorizedly on 09.02.1987 and caused the accident. The State has deposited the compensation as per the aforesaid award and the petitioner was held responsible for this accident. The

petitioner gave his reply dated 30.05.1990 (Annexure P-12) and denied the

allegations levelled against him. The enquiry officer held that it was Surinder Singh, who was official driver of the Truck bearing No.HNA-5149 and he had handed over the said truck to Lal Chand, tractor driver, who unauthorizedly drove the truck and caused the accident. Both the drivers were held liable for recovery of the compensation to the extent of 10% from Surinder Singh and 90% from Lal Chand. On the basis of enquiry report dated 14.11.1995 (Annexure P-14), a show cause notice dated 21.03.1996 (Annexure P-13) was issued to the petitioner, asking him a to why penalty of stoppage of two increments with future effect along with recovery of Rs.1,81,252-50 besides down grading of ACR for that year, should not be imposed on him. To the said notice, petitioner filed his reply dated 23.04.1996 (Annexure P-15). Ultimately, vide impugned order dated 26.06.1996 (Annexure P-16), punishment of stoppage of two increments with future effect and recovery of Rs.1,82,252-50 Ps. was inflicted upon the petitioner, besides down grading his ACR for that period.

The petitioner has challenged the memo of charge sheet, statement of allegations and charges (Annexure P-7 to P-9), memo (Annexure P-13), enquiry report (Annexure P-14), order imposing punishment dated 26.06.1996 (Annexure P-16) and order dated 10.11.1997 (Annexure P-17) on the ground that he was on leave w.e.f. 31.01.1987 to 06.02.1987 and from 08.02.1987 to 11.02.1987. On 07.02.1987, it was Saturday and the petitioner had gone to the office of respondent No.2 to hand over the charge of Jeep to Sh. Om Parkash, Driver. The petitioner was competent to driver the vehicle. This vehicle was taken by the official driver namely Surinder Singh.

Upon notice, written statement on behalf of respondent Nos.1 to

4 has been filed, stating therein that on 09.02.1987, the accident in question was caused by the present petitioner while driving Truck No.HNA-5149 carelessly and a criminal case bearing FIR No.49 dated 10.02.1987, under Sections 279/304-A IPC was registered against him at Police Station, Ambala Cantt. Vide MACT award dated 13.06.1988 (Annexure P-1), claimants were held entitled to a sum of Rs.1,44,000/-, which was to be paid by the respondent-State as well as present petitioner jointly and severally along with interest at the rate of 12% per annum. It was further stated that the petitioner had unauthorizedly removed the truck in question from the public premises in connivance with the cleaner namely Sh. Om Parkash and caused the accident while driving the said vehicle rashly and negligently, resulting into the death of Om Parkash, Cleaner. Therefore, deduction from his salary amounting to Rs.550/- per month is justified.

The present petition was admitted on 02.12.1997 and recovery from the petitioner was ordered to be stayed. Subsequently, the said interim order was made absolute vide order dated 27.07.1998.

After hearing learned counsel for the parties, this petition deserves to be allowed. In **Pritam Chand vs. HRTC and another**, 2005 (3) RCR (Civil) 138, the Himachal Pradesh High Court was examining a case, where a jeep, owned by State Transport Corporation, was taken by the driver unauthorisedly to his village and caused accident on the way by rash and negligent driving. State was held liable to pay compensation to the injured. Owner was also held liable for acts of the driver, which he might have unauthorisedly done. In para nos.18 and 19 of the judgment, it was observed as under:-

“18. In the present case, admittedly, the driver was on duty. According to the respondents, he had been asked to park the jeep at the bus stand.

This appears to be afterthought. The driver could not have been expected to walk to his native place which is about 25 Kms away from the main bus stand. It is a known fact that the drivers do take the Government vehicles to their residences especially when they finish their duties at odd hours as happened in the present case.

19. However, assuming that the driver had taken the vehicle unauthorisedly, this would not help the case of the respondent-HRTC. He was admittedly, the driver of the vehicle and the vehicle had been put in his charge by the owner. In view of the law laid down by the Apex Court, the owner is also liable for acts of the driver, which he may have unauthorisedly done. Therefore, the findings of the Tribunal below on this point is set aside and it is held that the respondent-HRTC is responsible for tortious act of the driver.”

Further, Hon'ble the Supreme Court in **State of Maharashtra & others vs. Kanchanmala Vijaysing Shirke & others**, (1995-3) Punjab Law Reporter 375, while examining a case of accident pertaining to State, wherein the driver who was under the influence of liquor, had authorized a Clerk (employee of the State) to drive the vehicle, which hit a scooter resulting in a fatal accident. It was held that the accident was caused in the course of employment and State cannot escape its vicarious liability to pay compensation to the heirs of the victim. It was further observed as under:-

“18. So far the facts of the present case are concerned, the High Court has rightly come to the conclusion, on basis of the pleadings and evidence on record, that it was the year ending day. i.e. 31.03.1980 and the clerks and officers were required to work during night time. This direction had been given by the appellant No.2 who was incharge of the office. It further appears that after normal working hours of the office, the employees had gone to their homes and were required to come back after taking dinner. The jeep was used for bringing such employees to the office. In this background, there is no escape from conclusion that jeep was being used in connection with the affairs of the State and for official purpose. The High Court has also found that respondent who was the clerk in the office of appellant No.2 was driving the vehicle under the authority of the driver who was incharge of the said vehicle and as the driver had consumed more liquor on that day he permitted respondent to drive the vehicle that night. The facts of the present case disclose and

demonstrate that an authorised act was being done in an unauthorised manner. The accident took place when the act authorised was being performed in a mode which may not be proper but nonetheless it was directly connected with 'in the course of employment'- it was not an independent act for a purpose or business which had no nexus or connection with the business of the State Government so as to absolve the appellant State from the liability.”

This Court in Kulwant Singh Driver vs. Municipal Corporation, Amritsar and another, 2011 (3) RCR (Civil) 552, held that under Section 146 and 149 of the Motor Vehicles Act, 1988, the Municipal Corporation was vicariously liable for the wrong committed by its employee while causing the accident during employment. The MACT had granted compensation, which was to be made jointly and severally by the respondents. Even in that case, recovery of Rs.500/- per month was to be made from the salary of the employee. The petitioner-driver had been acquitted of the charge under Section 304-A IPC and this aspect had not been considered by the respondent-department while imposing the punishment of recovery. In para no.10 of the judgment, it was held as under:-

“10. Furthermore, if the findings of the Tribunal, *ipso facto*, could be relied upon to impose a punishment of recovery, as to why the finding of a Criminal Court could not be taken into consideration, is another issue to which the employer became oblivious. It was incumbent upon the employer to hold as to whether the act of negligence or error of judgment which caused accident, constituted misconduct or not, making the employee liable for punishment of recovery. In the course of discharge of duties; mistakes do occur and employees do act negligently, but for each negligence an employee cannot be taken to task until the employer comes to a conclusion that the employee had acted malafide. Furthermore, an employer, before considering the misconduct or ill motive on the part of an employee, has also to take into consideration the antecedents of such an employee or his previous conduct. Nothing to this effect was done by the employer in the present

case.”

The above judgments have clarified this aspect that the employer cannot be absolved of its vicarious responsibility to pay compensation on account of the mistake committed by its employee.

In the facts of the present case, Lal Chand-petitioner was also an employee of the respondent-department. At best, his case can be that he had taken the vehicle unauthorizedly from Surinder Singh. In view of the above judgments, the respondent-department was vicariously liable to pay the compensation. Moreover, it is not the case of the respondents that there was intention on the part of the petitioner to cause the accident in question. Hence, the petitioner alone cannot be held liable to pay the amount of compensation and no recovery can be made from him in this regard.

In view of the above discussion, the present petition is allowed and the impugned memos and orders (Annexures P-7 to P-9, P-13, P-14, P-16 and P-17) are set aside. No recovery shall be imposed on the petitioner.

(RITU BAHRI)
JUDGE

03.12.2018
ajp

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>