

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.275 of 2015

Oriental Insurance Company Limited,
represented by its Manager, Branch Office,
Arunagiri Complex, 3rd floor, 25/C, Bypass
Road, Hosur, Hosur Taluk,
Krishnagiri District. ... Appellant/2nd Respondent

Vs.

1.Kandasamy ...1st Respondent/Petitioner

2.Usensha ...2nd Respondent/1st Respondent

3.The State of Tamil Nadu
Rep. by its Home Secretary
Fort St. George, Chennai. ...3rd Respondent
(R3 Suo Motu impleaded vide
order of Court dated 04.03.2015 made in
CMA No.275 of 2015)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2014 made in M.C.O.P.No.258 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Harur.

For Appellant : Mr.S.Manohar

For R1 : Mr.Selvam

For R3 : Mr.A.Dev Narendran

Government Advocate (CS)

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 05.07.2014 made in M.C.O.P.No.258 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Harur.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.258 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Harur. The 1st respondent filed the said

claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.05.2006. The State of Tamil Nadu, represented by its Home Secretary, Fort St.George, Chennai, is suomotu impleaded as 3rd respondent in this appeal.

3. According to the 1st respondent, he was on election duty during the time of the accident. He along with others accompanying the ballot boxes travelled in the Eicher tempo for transporting the ballot boxes to Dharmapuri. At that time, the driver of the Eicher tempo drove the same in a rash and negligent manner at a high speed. Due to the same, the Eicher tempo capsized. The 1st respondent and others, who travelled in the vehicle, sustained injuries. After the accident, the 1st respondent was given treatment at Government Hospital, Dharmapuri and has taken treatment as in-patient for one day at Government Hospital, Salem and subsequently, he has taken treatment at private hospital. According to the 1st respondent, he was aged 42 years, he was working as a police constable and was earning a sum of Rs.7,500/- per month. For the injuries sustained by him in the accident, he claimed a sum of Rs.5,00,000/- as compensation.

4. Before the Tribunal, the 2nd respondent, owner of the vehicle remained ex-parte. The appellant filed counter statement and contended that the vehicle involved in the accident is a goods vehicle. At the time of the accident, 19 persons travelled in the vehicle belonging to the 2nd respondent. The vehicle was handed over to the State Election Commission and the vehicle was under the full control of the officials of the State of Tamil Nadu. The owner of the vehicle lost his control over the vehicle. Hence, the appellant is not liable to pay compensation. The State Government is only liable to pay compensation. The State Government is necessary party to the claim petition and the claim petition is liable to be dismissed for non-joinder of necessary party and prayed for dismissal of the claim petition against the appellant. सत्यमेव जयते

5. Before the Tribunal, the 1st respondent examined himself as PW1 and examined one Dr.S.Krishnakumar as PW2 and marked seven documents as Ex.P1 to Ex.P7. The appellant examined one Thiruvencatam, Junior Grade-I from the Insurance Company and marked four documents as Ex.R1 to Ex.R4.

6. The Tribunal after framing necessary points for consideration and considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the Eicher tempo belonging to the 2nd respondent. The Tribunal considering the evidence of PW1 and PW2, fixed percentage of disability and

awarded a sum of Rs.1,35,000/- as compensation to the 1st respondent. The Tribunal accepted the contention of the appellant that the owner of the vehicle did not possess valid driving license and directed the appellant/Insurance Company to pay compensation at the first instance and recover the same from the 2nd respondent by filing Execution Petition.

7.Against the said award dated 05.07.2014 made in M.C.O.P.No.258 of 2009, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

8.The learned counsel appearing for the appellant raised various grounds in the appeal challenging the award of the Tribunal. At the time of arguments, the learned counsel for the appellant confined his arguments with regard to liability of State Government only. The learned counsel for the appellant contended that the Tribunal failed to see that the vehicle was under the control of officials of the State Government for election duty. The accident has occurred when the vehicle was under the control of officials of the State Government. The 2nd respondent owner of the vehicle did not have any control over the vehicle. Even though the driver of the vehicle was an employee of the 2nd respondent, the 2nd respondent did not have any control over the driver of the vehicle as well as the vehicle as the driver of the vehicle was acting as per the instructions of officials of the State Government. At the time of accident, 19 persons travelled in the goods vehicle as evidenced by FIR. The driver of the vehicle did not possess any driving license at the time of the accident. In support of his contentions, the learned counsel for the appellant relied on the following judgment reported in 2018 ACJ 1548 (Santosh Kumari and others vs. Vinayak Prasad Gupta) and others);

"12. Now, the point for consideration is, whether the State would be held liable vicariously to pay the compensation to the claimants? It is admitted position that the offending vehicle was requisitioned and acquired by the State, non-applicant No.3, on the basis of the order of Collector, Sidhi, for Lok Sabha elections at the relevant time, in which deceased was travelling. It is also admitted position that the non applicant No.2 was driving the offending vehicle due to Lok Sabha elections. The said vehicle fell into the pit and accident occurred in which deceased died.

13.Learned Claims Tribunal in para 8 of the impugned award has held that since the non-applicant No.2 was already aware of the pit, he

cannot take a plea that he has not seen the pit due to darkness and due to rash and negligent driving of the offending vehicle, the accident occurred, which led to death of deceased. Therefore, learned Claims Tribunal came to the conclusion that non-applicant No.2-driver is also liable to pay the compensation.

14.Learned counsel for the State, non-applicant No.3, submitted that even if the offending vehicle was requisitioned for Lok Sabha election purpose and it was under the control of the State Government, still the owner of the vehicle was vicariously liable to pay compensation arising out of the accident.

15.The above contention of learned counsel for the State, non-applicant No.3, has no merit. In this context, Punjab and Haryana High Court in the case of Brij Lal V. Mangal Chand Maheshwari, 1987 ACJ 522 (P&H), has held in paras 12 and 13 follows:

"(12) Once the owner of the vehicle surrenders control of the same to another person, it is the latter who becomes liable for the payment of compensation vis-a-vis the accident which is caused by rash and negligent driving of his driver. In this context an earlier judgment of this Court in Municipal Committee, Sonapat v. Khushi Ram, 1983 PLR 313, may be noticed. In that case a vehicle owned by the Haryana State was in possession and under the control of the Municipal Committee, Sonapat. The driver who was in employment of the Municipal Committee caused the accident and a point arose whether the Haryana Government as owner or whether the Municipal Committee, Sonapat, which was in possession and control of the vehicle was vicariously liable to pay the compensation. In no uncertain terms it was held in this judgment that it was the Municipal Committee and not the State of Haryana which was liable to pay the compensation. It was observed that since the Haryana State had no control over the driver and he was not in its employment, and on the other hand the driver was acting in the course of the employment of the Municipal Committee at the time of accident, the vicarious liability would be that of the Municipal Committee. The High Court of Madhyapradesh took the same view in State of Madhya Pradesh v.

Premabai, 1979 ACJ 503 (MP).

(13) ... In such circumstances it can be presumed that whosoever was driving the jeep was doing so under the authority of the bank. It was held by this Court in Mohinder Singh v. Gurdial Singh, 1978 ACJ 279 (P&H), that in the normal circumstances when a person happens to be driving a vehicle it is to be presumed that he had the authority of the owner to drive and was driving in the course of the employment of the owner unless evidence is placed on the record to prove the contrary. In the present case, this presumption has not been rebutted by the bank. The contention that the jeep was being driven by the owner himself at the time of accident has not been found believable. Hence, disagreeing with the Tribunal on the point of liability I hold that it is the respondent, Primary Land Development Bank, Sirsa, which has to pay compensation to the claimant."

Further, in the case of State of Madhya Pradesh v. Premabai, 1979 ACJ 503 (MP), it has been held that master is vicariously liable for the acts of his servant acting in the course of his employment. Paras 5 and 8 of this report read as follows:

"5. Admittedly, the respondent No. 2 was in the employment of the State Government in the Raipur Development Block. According to the case pleaded by the State Government, the jeep was being driven at the relevant time by the respondent No. 2 in discharge of sovereign functions of the State which amounts to an admission that the respondent No. 2 was driving the vehicle in discharge of his official duties. The driver is primarily liable for the death of Ramavtar and Shivprasad due to his rash and negligent driving. Since at the relevant time he was driving the vehicle in discharge of his official duties, the State Government is vicariously liable for the acts of its employee. The Supreme Court in Sitaram v. Santanuprasad AIR 1966 SC 1697, has held that a master is vicariously liable for the acts of his servant acting in the course of his employment. 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 driver of a car taking the car on the master's business makes him vicariously liable if he commits an accident. Reiterating this principle in a recent case of Pushpabai v. Ranjit Gining and Pressing Co. (AIR 1977 ACJ 343 SC), the Supreme Court has further held that:

"For the master's liability to arise 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. 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.

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. 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".

Therefore, the State of Madhya Pradesh is liable for payment of compensation for the acts of its driver, even if the State Government is not owner of the jeep in question.

(8) The Claims Tribunal was not right in holding the State Government to be the owner of the jeep in question. Under the general law of Torts and also under the Fatal Accidents Act, the driver is primarily liable for compensation for causing death or injuries by his rash and negligent driving of the vehicle. His master is also vicariously liable for the acts of his servant. Section 110-B only stipulates that the Tribunal shall specify the amount which shall be paid by the insurer, or owner or driver of the vehicle. It does not provide that these three persons are alone liable for the accident. The owner's liability is not absolute. If the vehicle is entrusted to an independent person and it is in the complete control of that independent person, the owner cannot be made liable for the act of that independent person or his servant. The House

of Lords in Arthur White (Contractors) Ltd. v. Tarmac Civil Engineering Ltd. 1968 ACJ 191 (HL, England), has held:

"Owner of an excavator gave it on hire and provided a driver. Hire agreement stipulated that the driver would be deemed to be the hirer's servant. When an accident took place due to negligence of the driver, the hirer was entirely liable and not the owner".

16. In the light of position of law stated above, after having heard learned counsel for the parties and on going through the evidence adduced and after taking into consideration the material evidence available on record, it appears that the amount awarded by the learned Tribunal is on the lower side and deserves enhancement and the State, non-applicant No.3, is held liable vicariously and to pay compensation to the claimants."

9. Per contra, Mr. A. Dev Narendran, the learned Government Advocate contended that the 2nd respondent is the owner of the vehicle, which was insured with the appellant and the insurance policy issued by the appellant was in force at the time of accident. In view of the same, the appellant as a insurer of the vehicle is liable to pay compensation to the 1st respondent. The 3rd respondent not being owner of the vehicle is not liable to pay compensation and prayed for dismissal of the appeal. In support of his contention, he relied on the following judgment of the Hon'ble Apex Court reported in 2008 ACJ 705 (National Insurance Co. Ltd., vs. Deepa Devi and others);

"10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondent Nos. 3 and 4 continued to be the registered owner of the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of its power conferred upon it under the Representation of People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remains under requisition, the owner does not exercise any control thereover. The driver may still be the employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in-charge thereof. Save and except for legal ownership, for all intent and

purport, the registered owner of the vehicle loses entire control thereover. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains under the control of the State and/ or its officers, the owner is only entitled to payment of compensation therefor in terms of the Act but he cannot not exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that the Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view.

.. ..
.. ..

18. We, therefore, are of the opinion that the State shall be liable to pay the amount of compensation to the claimants and not the registered owner of the vehicle and consequently the appellant herein."

10. Heard the learned counsel appearing for the appellant as well as the learned Government Advocate and perused all the materials available on record.

11. The following points are the admitted facts of the case:

(i) The 2nd respondent was owner of the vehicle at the time of accident.

(ii) The vehicle was insured with the appellant and insurance policy was in force.

(iii) The State Government took over the vehicle for the purpose of election duty and vehicle was under the control of officials of the State Election Commission.

(iv) At the time of accident, the 1st respondent and others accompanied the ballot boxes, which were being transported to Dharmapuri. The accident has occurred due to rash and negligent driving by the driver of the vehicle as held by the Tribunal by appreciating the oral and documentary evidence.

12. The issue to be decided in the appeal is whether the

appellant is liable to pay compensation or the 3rd respondent is liable to pay compensation?

13. As stated above, it is not disputed that the vehicle was under the control of State Election Commission and the ballot boxes were transported to Dharmapuri. The 1st respondent, police constable accompanied the ballot boxes along with the officials of the Government. It is not the case of the appellant that the accident did not occur due to rash and negligent driving by the driver of the vehicle. After being impleaded as 3rd respondent in the appeal, the State of Tamil Nadu/3rd respondent has not denied that the vehicle was under their control at the time of the accident. The contention of the learned Government Advocate appearing for the 3rd respondent is that the vehicle belongs to 2nd respondent insured with the appellant and hence, the 2nd respondent is vicariously liable for negligence of his driver and the appellant as the insurer of the vehicle is liable to pay compensation to the 1st respondent, who is a 3rd party. The appellant is liable to indemnify the 2nd respondent as insurer of the vehicle. The said contentions are untenable. The appellant is liable to indemnify the 2nd respondent, owner of the vehicle, only when the 2nd respondent is vicariously liable for his own act or act of his employee. In the present case, the driver of the vehicle was acting as per the instructions of the officials of the State Election Commission. As the vehicle was under the control of the State Government, the driver of the vehicle in such circumstances, acted as driver of the State Government and the State Government alone is vicariously liable for the negligent act of the driver of the vehicle. This issue has been considered by the Hon'ble Apex Court in the judgment reported in 2008 ACJ 705 (National Insurance Company Ltd, vs. Deepa Devi and others) referred to above and the Hon'ble Apex Court held that the State Government is liable to pay compensation to the claimant and not registered owner of the vehicle and consequently, the Insurance Company. This ratio has been reiterated in the judgment reported in 2018 ACJ 1548 (Santosh Kumari and others vs. Vinay Prasad Gupta and others). In view of the above judgments, the appellant is not liable to pay compensation and only the 3rd respondent is liable to pay compensation to the 1st respondent.

14. In the result, this Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is hereby modified setting aside the portion of award directing the appellant/Insurance Company to pay the compensation at the first instance and recover the same from the 2nd respondent and the compensation awarded by the Tribunal is confirmed. The 3rd respondent/State of Tamil Nadu is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, within a period of six weeks from the date of receipt of

a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the entire award amount, along with interest and costs, after adjusting the amount, if any already withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Harur.

2.The Home Secretary,
State of Tamil Nadu,
Fort St.George, Chennai.

Copy To: The Section Officer, V.R.Section,
High Court of Madras.

+1 cc to M/s.M.Selvam, Advocate Sr.No. 42046

+1 cc to Mr.S.Manohar, Advocate Sr.No.41180

+1 cc to The Special Government Pleader SR.No.41124

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