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Devinder Singh Vs. Mangal Singh and ors.

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Court : Punjab and Haryana

Decided On : Aug-07-1980

Reported in : AIR1981P& H53

Judge : S.S. Sandhawalia, C.J. and; S.S. Kang, J.

Appeal No. : Letter Patent Appeal No. 379 of 1977 with Cross Objection No. 1 of 1978

Appellant : Devinder Singh

Respondent : Mangal Singh and ors.

Judgement :

S.S. Sandhawalia, C.J.

1. Whether the vicarious liability of the owner of a motor vehicle can be extended to cover even its unauthorised use by a stranger during the vehicle's entrustment to a workshop for repairs is the meaningful question which arises for determination in this appeal under Clause X of the Letters Patent.

2. On February 23, 1968, at about mid-day Mangal Singh, injured respondent, whilst going on his bicycle, with in the town of Moga, collided with truck No. PNF 8078 and suffered serious injuries on his person. He was immediately removed to the Civil Hospital, Moga, where the medical witness found that apart from other injuries, the whole of the outer side of the right leg and the right thigh were abraded and contused and bones of the right thigh and right ankle were fractured. A case was also registered against the driver of the vehicle at police station, Moga Mangal Singh was later removed to the Post Graduate Institute at Chandigarh for better treatment for the compound fracture of the lower and right femur ad compound fracture of right medical malleolus. He was discharged from the hospital partially cured.

3. Mangal Singh, respondent, preferred an application for compensation for a sum of Rs. 60.000/- for injuries ad loss of his earning due to the disability caused thereby.

4. In contesting the claim application, the appellant, Devinder Singh Brar, pleaded that he had completely entrusted his truck for repairs to the Behon Workshop at Moga, which apparently was the proprietary concern of Jarnail Singh, respondent. It was his express stand that he had never authorised its driving on the road either by the said Jarnail Singh or anyone of his employees. He further took up the plea that the truck at the time of the accident was being driven at a low speed and in any case the accident was caused by the contributory negligence of Magal Singh, respondent who suddenly swerved his bicycle towards one side.

5. The Oriental Fire and General Insurance Company Limited, with which the truck was insured, also raised the same pleas which wee taken by the appellant who is the owner of the truck. They further contested the amount of claim as being exaggerated and conjectural.

6. Tara Singh, respondent, brother of Jarnail Singh, respondent in his written statement, denied that he was driving the truck at the time of the accident and in support of his stand he further pleaded that on the day in question because of the inflammation of his foot he was under the treatment of Dr. Sham Lal Nayyar.

7. The positive stand taken by Jarnail Singh was that he was driving the truck at a normal speed on the G.T. Road in Moga and was coming from Jagran Mangal Singh, respondent, who was coming from the opposite side, took a quick and sudden turn towards the left when the truck approached and despite his best attempts to avoid a collision the rear left wheel of the truck struck of the bicycle of Mangal Singh who fell down. He pleaded that he immediately stopped the truck and removed Mangal Singh to the Civil Hospital in another truck. He reiterated his brother Tara Singh's stand that on the day of the accident the latter was under the treatment of Dr. Sham Lal Nayar.

8. On the aforesaid pleadings, the following issues were struck by the Tribunal :--

1. Whether at the time of this accident truck No. P.N.F 8078 was being driven--(a) by Tara Singh/(b) by Jarnail Singh?

2. Whether Magal Singh sustained injuries due to negligent driving of the truck?

3. Whether the injuries were caused to Mangal Singh by his own contributory negligence and what is its effect?

4. Whether there was suspension of the operation o the insurance policy at the time when this accident involving injuries to Mangal Singh occurred? If so, what is its effect?

5. In case issue No. 2 is proved in favour of the petitioner, to what amount of compensation he is entitled and from whom?

6. Relief.

9. On issue No. 1, the Tribunal came to the firm finding that it was Tara Singh, respondent, who was driving the truck when the accident took place. With regard to issues Nos. 2 and 3, the conclusive finding arrived at was that Mangal Singh was not guilty of any contributory negligence and that the accident was caused due to the rash and negligent driving of the truck of by its driver. On issues Nos. 4 and 5, it was held that the truck had been duly entrusted for repairs to Behon Workshop at Moga and no relationship o master and servant could be remotely established betwixt Tata Singh, driver of the vehicle, and the appellant Devinder Singh Brar. On this score, neither the appellant, Devinder Singh Brar, nor the insurer, the Oriental Fire and General Insurance Company Limited were made liable to pay any compensation. Consequently, Tara Singh, respondent, alone was held liable to pay compensation o the tune of Rs. 6, 000/- in all.

10. Both Mangal Singh, Respondent injured claimant and Tara Singh, respondent preferred appeals against the judgment of the Tribunal.The learned single Judge declined any relief against the Insurance Company on the Virtually unchallenged ground that the vehicle at the time was being driven by Tara Singh,who was an unlicensed driver, and the insurer was therefore, not liable. However, it was held that Devinder Singh Brar, as owner of the vehicle, could not escape his liability because the truck would be deemed to have been driven in he course of his employment. Consequently, the appeal of Mangal Singh, respondent--claimant, was allowed and further the compensation amount granted was enhanced to Rs. 19.000/- against all the persons jointly and severally other than the insurer who had been arrayed as respondents. The appeal preferred by Tara Singh respondent was however dismissed.

11. Before adverting to the meaningful legal question involved in this appeal, the virtuallyunchallenged findings of fact deserve some highlighting. None of the Counsel for the parties had even remotely assailed the quantum of compensation now assessed by the learned single Judge. The concurrent finding of fact that at the time of the accident Tara Singh, respondent, who admittedly did not hold a driving licence, was driving the truck negligently, has again not even been remotely assailed. Counsel for the parties were also virtually compelled to concede that there was not an iota of evidence of any authorisation, express or implied, given by the owner of the vehicle to Tara Singh for driving the truck. Far from being it so, it is pointedly noticed that the firm stand of Tara Singh, respondent, himself was that he was not driving the true and indeed was incapable of doing so owing to a physical disability. Equally, Jarnail Singh, respondent brother of Tara Singh, was categoric that the latter was not driving the truck and he himself was at the wheel when the accident took place.

12. From the above it would be manifest that on the basis of the unchallenged and concurrent finding of fact, the appellant, Devinder Singh Brar, had never expressly or impliedly authorised the driving of his vehicle by Tara Singh who admittedly did not even have a driving licence.

13. Once the factual ground has been cleared, the legal position remains for examination. The learned single Judge reversed the findings of the Tribunal in the question of the vicarious liability of the appellant tersely in the following words:-

'So far as Shri Devinder Singh Brar, respondent No. 3, is concerned, he can not escape liability on this ground when he gave his truck for repairs to Jarnail Singh who was running a workshop with the assistance of unlicensed workers. If any of such workers drove the truck, the truck would be deemed to have been driven in the course of employment. Reference in this connection may be made to Gopalakrishnan Embrandiri v. Krishna kutty, 1966 Acc CJ 262: (AIR 1967 Ker 19). I, therefore, hold that the damages could be recovered from Shri Devinder Singh Brar, respondent No. 3 and that to that extent the judgment rendered by the learned Tribunal is set aside,'

14. Mr. G. B. Majithia, learned counsel for the appellant -owner, has respectfully assailed the aforesaid view on the ground that herein no question of any relationship of master and servant betwixt the appellant and Tara Singh arises. As a natural corollary, therefore, it is argued that no issue of any actual or deemed driving of the vehicle in the course of employment of the appellant would be attracted. The core of the submission on behalf of the appellant is that the appellant-owner had entrusted. His vehicle for repairs to an independent contractor and was, therefore, in no way responsible for the fault, if any of the latter.

15. On the aforesaid contention, the issue that arises at the very threshold is whether Jarnail Singh, respondent, who is the proprietor of Bahon Workshop at Moga, and to whom admittedly the vehicle was entrusted for repairs, was an agent or employee of the owner or merely an independent contractor, unfettered by any control or direction of the appellant. It appears to me that the answer is plain. Judged by any test, the relationship betwixt the owner of the truck and the proprietor of the workshop, to whom it is entrusted for repairs, cannot be that of a master and servant. It is well settled that an independent contractor is one who under-take to produce a given result or performs a particular work, but in the actual execution of that work of the person for whom the work is done ad he is at liberty to use his own discretion and judgment. Applying this test, it would appear that the appellant could not possibly direct and control the manner in which the repair was to be done of his vehicle. Speaking generally also, it does not appear to be possible to hold that proprietors of automobile work shop stand in the relationship of master and servant in regard to the owner of cars or lorries entrusted to them for repairs.

16. Once it is held that Jarnail Singh, respondent, was an independent contractor, then it would inevitably follow that the appellant cannot be vicariously saddled with the responsibility for his acts or for the unauthorised use of the vehicle while in his custody by a stranger or an employee of the independent contractor. It is significant that the factual finding herein is that it was no the independent contractor who at the material time was driving the truck but a different person, namely.Tara Singh,respondent, who cannot even remotely by deemed to have been authorised by the owner of the vehicle to drive the same.

17. I am not oblivious of the fact that the settled rule that an employer is not liable for the negligence of an independent contractor has some well recognised exceptions. However, the present case of the entrustment of a motor vehicle to a workshop owner cannot possibly be brought within he ambit of any such exception. The absolute rule of Ryland v. Fletcher cannot possibly be attracted to the case of an ordinary work-a-day chattel like motor vehicle. Whatever may have been the position of the law a century earlier, it cannot today be held that a motor vehicle is so inherently dangerous and hazardous hat even its entrustment to another for repairs would attract the absolute rule of liability at the owner's own peril. On the other hand, the appears to be ample authority for the view that motor vehicle in itself is not a nuisance or a hazardous chattel so as to attract the doctrine of Ryland v. fletcher.

18. The view I am inclined to take seems to have the substantial, if not conclusive, support of the Division Bench Judgment of the Madras High Court in B. Govindarajulu Chetty v. M. L. A. Govindaraja Mudaliar, 1966 Acc CJ 153: (AIR 1966 Mad 332). Therein an exhaustive examination of case law on the point has been made and it would be evidently wasteful to traverse the same ground over again. It suffices to notice that the learned Judges in B. Govindarajulu Chetty's case (supra) had concluded as follows:

'From this decision it is absolutely clear that in the case of a motor vehicle liability can be fastened as against a person only on proof that he was negligent and that negligence was responsible for the accident in question. It is impossible to hold that the first respondent owed any duty or could have exercised any control or taken any precaution about the lorry once it had been entrusted to the workshop of the repairer. We have no doubt that there is no law which throws a duty upon the owner to speculate and anticipate that some unauthorised person would take the lorry out from

the garage of he repairer. It is not one of the necessary natural consequences that would be expected to arise in the matter of entrustment of a lorry for repair.'

19. With respect, the case strenuously relied upon by the learned counsel for the respondent and also referred to by the leaned singly Judge in Gopala krishnan Embrandiri's case (AIR 1967 Ker 19)(supra) appears to me as plaintly distinguishable. There in the vehicle was in the custody of the mechanic who admittedly was the employee of the owner of his agent and whilst in his custody it was driven on the road for a test run which resulted in an accident. The owner therein, therefore, was held vicariously liable for the action of his mechanic employee. No question or issue of his being an independent contractor was either raised or arose from the fats. Therefore, the observations in the said case are wide off the mark so far as the present one is concerned.

20. In the light of the foregoing discussion, it inevitably follows that the owner of a motor vehicle isnot vicariously liable for its unauthorised use during its custody with n independent contractor for the purpose of repair, etc. The answer to the question posed at the outset is to be returned in the negative.

21. In fairness to the learned counsel or the respondents, it may be noticed that they sought to rely on a number of decision, mostly relating to the doctrine of master and servant relationship.Once it is held, as it has been done above, that Jarnail Sigh, respondent, was an independent contractor to whom the vehicle was entrusted for repairs, then it is plain that the judgments relied upon would have little and indeed no relevance. If, therefore, becomes unnecessary and indeed wasteful to advert to them individually.

22. To conclude, I would hold with respect that the view of the learned single Judge that there was any relationship of master and servant betwixt the appellant and the unauthorised user of his vehicle or there was any deemed driving of the same in the course of his employment cannot be sustained in law. The appeal, of the appellate-owner is hereby allowed. However, it is made clear that inevitably the insurer, the Oriental Fire and General Insurance Company Limited, would obviously be not liable for any compensation and Tara Singh and Jarnail Singh, respondents, would be jointly and severally responsible for the compensation awarded by the learned single Judge to Mangal Singh, respondent. The grant of interest at the rate of 4 per cent from the date of the award of the Tribunal is also upheld. There will be no order as to costs.

23. Appeal allowed.

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