State Of Maharashtra And Ors vs Kanchanmala Vijasinci Shirke And Ors on 22 August, 1995

Equivalent citations: AIR 1995 SUPREME COURT 2499, 1995 AIR SCW 3684, 1995 AIR SCW 3668, 1995 (6) JT 155, 1995 SCC (CRI) 1002, 1995 (2) ALL LR 422, (1996) 1 TAC 1, (1995) 2 LANDLR 505, (1995) 3 ALL WC 1870, (1995) 3 CURCC 309, (1995) 6 JT 242 (SC), 1996 SC CRIR 153, (1996) 1 CIVLJ 2, (1996) 1 APLJ 17.1, (1995) 2 LS 28

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Bench: N.P. Singh, B.L. Hansaria

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           CASE NO.:
Appeal (civil)  7564 of 1995

PETITIONER:
STATE OF MAHARASHTRA AND ORS.

RESPONDENT:
KANCHANMALA VIJASINCi SHIRKE AND ORS.

DATE OF JUDGMENT: 22/08/1995

BENCH:
N.P. SINGH & B.L. HANSARIA

JUDGMENT:
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JUDGMENT 1995 (3) Suppl. SCR 1 The Judgment of the Court was delivered by N.P. SINGH, J. Leave granted.

This appeal has been filed on behalf of the State of Maharashtra and others against the judgment of the High Court holding that the appellant Stale shall be vicariously liable for payment of compensation to the heirs of the deceased, who was the victim of the accident.

On 31.3.1980 at about 10.00 P.M. an accident took place opposite S.T. Divisional .office. Ratnagiri in which one Vijay Singh died. At that time the said Vijay Singh was driving the scooter and the jeep which belonged to the State Government dashed against the scooter because of which the victim sustained serious injuries and he ultimately succumbed to those injuries in the hospital. The appellant No. 3 was the driver of the said jeep, but at the time of accident Respondent No. 4 (hereinafter referred to as respondent') who was then a clerk in Engineering Fishing Project Division, Ratnagiri, was driving the jeep.

The Respondent Nos. 1 to 3 filed their claim before the Motor vehicles Tribunal, claiming Rs. 4,00,000 as the compensation for the death of Vijay Singh. it was alleged that respondent was under the influence of liquor and was driving the jeep in a rash and negligent manner which resulted in the accident and death of Vijay Singh. It was also alleged that the said respondent was driving the jeep with the knowledge and consent of the appellant No. 3, the driver of the jeep, as such the appellants and respondent were jointly and severally liable to pay compensation for the accident. Vijay Singh, the deceased was then aged about 35 years and was earning Rs. 1400 to Rs. 2000 per month.

In the written statement filed on behalf of the appellants, it was admitted that respondent was driving the jeep although he had no licence to drive the same. It was also admitted that he was under the influence of liquor. However, it was pleaded on behalf of the appellants that said respondent had snatched the keys of the jeep from the driver, appellant No. 3, and started driving the jeep from the office premises. It was asserted that in that background the appellants including the State could not be held to be vicariously liable for the compensation to be paid to the claimants. Respondent filed a separate written statement and denied that he was driving the vehicle at the time of the accident and claimed that he was sitting by the side of the driver, appellant No. 3, who was driving the jeep.

The Tribunal on materials on record came to the conclusion that it was respondent who was driving the vehicle at the relevant time and he caused the accident because of his rash and negligent driving. It was also held that he was having no licence to drive the jeep in question. But the Tribunal accepted the case of the appellants that said respondent had snatched the keys of the jeep from the driver and was driving the vehicle Unauthorisedly. In this background only respondent could be held to be liable to pay compensation to the claimants. The Tribunal directed respondent to pay Rs. 1,50,000 as compensation to the claimants.

The High Court affirmed the finding of the Tribunal that it was the respondent who was driving the jeep at the time of accident. Alter referring several materials on records including the First Information Report which was lodged after the accident, the High Court came to the conclusion that the case put forward on behalf of the appellants that respondent had snatched the keys forcibly from the driver was not correct. The High Court pointed out that the pleadings and evidence on record clearly indicate that it was the year ending day, i.e. 31.3.1980 and the clerks and officers were required to work during night time. This was at the instance of appellant No. 2, who was the incharge of the office. The evidence further disclosed 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 the employees to the office. The High Court said that on the materials on record it was not possible to conclude that respondent had taken the jeep for his own private purpose, on the other hand, it had been established that the jeep was on official duty although being driven by respondent, who had taken the charge of the vehicle under the authority of the driver of the vehicle. The High Court pointed out from the records including the medical examination of the driver that he had consumed liquor on that day and because of that he permitted respondent to drive the vehicle that night. In this background, the Slate has to be held to be vicariously liable for the accident. Thereafter the High Court directed payment of Rs.2,06.000 as the compensation along with 12% interest per annum payable from the date of the application till the date of deposit/realisation. The Stale Government, the driver and respondent were jointly and severally

held liable to pay the same.

The learned counsel appearing for the appellants took a stand that in the facts and circumstances of the present case, the State could not be held to be vicariously liable to pay the compensation for the acts of respondent who was just a clerk under the State Government and was neither authorised nor required to drive the jeep in question. The jeep had been put in custody of the driver who alone was entitled to drive the same. As respondent had forcibly snatched the keys from the driver and had caused the accident, the said respondent only should have been held to be liable for his act; his act could not bind the Stale because it could not be held that he was driving the jeep in the course of his employment so as to saddle the liability to pay compensation on the State Government, As a first impression, the argument looks attractive, but on proper analysis and evaluation, according to us, it cannot be accepted. As already mentioned above, the High Court has examined the materials on record for purpose of recording the finding that the jeep was on official duty, to bring the employees of the State Government to the office from their residences after they had their dinner. Respondent was a clerk in the said office and was required to be present in the office that night. The High Court has rejected the case of the State that the said respondent had snatched the keys from the driver. It has been found that respondent was driving the vehicle with the consent and under the authority of the driver of the jeep. Nothing has been brought on the record to show that any instruction had been issued to the driver not to hand over the vehicle to any other employee of the State Government while on official duly. As such it has to be examined whether in this background, it is open to the State Government to take a stand that the State Government shall not be vicariously liable for the act of respondent.

The question of payment of compensation for motor accidents has assumed great importance during the last few decades. The road accidents have touched a new height in India as well as in other parts of the world. Traditionally, before court directed payment of tort compensation, the claimant had to establish the fault of the person causing injury or damage. But of late, it shall appear from different judicial pronouncements that the fault is being read as because of someone's negligence or carelessness. Same is the approach and altitude of the courts while judging the vicarious liability of the employer for negligence of the employee. Negligence is the omission to do something which a reasonable man is expected to do or a prudent man is expected not to do. Whether in the facts and circumstances of a particular case, the person causing injury to the other was negligent or not has to be examined on the materials produced before the Court. It is the rule thai an employer, though guilty of on fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. In some case, it can be found that an employee was doing an unauthorised act in an unauthorised but not a prohibited way. The employer shall be liable for such act, because such employee was acting within the scope of his employment and in so acting done something negligent or wrongful A muster is liable even for acts which he had not authorised provided they are so connected with acts which he has been so authorised. On the other hand, if the act of the servant is not even remotely connected within the scope of employment and is an independent act, the master shall not be responsible because the servant is not acting in the course of his employment but has gone outside. In Saimond's Law of Torts (Twentieth Edition) at page 458 it has been said:

> ".....On the other hand it has been held that a servant who is authorised to drive a motor-vehicle, and who permits an unauthorised person to drive it in his place, may yet be acting within the scope of his employment. The act of permitting another to drive may be a mode, albeit an improper one, of doing the authorised work. The master may even be responsible if the servant impliedly, and not expressly, permits an unauthorised person to drive the vehicle, as where he leaves it unattended in such a manner that it is reasonably foreseeable that the third party will attempt to drive it, at least if the driver retains notional control of the vehicle."

In Halsbury's Laws of England, Fourth Edition, Volume 16, paragraph 739 it has been stated:

> "Where the act which the employee is expressly authorised to do is lawful, the employer is nevertheless responsible for the manner in which the employee executes his authority. If, therefore, the employee does the act in such a manner as to occasion injury to a third person, the employer cannot escape liability on the ground that he did not actually authorise the particular manner in which the act was done, or even on the ground that the employee was acting on his own behalf and not on that of his employer."

In the case of London County Council v. Cattennoles (Garages) Ltd., [1953] All ER 582, a workman was employed as a general garage hand, for moving cars by-pushing them or giving guidance to the drivers. He was not competent to drive, had no licence, and had been forbidden to do so. He got into a stationary van, started the engine, drove the van and went on to the highway. On the highway he collided with the plaintiff's van. The employers were held liable. A person who is a servant has always a personal independent sphere of life and at any particular time he may be acting in that sphere. Fn that situation, the master cannot be responsible for what he does. When the act of the servant causes injury Io a third party the question is not answered by merely applying the test whether the act itself is one which the servant was ordered or forbidden lo do. The employer has to shoulder the responsibility on a wider basis. In some situation he becomes responsible to third parties for acts which he has expressly or implicitly forbidden the servant to do.

It was said in the case of Ilkiw v. Samuels and Others, [1963] 1 W.L.R. 991 at 998:

> "....., The driver of the vehicle. Waines, was employed, as I see it, not only to drive, but to be in charge of his vehicle in all circumstances during any such times as he was on duty. That means to say that, even when he was not himself siting at the controls, he remained in charge of the lorry, and in charge as his employers' representative. His employers must remain liable for his negligence as long as the vehicle was being used in the course of their business. As I understand the authorities, the employers escape liability if, but only if, the vehicle was, at the time of the negligent act, being used by the driver for the purpose of what has been called a "frolic" of his own. That is not this case. Here, at the material time, this vehicle was in fact being used in the course of the defendants business."

It was further said at page 1005 :

> "..... If, as in Ricketts' case, and in the present case, the master puts the vehicle in the charge and control of his servant to he used for the purposes of the masters business, he thereby delegates to the servant his duty so to control it that it is driven with reasonable care while being used for that purpose; and an express prohibition upon allowing any other person lo drive it whilst being used for that purpose is no more than a direction as to the mode in which the servant shall perform the duty. It is a prohibition dealing with conduct within the sphere of employment."

In respect of a contention that the driver to whom the vehicle had been entrusted for driving had no authority from employer to delegate the driving of the vehicle to another person and because of that the employer cannot he made vicariously liable for the negligence of some one to whom he had purported to delegate the control of the vehicle, it was said at page 1006:

> "The duty in tort of which he was in breach was, in my view, a duty delegated to him by the defendants under his contract of employment, and for that breach the defendants are vicariously liable notwithstanding that it resulted from his breach of an express prohibition by the defendants against permitting any other person to drive, for that prohibition did not limit the sphere of his employment, but dealt with the conduct of Waines within that sphere."

It need not be pointed out that different considerations might arise if the servant or some stranger was using the vehicle for purpose other than the purpose of his master's business and the accident occurred while the vehicle was being used for that other purpose. But once it is found and established that vehicle was being used for the business of the employer, then the employer will be held vicariously liable even for the lapse, omission and negligence of his driver to whom the vehicle had been entrusted for being driven for the business of the employer.

In Staveley Iron & Chemical Co. Ltd, v, Jones, [1956] AC 627 = (1956) 1 All ER 403, it was said that the legislation has in no way altered the standard of care which is required from workmen or employers or 'that the standard can differ according to whether the workman is being sued personally or his employer is being sued in respect of his acts omissions in course of his employment.

In the case of Pitshpabai v. Ranjit Ginning Co., [1977] 3 SCR 372, it was said:

> "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 course of the employment" as ordinarily understood. We have referred to Sitaram Motilal Kalal v. SantanuprasadJaishankar Bhat, (supra) where this Court accepted the law laid down by Lord Denning in Onnrod and Another v. (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 of 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 uniformally accepted as stated in Salmond Law of Torts. 15th Ed., p. 606 in Crown Proceedings Act, 1947 and approved by the House of Lords in Staveley Iron & Chemical Co. Ltd. v. Jones [1956] A.C. 62? and I.CI. Ltd. v. Shatwell, [1965] A.C. 656"

From the facts of Pushpabai's case (supra), it will appear that one Purshottam Udeshi was travelling in a car which was driven the Manager of the first respondent company. The car dashed against a tree resulting in the death of purshottam. The widow and children of purshottam filed a claim for compensation. The High Court held that the respondent-company could not be held vicariously liable for the act of their driver in taking Purshottam as a passenger as the said act was neither in the course of his employment nor under any authority whatsoever. Therefore, the respondent-company was not liable to pay any compensation. It was pointed out by this Court that recent trend in law was to make the master liable for acts which do not strictly fall within the term "in the course of the employment" as ordinarily understood. It was held that the respondent-company was vicariously liable in respect of the accident.

On behalf of the appellants reliance was placed on the judgment in the case of Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt, AIR (1966) SC [1697] = [19661] 3 SCR 527. In that case the owner of the vehicle entrusted it to A for plying as a taxi. B used to clean the taxi. He was either employed by the owner or by A. A trained B to drive the vehicle and, took B for obtaining the licence for driving. While taking the test B caused bodily injury to the respondent. At the time of the accident, A was not present in (he vehicle. On the question whether the owner was liable, it was held in the majority judgment that the owner was not liable because evidence did not disclose that owner had employed B to drive the taxi or given him the permission to drive the taxi. However, Subba Rao, J. (as he then was) held that the owner was liable because A did not exceed the authority conferred on him by the owner in employing B as a servant and permitted him to drive the vehicle in order to obtain the licence for assisting him as a driver. This case was considered by this Court in the case of' Pushpabai's (supra) and it was said that recent trend in law is to make the master liable for acts which do not strictly fulls within the term "in the course of the employment" as ordinarily understood. The learned counsel for the appellants sought to distinguish Pushpabai's ease by contending that therein this court accepted the unauthorised act of the driver being within the course of employment because of his occupying 'high position of Manager', whereas in the case at hand appellant No, 3 - the driver - was a class IV employee. We do not think that the ratio of the case turns on the position occupied by the driver. The real thrust .of the decision is acceptance of the trend to make the master liable for acts which do not strictly fall within the

term in the course of employment' as ordinarily understood.

In view of sub-section (1) of Section 94 of the Motor Vehicles Act, 1939 (Section 146 of the Motor Vehicles Act, 1988) no person can use or allow any other person to use a motor vehicle in a public place, unless there is in force relation to the vehicle by that person, a policy of insurance complying with the requirements of Chapter VIII. In view of sub-section (2) of Section 94 (sub-section (2) of Section 146 of Motor Vehicles Act, 1988), the said provision is not applicable to any vehicle owned by the Central or State Government and used for government purposes. Sub-section (3) vests power in the appropriate Government to exempt from the operation of sub- section (1) of Section 94 any vehicle even owned by any local authority of any transport undertaking. Section 94 of the old Act as well as Section 146 of the new Act requires that a policy of insurance must provide insurance against any liability to third parties incurred by the person using the vehicle. But there is no such requirement so far the vehicles owned by the Central or State Government are concerned and if the exemptions are granted from operation of sub-section (1) of Section 94 it is not incumbent even on the part of any local authority or any State transport undertaking to take out insurance policy providing insurance against any liability to third parties incurred by the person using the vehicle. In this background, according to us, the Courts while judging the liability of the Central or Slate Government or local authorities or transport undertakings, which have been exempted from the provision of sub-section (1) of Section 94, have to be more cautious, while recording a finding as to whether in the facts and circumstances of a particular case the Central or the State Government or the local authority of the transport undertaking In question can he held vicariously liable for any act of its employee in the course of employment. As a result of commercial and industrial growth, even motor accidents are on sleep rise. For no fault or any contributory negligence of the victims of such accidents, [he families are deprived of their bread carners. The jurisprudence of compensation for motor accidents must develop towards liberal approach, because of mounting highway accidents.

Incidentally, it may be pointed out that in Motor Vehicles Act, 1939, Chapter VII A "liability without fault in certain .cases" has been introduced (Chapter X of the Motor Vehicles Act. 1988) . Sub-section (1) of Section 92A provides that where the death or permanent disablement of any person has resulted from an accident arising out of the use. of a motor vehicle, the owner of the vehicle shall be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said Section, Sub-section (2) specifies a fixed amount for such liability without fault. In view of sub-section (3) the claimant is not required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the vehicle. Sub-section (4} of that Section says in clear and unambiguous words that a claim for compensation under sub-section (1) of that section shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death of permanent

disablement the claim has been made. Section 92B clarifies that the right to claim compensation under Section 92A in respect of death or permanent disablement of any person shall be in addition to any other right i.e. the right to claim compensation on principle of fault. The introduction of provisions creating liability without fault gives out that the Parliament has provided for payment of compensation within certain limits, ignoring the principle of fault. When even under the law of tort, courts have held that the employer is vicariously liable for an authorised act done in an unauthorised manner taking into consideration the interest of the victims of the accident, according to us, this approach is all the more necessary while judging the liability of the owner of the vehicle under the Statutory provisions of the Motor Vehicles Act.

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. 31.3.1980 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 in charge 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.

The crucial test is whether the initial act of the employee was expressly authorised and lawful. The employer, as in the present case the State Government, shall nevertheless be responsible for the manner in which the employee, that is, the driver and the respondent executed the authority. This is necessary to ensure so that the injuries caused to third parties who are not directly involved or concerned with the nature of authority vested by the master to his servant are not deprived from getting compensation. If the dispute revolves around the mode or manner of execution of the authority of the master by the servant, the master cannot escape the liability so far third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. In the present case, it has been established beyond doubt that the driver of the vehicles had been fully authorised to drive the jeep for a purpose connected with the affair of the state and the dispute is

only in respect of the manner and the mode in which the said driver performed his duties by allowing another employee of the State Government, who was also going on an official duty, to drive the jeep, when the accident took place. Once it is established that negligent act of the driver and respondent was in the course of employment' the appellant State shall be liable for the same.

We are of the view that the appellant Stale cannot escape its vicarious liability to pay compensation to the heirs of the victim. The appeal is accordingly dismissed there shall be no orders as to cost.

Appeal dismissed.