Supreme Court of India
Sohan Lal Passi vs P. Sesh Reddy & Ors on 17 July, 1996
Equivalent citations: 1996 SCC (5) 21, JT 1996 (6) 728
Author: S N.P.
Bench: Singh N.P. (J)

PETITIONER:
SOHAN LAL PASSI

Vs.

RESPONDENT:
P. SESH REDDY & ORS.

DATE OF JUDGMENT: 17/07/1996

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
FAIZAN UDDIN (J)
AHMAD SAGHIR S. (J)

CITATION:
1996 SCC (5) 21 JT 1996 (6) 728
1996 SCALE (5)388

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T N.P. SINGH, J Leave granted.

An accident took place on 8th June 1980 at Panaji between a bus bearing No. DLP-5843 and scooter bearing No. GDC-9713, as a result whereof one Dr. P. Ramachandra Reddy who was driving the scooter fell down and succumbed to the injuries, the same day. A claim petition was filed before the Motor Accident Claims Tribunal by respondent Nos. 1 and 2 claiming compensation. The appellant is the owner of the bus which had been insured by respondent No.3, the Oriental Fire and General Insurance Company Limited (hereinafter referred to as the 'Insurance Company').

According to the claimants, the respondent No.4, Rajinder Pal Singh who was the cleaner/conductor of the bus was driving the bus at the relevant time when the accident took place resulting into the death of Dr.P. Ramachandra Reddy, on account of his rash and negligent driving. The claim for

compensation was resisted by the appellant (owner of the vehicle) contending that when the accident took place, the bus was driven by Gurbachan Singh who was employed by him as a driver and who had the licence to drive the bus in question and as such the respondent Insurance Company was liable to pay the compensation. The Insurance Company, however, took the defence that as the bus was being driven by respondent No.4, Rajinder Pal Singh, cleaner/ conductor of the bus who was not holding the driving licence and, therefore, the Insurance Company cannot be held liable to pay compensation because under the terms of the policy only person holding a driving licence could have driven the bus in question.

The Tribunal on consideration of materials on rash and negligent driving of the bus by respondent No.4 who did not have a driving licence. On that finding the Tribunal discharged the liability of the Insurance Company and directed the owner and the driver i.e. appellant and respondent No.4 to pay an amount of Rs. 66,000/- along with rate of 6% per annum to the claimants as compensation. One appeal was filed on behalf of the claimants for enhancement of the amount of the compensation, whereas the other appeal was filed on behalf of the appellant along with respondent No.4 for Setting aside the award of the Tribunal. The High Court enhanced the amount of compensation from Rs.66,000/- to Rs. 1,57,500/- and directed payment of interest at the rate of 12% per annum to the claimants. In respect of the dispute regarding the liability to pay the compensation between the appellant the owner of the bus, vis-a-vis the Insurance Company, the High Court came to the conclusion that the Insurance Company was not liable because the vehicle was being driven by a person at the time of the accident, who was not holding a driving licence. The High Court rejected the claim of the appellant holding that at the time of the accident the vehicle was being driven by Gurubachan Singh who was holding the driving licence.

From the orders of the Tribunal and the High Court, it appears that Gurubachan Singh was the regular driver of the bus, but at the time of the accident Rajinder Pal Singh who was cleaner/conductor of the bus was driving the bus obviously with the consent and authority of the regular driver Gurubachan Singh. Gurubachan Singh was examined as a witness on behalf of the appellant and he asserted that it was he who was driving the bus and had not allowed Rajinder Pal Singh, the cleaner/conductor to drive the bus when the accident took place. But on basis of the materials on record the Tribunal and the High Court, have rightly come to the conclusion that Gurubachan Singh, the duly appointed driver having licence had allowed Rajinder Pal Singh to drive the said vehicle and it was due to rash Rajinder Pal Singh, the accident took place resulting into the death of Dr. P. Ramachandra Reddy.

On behalf of the appellant a stand was taken that as he had appointed Gurubachan Singh to drive the vehicle in question and if the said driver allowed Rajinder Pal Singh to drive the vehicle without any authority from the appellant then in that event the appellant shall not be liable to pay any compensation to the heirs and legal representatives of the victim.

In Salmond's Law of-Torts (Twentieth Edn.) 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 of 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."

It has been said in Halsbury's Laws of England, Fourth Edn., Vol.16, paragraph 739:

> "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 lability 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 that connection reference can be made to the cases of London County Council v. Cattermoles (Garages) Ltd., (1953) 2 All ER 582, Ilkiw v. Samuels (1963) 2 All ER 879; Staveley Iron and Chemical Co. Ltd. v. Jones, (1956) 1 All ER 403 and the case of Pushpabai; Purshottam Udeshi v. Ranjit Ginning and Pressing Co. (P) Ltd., (1977) 2 SCC 745. The crucial test is whether the initial act of the employee was expressly authorised and lawful. Then the employer shall nevertheless be responsible for the manner in which the employees that is, the driver and the respondent no. 4 executed the authority. This is necessary to ensure so that the injured 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. This aspect of the matter has been recently examined by a Bench of this Court of which one of us (N.P. Singh, J) was a member, in the case of State of Maharashtra & Ors. v. Kanchanmala Vijaysing Shirke & Ors., (1995) 5 SCC 659. From the facts of that case it shall appear that the jeep which caused the accident belonged to the State of Maharashtra, the appellant in that case. The regular driver of the jeep allowed respondent No.4 of that appeal who was a clerk in the Department of the State Government to drive the jeep when the accident took place. The High Court in that case recorded a finding that respondent No.4 of that appeal, was driving the jeep while on official duty. This Court held that a master is liable even for acts which he had not authorised provided they are so connected with the acts which he had authorised. If the act of the servant on the other hand is not even remotely connected within the scops of the 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.

It was said in the aforesaid case of State of Maharashtra v. Kanchanmal Vijaysing Shirke (supra):

> "....The High Court has also found that the 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 the 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."

In the case of Pushpabai Purshottam Udeshi vs. Banjit Ginning and Pressing Co.(P) Ltd., (1977) 2 SCC 745, 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 or the employment' as ordinarily understood. We have referred to Sitaram Motilal Kalal v Santanuprasad Jaishankar Bhatt where this Court accepted the law laid down by Lord Denning in Ormrod v. Crosville Motor Services Ltd. 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 vs. 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's Law of Torts, 15th Edn., p.606, in Crown Proceedings Act, 1947 and approved by the House of Lords in Staveley Iron and Chemical Co. Ltd. vs. Jones and ICI Ltd. v. Shatwell."

Same is the position in the present case. The appellant had authorised Gurubachan Singh to drive the vehicle, but Gurubachan Singh allowed Rajinder Pal Singh, the cleaner/conductor who was also the employee of the appellant to drive the vehicle because of which the accident took place. It is not the stand of the appellant the Rajinder Pal Singh was driving the vehicle without the knowledge or consent of Gurubachan Singh, for his personal pursuit. He was driving the bus for the business of the appellant, that is to carry on the passengers. In this background, the appellant cannot escape the liability so far the third parties are concerned on the ground that he had not actually authorised the particular manner in which the Act was done. As it has been established that the negligent act of Gurubachan Singh and respondent Rajinder pal Singh was "in the course of employment" the appellant shall be liable for the same. In the present case, 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 a within the course of employment. It was not an independent act for a purpose which had no nexus or connection with the business of the appellant so as, to, absolve the appellant from the liability.

The road accidents in India have touched a new height. In majority of cases because of the rash and negligent driving, innocent persons become victims of such accidents because of which their dependants in many cases are virtually on the streets. In this background, the question of payment of compensation in respect of motor accidents has assumed great importance for public as well as for courts. Traditionally, before the Court directed payment of tort compensation, it had to be established by the claimants that the accident was due to the fault of the person causing injury or damage. Now from different judicial pronouncements, it shall appear that even in western countries fault is being read and assumed as someone's negligence or carelessness. The Indian Parliament, being conscious of the magnitude of the plight the victims of the accidents, have introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident. In the Motor Vehicles Act,1939 Chapter VII-A was introduced by the Motor vehicles (Amendment) Act, 1982. Sub-section (1) of Section 92-A provides that where the death or permanent disablement of any person has resulted from an accident, 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 filed was the result of the wrongful act, neglect or default of the owner of the vehicle. Sub-section (4) of that section provides that 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 or permanent disablement the claim has been made. Section 92-B, makes it clear that the right to claim compensation under Section 92-A 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. It can be said that Parliament by introducing the aforesaid Chapter in the Motor Vehicles Act, 1939 provided for payment of compensation within certain limits ignoring the principle of fault. Same is the position in the Motor Vehicles Act, 1988 and similar provisions have been retained in Chapter X of the said Act. In that connection, it may further be mentioned that the Motor Vehicles Act, 1988 which repealed the Motor Vehicles Act, 1939 and came in force w.e.f. 1.7.1989 prescribed a period of limitation for making claims before the Tribunal in sub-section (3) of Section 166 of the Act. The said sub-section provided:

> "No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident.
>
> Provided that the Claims Tribunal may entertain the application after the expiry of the said period or six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

As sub-section (3) of Section 166 by its proviso fixed a limit of 12 months before which the application for compensation must be filed, it left no discretion in the claims Tribunal to extend the period beyond 12 months. This used to cause hardship and injury to many claimants who could not approach the Tribunal for compensation within the period of 12 months from the date of the accident for one reason or the other. The aforesaid. Sub-section (3) ofSection 166 of the. Motor

Vehicles Act, 1988 has been omitted by Section 53 of the Motor Vehicles (Amendment) Act, 1994 which came in force w.e.f. 1.4.11. The effect of the foresaid amendment is that there is no limitation for filing claims before the Tribunal in respect of an accident. It can be said that Parliament realised the grave injustice and injury which was being caused to the heirs and legal representatives of the victims who died in accidents by rejecting their claim petitions only on the ground of limitation. An other amendment which can be referred to in this connection, which has been introduced by the aforesaid Amendment Act of 1994 as sub-section (6) to Section 158 provides:

> "As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner he shall also within thirty days'of receipt of such report, forward the same to such Claims Tribunal and Insurer."

Because of sub-section (6) of Section 158 of the Act, the officer incharge of the police station is enjoined to forward a copy of information/report regarding the accident to the Tribunal having jurisdiction. A copy thereof has also to be forwarded to the concerned insurer. The same Amendment Act has also substituted Sub-section (2) of Section 166 because of which an application for compensation under sub section (1) of Section 166 now can be made, at the option of the claimants either to the claim Tribunal having jurisdiction over the area in which the accident occurred or to the claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides. Originally, such application used to be filed before the claims Tribunal having jurisdiction over the area in which the accident occurred. This used to cause great hardship and in many cases it became impossible for the claimants to approach such claims Tribunal, the distance being beyond their reach from the place of their residence.

Some of the aforesaid significant amendments introduced in the Motor Vehicles Act, 1939 and Motor Vehicles Act, 1988 have been referred to above only to indicate that even Parliament is conscious that right to claim compensation by the claimants in connection with the tor vehicles accidents should not be defeated on technical grounds.

Now it has to be examined as to whether the insurance company can be absolved of its liability to pay the compensation in a case where the owner of the vehicle had got the vehicle insured, but the accident took place when it was being driven by a person not holding the driving licence In the present case the accident took place when the Motor Vehicles Act, 1939 was in force. Section 96 of that act prescribed the duty of the insurers to satisfy the judgments against persons insured in respect of third party risks (the parallel provision being Section 149 in the Motor Vehicles Act, 1988). The relevant part of Section 96 provided:

" 96. Duty of insurers to satisfy Judgments against persons insured in respect of third party risks.- (1) If, after a certificate of insurance has been issued under sub-section (4) of Section 95 in. favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause

(b) of sub-section (1) of Section 95 (being liability covered by the terms of the policy) is obtained. against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have voided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured- payable thereunder, as if he were the judgment debtor, in respect of the liability.

(2) No sum shall be payable by an insurer under sub section (1) in respect of any judgment unless before or after the commencement of the proceedings, in which the judgment is given the insurer had notice through the court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal and an insurer to whom notice of the bringing of any such proceeding is so given shall be entitled to be made a party thereto and to defend. the action on any of the following grounds, namely:

(a) .....

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) .....

(a) to (d) .....

(ii) a condition excluding driving by a named person or persons or by any person who this not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or ....."

In view of sub-section (1) of Section 96 if after the certificate of insurance has been issued in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy, the insurer shall subject to the provisions of the said section pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he was the judgment debtor. in respect of the liability. (emphasis supplied). Sub-section (2) of Section 96 enjoins that notice of the proceedings in which the judgment is given, has to be given to the insurer and such insurer shall be entitled to defend the action on any of the grounds mentioned in sub-section (2) of Section 96. We are concerned in the present case only with Section 96(2)(b)(ii), a condition excluding driving by any person who is not duly licensed. The question is as to whether the insurance company can repudiate its liability to pay the compensation

in respect of the accident by a vehicle only by showing that at the relevant time it was being driven by a person having no licence. In the case of Skandia Insurance Co.Ltd. vs. Kokilaben Chandravadan, 1987(2) SCC 654; in respect of this very defence by the insurance company it was said:

> "The defence built on the exclusion clause cannot succeed for three reasons, viz. :
>
> (1) On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep, honour and fulfil the promise and he himself is not guilty of a deliberate breach.
>
> (2) Even if it treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver. (3) The exclusion clause has to be 'read down' in order that it is not at war with the 'main purpose' of the provisions enacted for the protection of victims of accidents so that the promisor is exculpated when he does everything in his power to keep the promise."

To examine the correctness of the aforesaid view this appeal was referred to a three Judges' Bench, because on behalf of the insurance company, a stand was taken that when 'Section 96(2)(b)(ii) has provided that the insurer shall be entitled to defend the action on the ground that there has been breach of a specified condition to the policy i.e. the vehicle should not be driven by a person who is 'not' duly licensed, then the insurance company cannot be held to be liable to indemnify the owner of the vehicle. In other words, once there has been a contravention of the condition prescribed in sub-section (2)(b)(ii) of Section 96, the person insured shall not be entitled to the benefit of sub-section (1) of Section 96. According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has not insured the vehicle with the insurance company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability? The expression "breach" occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was willful, It the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that lt was the insured who

allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96. In the present case far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurubachan Singh and had placed the vehicle in his charge. While interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had willfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub- section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the Vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realization of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known.

This Court in the case of Kashiram Yadav and Another. vs. Oriental Fire and General Insurance Co. and Others, (1989) 4 SCC 128 reiterataed the views expressed in Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan (supra) while referring to that case it was said:

> ".....There the facts found were quite different. The vehicle concerned in that case was undisputedly entrusted to the driver who had a valid licence. In transit the driver stopped the vehicle and went to fetch some snacks from the opposite shop leaving the engine on. The ignition key was at the ignition lock and not in the cabin of the truck. The driver had asked the cleaner to take care of the truck. In fact the driver had left the truck in care of the cleaner. The cleaner meddled with the vehicle and caused the accident. The question arose whether the insured (owner) had committed a breach of the condition incorporated in the certificate of insurance since the cleaner operated the vehicle on he fatal occasion without driving licence. his Court expressed the view that it is only when the insured himself entrusted the vehicle to a person who does not hold a driving licence, he could be said to have committed breach of the condition of the policy. It must be established by the Insurance Company that the breach is on the part of the insured. Unless the insured is at fault and is guilty of a breach of the condition, the insurer cannot escape from the obligation to indemnify the insured. It was also observed that when the insured has done everything within his power inasmuch as he has engaged the licensed driver and has placed the vehicle in his charge with the express or implied mandate to drive himself, it cannot be said that the insured is guilty of any breach.
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> We affirm and reiterate the statement of law laid down in the above case. We may also state that without the knowledge of the insured, if by driver's acts or omission

> others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition in the certificate of insurance."

We are in respectful agreement with the view expressed in the case of Skandia Insurance Co. Ltd. vs Kokilaben Chandravadan (supra).

As in the facts of the present case, the appellant shall be deemed to be liable to pay compensation applying the principle of vicarious liability because the accident took place when the act authorised was being performed in a mode which may not be proper but was directly connected with in the course of employment, sub-section (1) of section 96 of the Act shall come into play and the insurance company shall be deemed to be the judgment debtor, so far claim made by the heirs and legal representatives of the deceased is concerned. are Accordingly, the appeals are allowed and the orders of the claims Tribunal and the High Court are modified where only the appellant has been held to be liable to pay the compensation and the respondent insurance company has been absolved of the liability. The respondent insurance company shall be jointly and severally liable to pay the compensation to the claimants. There shall be no order as to costs.