

Before S. S. Sodhi, J.

VIDYA DEVI AND ANOTHER,—Appellants.

versus

HARYANA STATE AND OTHERS,—Respondents.

First Appeal From Order No. 202 of 1977.

September 19, 1983.

Motor Vehicles Act (IV of 1939)—Sections 110-B and 110-D—Vicarious liability—Driver of a vehicle leaving it unattended on the side of a highway with its engine running—Unauthorised person getting into the vehicle and driving it away—Vehicle running over a child who died as a result of the accident—Owner of the vehicle—Whether vicariously liable for payment of compensation.

Held, that it cannot be said that a person lawfully leaving a vehicle standing unattended in a highway can in no circumstances be held responsible for damage through the intervening act of a third party. The circumstances might be such that he ought to recognize that he was offering a temptation or invitation to another to set the vehicle in motion and that danger might result in an injury to others. The act which causes the mischief must however be one which he could properly anticipate. Thus, where the driver of a vehicle had left the engine running when he went to drink water and in the meantime an unauthorised person drives the vehicle causing fatal injuries to the deceased, there could be no escape from the conclusion that the driver of the vehicle as also his master would indeed be vicariously liable for payment of compensation to the claimants.

(Paras 8 and 9)

First Appeal from the order of the Court of Shri Shiv Dass Tyagi, Motor Accident Claims Tribunal, Gurgaon, dated the 18th March, 1977 dismissing the petition of Janik Lalit and Vishwanath and leaving the parties to bear their own costs and granting the legal representatives of Kumari Saroj, namely Smt. Vidya Devi and Shri Chandan Singh an awarded of Rs. 8,000 with costs against respondent No. 3. Their claim against respondents Nos. 1 and 2 is disallowed.

M. S. Liberhan, Advocate, for the appellant.

Harbhagwan Singh A.G. Haryana with P. S. Duhan, D.A.G. Haryana, for respondents No. 1 and 2.

JUDGMENT

S. S. Sodhi, J.

(1) The matter which arises for consideration in this appeal is with regard to the liability of the driver and his master for the damage caused in an accident by an unauthorised person driving a vehicle left unattended on a public road.

(2) The circumstances in which this question has arisen are that Saroj, a seven years old girl had just come out on to the road from her school, when a tractor came and ran her over. She died as a result of the injuries sustained at that time. This accident took place on December 13, 1974 at about 1 P.M., on the New Railway Road, Gurgaon just in front of Saint Crispin High School. The tractor belonged to the P.W.D. (B & R) Department.

(3) It was the finding of the Tribunal that the accident had been caused entirely due to the rash and negligent driving of the driver of the tractor. The driver thereof was Zile Singh, who was, however, not authorised to drive it and consequently neither the State of Haryana nor the Executive Engineer concerned could be held vicariously liable. The liability for payment of compensation in this case was thus of Zile Singh alone. A sum of Rs. 8,000 was awarded as compensation to the claimants, they being the parents of Saroj, deceased.

(4) The evidence on record shows that the driver of the tractor was, in fact, Narinder Kumar. It was his testimony that while taking the tractor from Eros Cinema to the post office he stopped on the way and parked the tractor on the side of the road and went into a shop to drink water. When he went, he left the engine of the tractor running. It was then that Zile Singh is said to have driven away the tractor. Zile Singh was not shown to be either an employee of the respondents or in any manner authorised to drive the tractor.

(5) It is well settled that in order to hold the master vicariously liable for the acts of his servant, the act must either be a wrongful act authorised by the master or a wrongful and unauthorised mode of doing some act authorised by the master. The contention of Mr. M. S. Liberhan, counsel for the claimants here was that vicarious liability must be taken to arise in this case by the act of

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Narinder Kumar in leaving the tractor running when he went to drink water. The argument being that his leaving the tractor in this manner was a wrongful and unauthorised mode of doing the authorised act of driving the tractor in the course of his employment as driver.

(6) In dealing with a case like the present, it would be pertinent to advert to *Latham v. R. Johnson & Nephew Ltd.* (1), where Hamilton, J. observed "a person who in neglect of ordinary care, places or leaves his property in a condition which may be dangerous to another may be answerable for the resulting injury, even though but for the intervening act of a third person or the plaintiff himself that injury would not have occurred. Children acting in the wantonness of infancy and the adults acting on the impulse of personal peril may be and often are only links in a chain of causation extending from such initial negligence to the subsequent injury. No doubt, such intervener is a *causa sine qua non*, but unless the intervention is a fresh, independent cause, the person guilty of the original negligence will still be the effective cause, if he ought reasonably to have anticipated such intervention and to have foreseen that if they occurred the result would be that his negligence would lead to mischief."

(7) Similarly in *Rouff v. Long & Co.* (2), Lush, J. observed "We need not go so far as to hold that a person lawfully leaving a vehicle standing unattended in a highway can in no circumstances be held responsible for damage through the intervening act of a third party. The circumstances might be such that he ought to recognize that he was offering temptation or invitation to another to set the vehicle in motion and that danger might result to third persons. The chain of casualty may be complete although a link in the chain is the intervening act of a third person. But the act which causes the mischief must be one which he would properly anticipate".

(8) The two authorities cited above came up for consideration before the High Court of Allahabad in *Ganga Sugar Corporation Ltd., Deoband & others v. Sukhbir Singh and another* (3). This was

- (1) (1913) 1 K.B.D. 398.
- (2) (1916) 1 K.B. 148.
- (3) 1973 A.C.J. 449.

a case where the driver of the jeep left the ignition keys in it when he went away. In his absence someone drove the jeep and caused an accident. Both the driver as also the owner of the jeep were held vicariously liable. In dealing generally with the liability of driver and the masters leaving vehicles unattended on the highway it was held that the law appear to be that :

- (1) it is not correct that in every case where the damage is caused by the intervention of a third party the driver and the master are not liable ;
- (2) the driver and consequently the master in such cases is liable if the driver was guilty of initial negligence and if, as a reasonable man, he could have anticipated the intervention of a third party; and
- (3) the driver and consequently the master will not be responsible if the damage is caused by a fresh independent cause, which in the circumstances, the driver as a reasonable man, could not have anticipated.

Considered in the light of the law as set out above and having regard to the circumstances as stand established in this case, namely, that the driver had left the engine of the tractor running when he went to drink water, there can be no escape from the conclusion that the driver of the tractor as also his master are indeed vicariously liable for payment of compensation to the claimants in this case. The award of the Tribunal is modified accordingly and it is held that the respondents are jointly and severally liable for payment of the amount awarded as compensation in this case. The claimants shall also be entitled to interest on the amount awarded at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded.

(9) This appeal is consequently accepted with costs. Counsel's fee Rs. 300.

N. K. S.