

Before S. S. Sodhi, J.

STATE OF HARYANA,—Appellant

versus

SATYA DEVI AND OTHERS,—Respondents.

First Appeal from Order No. 70 of 1979.

August 2, 1984.

*Motor Vehicles Act (IV of 1939)—Section 110-B—Motor accident resulting in the death of a person—Offending vehicle being driven by a passenger with the consent of the driver—Owner of the vehicle—Whether can be held vicariously liable for the accident, and for payment of compensation.*

*Held*, that there is a presumption, rebuttable no doubt, that a vehicle is driven on the master's business and by his authorised agent or servant, and consequently the owner or master is vicariously liable for the negligence of such servant or agent committed in the course of his employment. Such being the position in law, and the evidence showing that the passenger who drove the bus was the one who was so authorised to drive it by the driver, there can be no escape from the conclusion that both the driver and the owner of the vehicle were liable for the payment of compensation to the heirs of the deceased under section 110-B of the Motor Vehicles Act, 1939.

(Para 11)

*First Appeal from Order of the Court of Shri O. P. Gupta, HCS, Motor Accident Claims Tribunal, Ambala dated 13th November, 1978, accepting the petition and granting compensation of Rs. 60,000 to the claimants against respondent Nos. 1 and 3 with costs of the petition.*

Harbhagwan Singh, A.G. Haryana with P. S. Duhan, D.A.G. Hy.,  
for the Appellant.  
C. B. Goel, Advocate for respondents 1 and 2.

#### JUDGMENT

S. S. Sodhi, J.

(1) The State of Haryana, can it be held vicariously liable for an accident caused by a Haryana Roadways bus driven not by its

driver but by one of the passengers thereof? Herein lies the controversy raised in appeal.

(2) The accident in this case took place on July 4, 1976, at about 9.30 p.m. The Haryana Roadways Bus HRA 9950 came from behind and ran over and killed Pawan Kumar deceased who was travelling on his motor cycle.

(3) The Tribunal held that the accident had been caused by the rash and negligent driving of the bus by whosoever was driving it at that time. No finding was, however, returned with regard to the identity of such driver, but both Baldev Raj, the driver employed for this bus as also the State of Haryana were held liable for the payment of the compensation awarded to the claimants, which was Rs. 60,000. The claimants being the parents, widow and minor daughter of Pawan Kumar deceased.

(4) There is no challenge to the finding of the Tribunal that the accident here had been caused due to the negligence of the person driving the bus. It is also not disputed that at the time of the accident, the bus was being driven not by the bus driver Baldev Raj, but by a passenger travelling in the bus.

(5) The plea put forth on behalf of Baldev Raj and the State of Haryana was that the bus was being driven by a person not authorised to drive it and consequently no liability could be fastened upon them. This was contested by the claimants, it being asserted that Baldev Raj too was responsible for the accident as it was he who enabled the passenger to drive it by getting the bus started and then also handed over his driving licence to him.

(6) A reference to the evidence on record would show that when the bus had covered about 7 miles from Yamuna Nagar on its way to Jathlana, the head lights thereof went out of order. Baldev Raj consequently stopped the bus and it appears that he then tried to get a relief bus or a mechanic but did not succeed in getting either. It has also come on record that the passengers travelling in the bus got annoyed with Baldev Raj to the extent that they wrote a complaint against him which the conductor Basheshar Dass also signed.

(7) The main witness examined by the claimants was A.W. 6 Ram Gupta, Headmaster of the Government High School, Khajuri, who was travelling in this bus when this occurrence took place.

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He deposed that when the bus reached Naggal at about 7.20 p.m., the bus driver, that is, Baldev Raj refused to take the bus any further saying that the bus had gone out of order. The passengers then wrote a complaint against the driver saying that the bus was in order. Baldev Raj driver then removed the dynamo from the engine of the bus. In the meanwhile, Pawan Kumar deceased, a conductor in the Haryana Roadways came there on his motor cycle and asked Baldev Raj to take the bus and saying this he went away. He returned about an hour later. Baldev Raj then asked him to drive his motor cycle in front so that he could drive his bus with the help of the light of his motor cycle. Baldev Raj then got the bus started by pushing it and he asked one Puran Singh to drive the bus as he (Baldev Raj) was drunk. It was when Baldev Raj was handing over the bus to Puran Singh, while the bus was moving that it went and hit into the motor cycle of Pawan Kumar deceased. It deserves mention here that it was on the statement of A.W. 6 Ram Gopal Gupta that the first information report relating to this incident was recorded.

(8) The two other witnesses examined by the claimants were A.W. 6 Om Parkash and A. W. 5 Puran Chand. They too were travelling in this bus. They both testified to the fact that the bus was driven by someone who was not the driver of the bus. The passengers, they said, had not asked this person to drive the bus. He drove it on his own accord. According to Puran Chand, the regular driver of the bus was not in the bus when the accident occurred.

(9) The bus driver Baldev Raj, on the other hand, deposed that he was at some distance from the bus when he noticed that somebody had started it and was taking it away. He denied the suggestion that it was he who got the bus started and was with the driver at that time. The other witness R.W. 2 Puran Singh stated that the bus had been started with a push but he did not know who was driving it. He denied the suggestion that he had driven the bus or that he had done so at the instance of Baldev Raj.

(10) The testimony that deserves reliance and acceptance in this case is that of A.W. 6 Ram Gopal Gupta. He has not been shown to be in any manner interested in the claimants or to have any connection with them. Further, his statement is corroborated by the first information report Exhibit A. 1. It becomes clear from his testimony that the person who drove the bus did so with the permission and consent of the bus driver Baldev Raj. The statement

of A. W. 5 Puran Chand that the passenger drove the bus on his own accord does not necessarily deserve to be construed as being a contradiction to the testimony of A. W. 6 Ram Gopal Gupta as it is quite possible that he may not have been there to see the manner in which the passenger came to occupy the driver's seat. Similarly, he may not have noticed the bus driver Baldev Raj in the bus at that time as it was dark.

(11) There is a presumption, rebuttable no doubt, that a vehicle is driven on the master's business and by his authorised agent or servant, and consequently the owner or master is vicariously liable for the negligence of such servant or agent committed in the course of his employment. An apt precedent here is provided by the judgment of the High Court of Gujarat in *Gujarat State Road Transport Corporation v. Haribhai Vallabhbhai Darji and others* (1). In this case, the bus was left unattended in a thickly populated locality by its driver when he went for his meals. A third person unauthorisedly drove away the bus and caused an accident resulting in some persons being killed and others injured. It was held that the owner was liable for the negligence of the driver in leaving the bus in this manner. Quoted here with approval was what Lord Denning said in *Ormerod v. Crosville Motor Services* (2):—

"It has often been supposed that the owner of a vehicle is only liable for the negligence of the driver if that driver is his servant acting in the course of his employment. This is not correct. The owner is also liable if the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes.

.....The law puts a special responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friend or anyone else. It is being used wholly or partly on the owner's business or for the owner's purpose, the owner is liable for the negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern."

Such being the position in law and the evidence on record showing that the passenger who drove the bus was the one who had been so

(1) 1984 A.C.J. 72.

(2) 1953 (2) All Eng. Reports 753.

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authorised to drive it by the driver Baldev Raj, there is no escape from the conclusion that both Baldev Raj and the State of Haryana were rightly held liable for the payment of the amount awarded as compensation.

(12) The other point raised in this appeal was with regard to the quantum of compensation awarded to the claimants. In dealing with this matter, it will be seen from the evidence on record that Pawan Kumar deceased was only 23 years of age when he died. He was employed as a conductor in the Haryana Roadways and his total emoluments were slightly over Rs. 300 per month. He died leaving behind his young widow, a minor daughter and also his parents. Considering the circumstances of the deceased and the claimants in the context of the principles laid down by the Full Bench in *Lachhman Singh v. Gurmit Kaur* (3), the appropriate multiplier to be applied in this case would clearly be 16 and the loss to the claimants deserves to be taken at Rs. 3,000 per annum. So computed, the compensation payable to the claimants would work out to Rs. 48,000. The amount awarded must consequently be reduced to this sum, but the claimants shall be entitled to interest thereon 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, subject of course to the maximum amount of Rs. 60,000 which was the amount awarded to them by the Tribunal. Out of the amount awarded, a sum of Rs. 8,000 shall be payable to the parents of the deceased, Rs. 10,000 to the minor daughter and the balance to his widow.

(13) This appeal is accepted to the the extent indicated above. There will, however, be no order as to costs.

H.S.B.

Before G. C. Mital, J.

NARINDER SINGH RANDHAWA AND ANOTHER.—Appellants  
versus

HARDIAL SINGH DHILLON AND OTHERS.—Respondents.

First Appeal from Order No. 353 of 1976.

August 7, 1984.

Arbitration Act (X of 1940)—Section 44(g)—Arbitration clause  
in partnership deed providing for a settlement of dispute through

(3) 1979 P.L.R. 1.