

APPELLATE CIVIL

Before Shamsheer Bahadur and P. D. Sharma, JJ.

KUNDAN KAUR,—Appellant.

versus

S. SHANKAR SINGH AND OTHERS.—Respondents

Regular First Appeal No. 34-D of 1955.

1965

July, 12th.

Torts—Principle of “respondeat superior”—Owner of a vehicle giving it on hire to another person along with the driver—Accident taking place while the vehicle is in the custody of the hirer and being driven by the owner’s driver—Negligence of the driver proved—Owner of the vehicle—whether liable—Principle of “Negligence respondent Superior”—Whether applicable.

Held, that the general principle of “respondent superior” that the master is vicariously liable in damages for his driver’s tort in the negligent driving of the vehicle in the course of employment is applicable when the vehicle is given temporarily on hire. The temporary hire of a vehicle by the general employer does not result in the transference of the control of the servants of the vehicle as the services alone are transferred and not the control. In other words, the effective control of the vehicle remains with the general employer who has lent the vehicle for hire and if an accident takes place while it is in the hirer’s custody, the liability still remains that of the general employer as against the hirer.

Regular First Appeal under section 39, Punjab Courts Act from the decree of Shri Des Raj Dhamija, P.C.S., Sub-Judge, 1st Class, Delhi, dated 6th May, 1953, passing a decree for Rs. 10,000 with costs against deft. No. 4 and dismissing the suit against defts. 1 to 3.

N. S. BINDRA, AND N. R. SURI, ADVOCATES, for the Appellant.

S. S. CHADHA, ANOOP SINGH AND RADHEY MOHAN LAL, ADVOCATES, for the Respondents.

JUDGMENT.

Shamsheer
Bahadur, J.

SHAMSHER, BAHADUR, J.—The surviving question for determination in this appeal is whether Lila Dhar, defendant No. 4, the driver of the vehicle belonging to defendants Nos. 1 to 3 was in their employment at the time of the accident which resulted in the death of Kundan Lal

Kohli, whose widow Kundan Kaur, filed a suit for damages of Rs. 10,000 in respect thereof? Kundan Kaur

v.

S. Shankar
Singh
and others

Shamsher
Bahadur, J.

The appellant Kundan Kaur, widow of Kundan Lal Kohli, brought a suit in *forma pauperis* to recover damages of Rs. 10,000, the foundation of the claim being that her husband met with a fatal accident at 9.30 p.m. on 18th of January, 1949, in the vehicle belonging to defendants 1 and 2, Shankar Singh and Trilok Singh, partners of the firm Allied Motor Transport Company Limited (defendant 3) and driven by their driver Lilla Dhar, the fourth defendant, on its way to Deoband from Delhi. The vehicle had been taken on hire by Jawahar Transport Company, whose employee Kundan Lal Kohli was, and it was intended to transport goods in it from Deoband to Delhi. As a result of rash and negligent driving of the fourth defendant, the vehicle met with an accident resulting from its impact with a cart loaded with steel girders. One of the steel girders struck the window pane of the front seat next to the driver where Kundan Lal Kohli was sitting and resulted in his instantaneous death. The first two defendants were sought to be made liable as partners of the firm Allied Motor Transport Company, the third defendant. In addition to the driver, Lila Dhar, who is defendant 4, the New Asiatic Insurance Co., Ltd., was impleaded as a fifth defendant, being the insurers. No relief was, however, preferred against the fifth defendant.

The plaintiff was permitted to sue as a pauper and in addition to denying her right to sue in this capacity the claim was resisted by the first two defendants on a variety of grounds. The ownership of the vehicle bearing No. DLH 3839, was denied. To show the equivocal nature of the plea on this score by the first two defendants, it is worthy to observe that in the written statement filed on behalf of the first defendant Shankar Singh, it was stated that vehicle No. DLH 3839, was owned as a "heavy transport vehicle" by defendant No. 3, namely, the Allied Motor Transport Company. It was stated that the vehicle was no longer owned by the Company. It was denied that the fourth defendant was driving the truck in question. It was further averred that no passenger could have been carried in the truck which was meant for transporting goods. It was, of course, traversed that the accident was due to the negligence of the driver.

Kundan Kaur
 v.
 S. Shankar
 Singh
 and others

 Shamsheer
 Bahadur, J.

The quantum of damages claimed was questioned also. The pleas of the second defendant were similar. In the statements made by the first two defendants before issues were framed, somewhat inconsistent pleas were raised about the ownership of vehicle No. DLH 3839. The counsel for defendant 2 stated on 3rd of February, 1951, as under:—

“Truck No. DLH 3839 belonged to defendant No. 2. I cannot state the date on which it was transferred. The learned counsel now states that he is not sure whether the truck belonged to defendant No. 2.”

Shanker Singh the first defendant stated on 14th of February, 1951, thus:—

“On the date of the accident defendant No. 3 owned the truck in suit. I was a share-holder of defendant No. 3 on the said date.”

On the same date the following issues were framed by the learned trial Judge:—

- (1) Whether Kundan Lal, the deceased husband of the plaintiff, was killed in an accident in which truck No. DLH 3839, was involved, by the negligence of the driver of the said truck?
- (2) Who was the driver of the truck and who is liable to pay damages arising out of the said accident?
- (3) Whether defendant No. 4, was an employee of defendant Nos. 1 to 3 at the time of the accident and was acting in the course of his employment or permission?
- (4) Whether at the time of the accident the deceased was the *bona fide* paid passenger on the truck in suit, or is he otherwise entitled to damages?
- (5) To what amount is the plaintiff entitled as damages and from which defendant?
- (6) Relief.

It was held by the learned Judge on the first issue that the death of Kundan Lal took place as a result of the negligent driving of truck No. DLH 3839. On issues 2 and 3 which were dealt with together, it has been found that the fourth defendant Lilla Dhar was driving the truck at the time of the accident though it has not been established

that defendants 1 to 3 were the owners of the vehicle. The fourth issue was found in favour of the plaintiff and the quantum of damages which is the subject-matter of issue No. 5, was decided in favour of the plaintiff. As a result of the findings a decree has been awarded for a sum of Rs. 10,000 against the fourth defendant alone and so far as this defendant is concerned this decree is not being challenged by him. In this appeal, which has been filed by the plaintiff, it is sought to make defendants 1 to 3 as well liable for the decretal amount. Though the fifth defendant, the New Asiatic Insurance Company, has again been impleaded, no relief is sought against it. The litigation before the trial Judge proceeded on the assumption that the first three defendants could be fastened with liability only if it is established that Lila Dhar was their driver and the arguments at the bar have been addressed on this basis.

Mr. Bindra, the learned counsel for the appellant, has contended that the pleadings of the parties and the statements made by the counsel for the defendants when read together with the evidence adduced by the parties establish beyond doubt the defendants' ownership of vehicle No. DLH 3839. In the ensuing contention of the learned counsel, it is submitted that the ownership having been so determined, it must be presumed that the fourth defendant was in the employment of the first three defendants at the time of accident and the temporary transference of the vehicle to Jawhar Goods Transport Company on hire at the time of the accident does not affect the liability of the defendants as the fourth defendant in driving the vehicle was acting during the course of his employment with them.

In the application for leave to file a suit in *forma pauperis* the fourth defendant is shown as the driver of the third defendant, Allied Motor Transport Company Limited, which is in fact a partnership concern of the first two defendants. The word 'limited' has been inadvertently added after the name of the third defendant as the vehicle was insured with the fifth defendant under that name. An application was subsequently made to have this word deleted and nothing really turns on this point at this stage as it does not seem to be disputed that the third defendant is in fact a partnership concern and not a limited company. In paragraph 3 of the petition, a

Kundan Kaur
v.
S. Shankar
Singh
and others

Shamsher
Bahadur, J.

Kundan Kaur
v.
S. Shankar
Singh
and others

Shamsher
Bahadur, J.

definite averment is made that both Shanker Singh and Trilok Singh have been the owners of vehicle No. DLH 3839 plying between Delhi and U.P. and is under their control, they being the proprietors of the third defendant firm in whose ownership it has been shown. Para 3 of the written statement to which reference has already been made does not traverse this plea. Indeed, it is admitted that the vehicle at one time was owned by the third defendant as a heavy transport vehicle. The import of this plea has no-where been made clear and so long as it was under the ownership of the third defendant, the first two defendants as partners of this concern cannot easily get rid of their liability. I may also advert to the second plea raised in the third paragraph of the written statement where it was stated that it was not within the knowledge of the first defendant whether Lila Dhar was driving the truck at the time of the accident. The statements made by and on behalf of the two defendants, to which also reference has been made, lend further colour to the impression that the ownership of the vehicle by the third defendant at least was never questioned. In the statement made by the counsel for defendant No. 2, it was said that the vehicle belonged to defendant No. 2 though in the statement made on 3rd of February, 1951, it was said that the counsel for defendant No. 2, it was said that the vehicle belonged to defendant No. 2 though in the statement made on 3rd of February, 1951, it was said that the counsel was not certain of this position, Shanker Singh made a statement that the vehicle was owned by defendant 3. Daulat Ram, P.W. 4, a clerk of the State Transport Authority, deposed in his evidence that the vehicle DLH 3839, was under the ownership of Mangaldha Shah Sethi, with effect from 20th of August, 1951. Prior to that the ownership was that of the third defendant, the Allied Motor Transport Company. The first application for permit was made on 5th of August, 1943, by the second defendant for and on behalf of the Allied Transport Company. Trilok Singh has been signing throughout as managing partner of the third defendant. Shanker Singh as defendant No. 1, stated on 29th of November, 1951, that the joint application for transfer of the permit was made on 15th of February, 1951, and was signed by him as managing proprietor of Allied Motor Transport Co. It is admitted by him that the original application for permit made in 1943 was signed by Trilok Singh as partner of the third defendant and he had been signing as a partner

throughout. Harnam Singh, P.W. 5, who is a proprietor of Victory Goods Transport Company, has deposed that as manager and director of the Jawahar Goods Transport Co., in the year 1949, he had engaged vehicle No. DLH 3839 from the Allied Motor Transport Company for transport of goods from Deoband to Delhi. The vehicle on the date of accident was proceeding to Deoband for this purpose and Kundan Lal was in the truck along with Babu Lal, peon. This witness has deposed that Lila Dhar was driving the truck at the time of accident and the hiring charges of the truck were to be paid on its return to Delhi. The statement of Harnam Singh is important as it shows that the vehicle in question was taken on temporary hire from the third defendant who remained its owner and Lila Dhar was driving the truck at the time of accident.

Kundan Kaur
v.
S. Shankar
Singh
and others

Shamsher
Bahadur, J.

The position adopted by the defendants, to reiterate, is most, equivocal. D. 2/W. 1, Madan Lal is an employee of the third defendant and has stated that the driver and clearner of the truck were of Jawahar Goods Transport Company. As an employee of the second defendant, his statement is not worthy of belief. Trilok Singh, D. 2/W. 2 adopted a somewhat strange position in the statement made by him in Court on 29th of January, 1953. He admitted the truck to be the property of the Allied Motor Transport Company and its insurance having been effected by the fifth defendant. The truck had been purchased from the Government by the first two defendants. Trilok Singh further stated that they kept no account books. This answer was obviously given to evade the disclosure of the true position with regard to employment of Lila Dhar. Trilok Singh stated that he was absent at the time of the accident and it is not clear what he wanted to prove by his absence at the time of accident. It is not worthy of belief that the third defendant as a partnership concern would maintain no register or accounts, as deposed by him. It is not unjustifiable to assume that the books have been withheld with knowledge and deliberation. Shanker Singh, as D. 1/W. 2 admitted in cross-examination that in the year 1949, Allied Transport Company had six trucks and "there were drivers for all these trucks. They were paid salaries. There must be register relating to the salaries drawn by them." It is difficult to avoid the conclusion that the registers had been withheld purposely and if produced they would have shown that Lila Dhar was in the employment of the defendants at the time of

Kundan Kaur
v.
S. Shankar
Singh
and others

Shamsher
Bahadur, J.

the accident. Shanker Singh admitted that at the time of the accident the vehicle was owned by Allied Motor Transport Company and both he and Trilok Singh were its share-holders. There appears to have been a separation of these partners after the accident.

The evidence so summarised does not support the conclusion of the learned trial Judge that "there is not an iota of evidence in the record, not even an allegation in the plaint, that defendant No. 4 was an employee of defendant No. 1 to 3." In the plaint it was stated that Lila Dhar was an employee of the third defendant which was owned by the first two defendants. If an accident results by rash and negligent driving of the vehicle, it is to be presumed that its driver was under the control of the owner. Reference may be made to a Division Bench judgment of the Bombay High Court in *Liladhar Chaturbhuj v. Harilal Jethabhai* (1), The Bench consisting of Sir John Beaumont, Chief Justice and Mr. Justice Kania held that:—

"In an action to recover damages caused by the negligent driving of a motor car, where it is proved that at the time of the accident the car belonged to the defendant, a presumption arises that the person who drove the car was either the defendant, his servant or agent. It is open to the defendant to displace that presumption by proving that at the material time the car was not under his control."

The Bench affirmed the judgment of Rangnekar, J., and the English case law on the subject was reviewed by Chief Justice Beaumont in the leading judgment of the Court. Said he at page 287:—

"The way the plaintiff puts his case is this. He says, on proof that at the time of the accident the car which knocked him down belonged to the defendant, a presumption arises that the person who drove the car was a servant of the defendant, and that it is for the defendant to displace that presumption."

In accepting this contention, the learned Chief Justice referred to the various decisions on the subject. It

(1) I.L.R. 1937 Bom. 268.

seems to us that the presumption which it was for the defendants to displace far from being refuted by their own statements has been further strengthened when read with the evidence adduced in this case.

Kundan Kaur

v.
S. Shankar
Singh
and others

Shamsher
Bahadur, J.

It is also to be examined whether the hiring of the vehicle to Jawahar Goods Transport Company had transferred the control of the vehicle to the hirer and the liability of the defendants as original owners ceased to exist. One of the tests to determine this question was laid down by Lord Justice Scott., in *Nicholas v. Sparks and Sons* (2). It is to this effect:—

“One test in cases of a vehicle lent with its services to a hirer, is this question, ‘In the doing of the negligent act was the workmen exercising the discretion given him by his general employer, or was he obeying or discharging a specific order of the party for whom upon his employer’s direction, he was using the vehicle or other instrument?’”

In the decision of the Court of Appeal in *McFarlane v. Coggins and Griffiths (Liverpool) Ltd.* (3), it was held that the regular employers having failed to establish that the hirers had such control must be held responsible for his negligence. It was also said that although the driver in that case was acting under the directions of the hirers in that they could tell him where to go and what to carry, he was not under their directions in regard to the manner of driving and in doing the negligent act he was exercising his own discretion as a driver—a discretion vested in him by his regular employers when he was sent out with the vehicle. This judgment of the Court of Appeal was affirmed in appeal by the House of Lords in *Mersey Docks and Harbour Board v. Coggins and Griffiths (Liverpool) Ltd* (4). This was a case of a crane which was lent by the owner to the hirer and the accident occurred as a result of the negligence of the servant of the stevedores who had hired it. On a parity of reasoning, it can acceptably be argued in this case that the fourth defendant was acting during the course of

(2) (1943) 61 T.L.R. 311.

(3) (1945) 1 All. E.R. 605.

(4) 1947 A.C. 1.

Kundan Kaur
 v.
 S. Shankar
 Singh
 and others
 ———
 Shamsher
 Bahadur. J.

the employment of the original owners and not the hirers. As observed by Lord Machmillan at page 14:—

“Servants cannot be transferred from one service to another without their consent and even where consent may be implied there will always remain a question as to the extent and effect of the transfer. Here the driver became the servant of the stevedores only to the extent and effect of his taking directions from them as to the utilization of the crane in assisting their work, not as to how he should drive it.”

If the contention of the defendants' counsel is to prevail, the driver of the truck would change his employment each time when he embarked on a fresh hiring contract. Indeed he might change it from day to day and this would lead to a great deal of confusion and inconvenience.

The decisions of the Indian Courts cited at the Bar are in consonance with the principle enunciated in *Mersey Dock's case* (4), by the House of Lords. Reference may be made to a Division Bench judgment of P. N. Mookerjee and P. K. Sarkar, JJ., in *M/s. National Spinning Co. v. Haripada Saha* (5), where it was held that the temporary hire of a vehicle by the general employer does not result in the transference of the control of the servants of the vehicle as the services alone are transferred and not the control. In other words, the effective control of the vehicle remains with the general employer who has lent the vehicle for hire and if an accident takes place while it is in the hirer's custody, the liability still remains that of the general employer as against the hirer. To the same effect is the *ratio decidend* of *Bhaiyalal Godre and others v. Smt. Rajrani and others* (6), a Division Bench authority of Pandey and Golwalker, JJ. The general principle of *respondant superior* that the master is vicariously liable in damages for his driver's tort in the negligent driving of the vehicle in the course of his employment is applied to the case though in the particular case with which the Bench was dealing it was found that the act of giving a lift to an unauthorised person is not merely a wrongful

(5) A.I.R. 1958 Cal. 597.

(6) A.I.R. 1960 M.P. 147.

mode of performing an act of the class which the driver was employed to perform but the performance of an act of a class which he was not authorised to perform at all. A learned Single Judge of the Madras High Court (Venkatadri, J.) in *M. S. Ramachandram Pillai v. K. R. M. K. M. Kumarappa Chettiar and another* (7), held that a general servant remains the servant of the master who pays him and there is a presumption against the transfer of that servant as distinct from his services, and the presumption is all against there being such a transfer.

Kundan Kaur
v.
S. Shankar
Singh
and others

Shamsher
Bahadur, J.

In our opinion, the liability of the defendants follows as a necessary corollary of the principle of *respondeat superior* and the plaintiff is entitled to a decree against defendants 1 to 3. It is true that Shanker Singh, the first defendant, died during the pendency of the appeal and his legal representatives have not been impleaded, but the liability of partners is co-extensive and the second defendant would be equally liable for the entire amount as a surviving partner of the third defendant-firm under whose ownership the vehicle was plying at the time of the accident. The appeal only abates in respect of Shanker Singh's legal representatives who have not been brought on record.

In the result, this appeal is allowed with costs and the decree granted by the trial Judge will also be enforceable against the second and third defendants.

P. D. SHARMA, J.—I agree.

Sharma, J.

K.S.K.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

ATMA PARKASH,—Appellant

versus

HARBANS LAL,—Respondent.

S.A.O. No. 5-D of 1964

Delhi Rent Control Act (LIX of 1958)—S. 12—Delhi Rent Control (Amendment) Act (IV of 1963)—S. 3—Acquired property purchased on 19th September, 1960, sale certificate granted on 16th August, 1961, Amendment Act came into force on 12th March, 1963 and application for fixation of standard rent filed on 23rd July, 1963 by the landlord—Whether within time.

1965

July, 30th.