B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

BEHARI LAL,—*Appellant*

versus

SURINDER SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 95 of 1958

1964

Sept., 2nd.

Master and Servant—Servant in the course of his employment delegating his duty to another—Injury caused by the delegate—Master—Whether liable for damages.

Held, that if a servant, during the course of his employment, delegates his duty to be performed by another and an injury is caused by the delegate to a stranger in the course of the performance of that duty, the master will be liable for damages on the principle of delegation. Thus when the driver delegates his duty to be performed by a cleaner, this negligent act of the driver will make the master liable for damages to a person who sustains injury by the act of the cleaner.

Regular Second Appeal from the decree of the Court of Shri Raj Inder Singh, Additional District Judge, Amritsar, dated the 2nd day of January, 1958, affirming with costs that of Shri Aftab Singh, Sub-Judge, 2nd Class, Amritsar, dated the 3rd July, 1957, granting the plaintiffs a decree with costs for Rs 5,000.

H. L. SIBAL AND S. C. SIBAL, ADVOCATES, for the Appellant.

DALIP SINGH KANG, ADVOCATE, for the Respondents.

JUDGMENT

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SHAMSHER BAHADUR, J.—This is an appeal of Behari Lal, against whom and two other defendants a decree for recovery of Rs. 5,000 as damages has been awarded by the Subordinate Judge, Amritsar, and affirmed in appeal by the learned Additional District Judge.

The facts as found by the Courts below and on which there is no dispute are briefly these:—Truck No. PNJ 1978 belonging to the appellant Behari Lal, was being driven on Amritsar-Verka Road, on 23rd November, 1954, when it struck Gajjan Singh, walking on the pavement. As a result of this accident Gajjan Singh, died and his legal representatives brought a suit for recovery of Rs. 5,000 as damages by way of compensation. At the time of the accident the truck was being driven by Teja Singh defendant No. 3 who was a cleaner of the Vehicle. The driver of the vehicle Anant Ram, defendant No. 2, was sitting in the front seat next to Teja Singh. The cleaner Teja Singh was obviously an inexperienced hand and the evidence which has been accepted by the Courts below leaves no manner of doubt that the accident took place as a result of rash and negligent driving.

Mr. Satish Chand Sibal, the learned counsel for the defendant—appellant very rightly did not challenge the concurrent findings of the Courts below that Teja Singh was driving the truck negligently. Both the Courts below on the compendious single issue framed in the case "To what amount of damage is the plaintiff entitled and against whom?" have returned the finding that the owner of the truck being liable for the tortious acts of his servants should pay damages of Rs. 5,000 to the surviving descendants of Gajjan Singh deceased.

The learned counsel for the appellant submits that the trial Court should have framed proper issues which arose out of the pleadings. It has, however, to be noted that the trial Judge made a note that no other issue besides the one which was actually framed was claimed for trial by the learned counsel for the parties. Moreover, the substantial question raised in this appeal, whether the owner is liable for the wrong delegation of the authority by the

driver to Teja Singh, has been fully canvassed before both the Courts below, the negligence of the driver Anant Ram in allowing the cleaner to take wheel while he himself was present in the vehicle based on clear and cogent evidence having been taken to be common ground in this case. I have not, therefore, considered it necessary to accede to the argument of Mr. Sibal that the case should be remanded for a proper trial after the necessary issues have been framed.

Adverting now to the argument of Mr. Sibal on the main question in controversy it has to be observed once again that the evidence adduced on behalf of the defendant himself shows that it was Anant Ram, driver, himself who had been duly authorised to drive the vehicle by the owner. It was Anant Ram, who entrusted it to the care of the cleaner, and driver at any rate cannot be heard to say now that the vehicle was being driven by a non-authorised person or a stranger. The principle that the master is liable for the default of his servant in delegating his duty to another servant is set out in Halsbury's Laws of England (Simonds Edition), Volume 25 at page 541 and is as under:—

> "The master may be responsible for the default of his servant acting in the course of the servant's employment, even though the act which caused injury was performed by a stranger or by another servant acting outside his employment, provided that the servant for whose default it is sought to make the master liable allowed the act to be performed, for example where he permitted a vehicle of which he was the driver to be driven by or left in charge of another person. In such case the master is not liable unless the servant for whose default it is sought to make the master liable was himself guilty of a breach of duty in allowing the act to be done and his breach of duty was in fact the effective cause of the injury."

Thus when the driver has delegated his duty to be performed by a cleaner as in this case this negligent act of the driver would make the master liable on the principle

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of delegation. The decision in point is that of Court of Appeal in *Engelhart* v. *Farrant and Co.* (1), where the defendant owner had employed a man to drive a cart with instructions not to leave it, and also a lad, who had nothing to do with the driving, to go in the cart and deliver parcels to the customers of the defendant. The driver left the cart, in which the lad was, and went into a house. While the driver was absent, the lad drove on and came into collision with the plaintiff's carriage. It was held that the negligence of the driver in so leaving the cart was the effective cause of the damage and that the defendant was liable. This decision of the Court of Appeal was followed by a Division Bench of Madras High Court in *Stanes Motors Ltd.* v. *Vincent Peter* (2). In that case the accident took place when the driver of the car (Babjee) was reclining in the back seat and it was being driven by a fitter in the employment of the owner though the case of the driver was that he had gone to sleep at the time of the accident and had no knowledge that the fitter was driving the car until he was aroused by the shock of the impact. The improbable story of the driver was disbelieved by the Court and it was found that the driver entrusted the driving of the car to the fitter, who was not authorised by his employers to drive their car and who, on his own admission, had no experience as a driver. It was held that the driver acted negligently in asking the fitter to drive the car and the owner became liable on the principle of delegation. Mr. Sibal has relied on another decision of the Court of Appeal in *Ricketts* v. *Thos, Tilling Ltd.* (3). I do not see how the ruling of this decision can possibly advance the case of the appellant. The conductor of an omnibus belonging to the defendants, in the presence of the driver, who was seated beside him, for the purpose of turning the omnibus in the right direction for the next journey, drove it through some by-streets so negligently that it mounted the foot pavement and knocked down and seriously injured the plaintiff, who was standing there. All that was said by Buckley L. J. in that case was that there being evidence of negligence on the part of the driver in allowing the omnibus to be negligently driven by the conductor, there must be a new trial. The question

(1) (1897) 1 Q.B. 240.
(2) I.L.R. 59 Mad. 402.
(3) (1915) 1 K.B. 644.

of negligence having been ruled out altogether by the trial Judge, the Court of appeal directed a new trial and Buckley L. J. after reference to *Engelhart* v. *Farrant* (1) fully accepted the principle of that decision. Reliance is placed by Mr. Sibal on the judgment of Pickford L.J., who made the following observation in the course of his judgment:—

> "I also, of course, accept the proposition that a man, who is instructed and employed to drive ought to look after the driving of the motor omnibus and has no right to delegate that duty to anybody else."

I cannot take that proposition to mean that if a driver wrongfully delegates his authority to some one else the employer can never be liable. The true principle governing such cases has been set out in *Engelhart* v. *Farrant* (1) which has been stated as a proposition of law in Halbury's Laws of England.

Mr. Sibal, has further relied on a Single Bench authority of Walmsley J. in *Nalini Ranjan Sen Gupta* v. *Corporation of Calcutta* (4), where a chauffeur, who was taking his master's car to a workshop for repairs, finding the lane leading to it impassable, left the car in charge of the cleaner, whose duty was only to clean the car and, who was forbidden to drive it, and went to the workshop and during his absence the cleaner drove it and broke a municipal lamp-post. It was held there that the master was not liable for the act of the cleaner which lay outside the scope of the employment of the latter. It has to be borne in mind that the driver had left the vehicle at the time when the cleaner drove it in the lane, which had become impassable for the time being. The cleaner's negligent act clearly fell outside the "course of his employment", the chauffeur not having authorised the cleaner to drive the vehicle. In the instant case the driver himself handed over the steering wheel to the cleaner while he was himself sitting next to him and it cannot be said that the vehicle was not being run in the course of the driver's employment. The decision of Mukerji J. in *Indra Mohan Roy* v.

(4) I.L.R. 52 Cal. 983.

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Emperior (5), is clearly distinguishable for in that case the master was made liable for the tort of a servant, who had no implied authority to engage a stranger to do work on his behalf. It was found as a matter of fact in that case that the car was being driven by an inexperienced driver without the knowledge of the owner.

For these reasons I see no ground to interfere with the judgments and decrees of the Courts below and dismissing the appeal would affirm the same. The appellant will pay the costs of the respondent in this appeal.

K.S.K.