ANDHRA PRADESH HIGH COURT

K. Mammi

Vs.

Barium Chemicals Ltd

A.A.O. Nos. 582 of 1975, 450 of 1976 and 411 of 1977

(Chennakesav Reddy, J.)

03.10.1978

JUDGMENT

Chennakesav Reddy, J.

1. In a motor accident that occurred at about 3 P.M. on 22-1-1972 in the fancy shop of Shah Pratapji Kanmal in the main Bazar of Kothagudem, a number of articles in the shop were damaged. Kilari Mammi of Kothagudem who had come to the shop to purchase fancy goods received grievous injuries; Jaber Singh, a boy aged 15 years who was working as the sales boy in the shop also received grievous injuries. The managing partner of the said fancy goods shop (who shall hereinafter be referred to as "the first petitioner") filed O. P. No. 54 of 1972 claiming Rs. 10,914-95 Ps. for the estimated damage to the property caused by the motor accident. Kalari Mammi, (who shall hereinafter be referred to as 'the second petitioner') and Jaber Singh, (hereinafter referred to as 'the third petitioner') filed O. P. Nos. 55 and 56 of 1972 each claiming Rs. 9,500/- and Rs. 7,500/- respectively, as damages for the bodily injuries and mental agony suffered by each one of them. The respondents in all the three original petitions are common. The first respondent, the Barium Chemicals Ltd. which is a Firm having its headquarters at Ramavaram, adjacent to Kothagudem, is the owner of the jeep bearing Registration No. A.P.H. 1502 which was involved in the accident. The second respondent, Ch Satyanarayana, was a clerk-cum-storekeeper of the first respondent and the third respondent was the driver of the said jeep and was an employee of the first respondent. The 4th respondent is the New India Fire and General Insurance Company, Bombay, with whom the jeep A.P.H. 1502 was insured.

2. The case of the petitioners shortly stated is as follows : On 22-1-1972 at about 3 P.M. the shop of the first petitioner was open. The second petitioner had come to the shop with her daughter. She was purchasing some fancy goods. The third petitioner was working in the shop. While so, a jeep A.P.H, 1502 driven by the second respondent rushed into the shop and dashed against the racks in which the fancy articles were kept. Due to the rash and negligent driving of the second respondent, some articles in the shop (were) damaged and some others were destroyed; the second petitioner sustained fracture of her legs and hands and the third petitioner sustained fracture of his two legs. The second and third petitioners were rushed to the Hospital at Khammam. The first petitioner immediately gave a report to the Police who came to the shop of

the first petitioner and conducted a panchanama regarding the damage caused to the property of the 1st petitioner. Ex. A-2 is the certified copy of the panchanama. The Police filed a charge-sheet against the second respondent in C. C. No. 87 of 1972 under Sections 338 and 337, Indian Penal Code and under Section 3 of the Motor Vehicles Act for rash and negligent driving, before the Judicial First Class Magistrate Kothagudem. The second respondent was convicted under Sections 338 and 337, Indian Penal Code and Section 3 of the Motor Vehicles Act and he was sentenced to pay a fine of Rs. 100/-, Rs. 50/- and Rs. 20/- respectively under each court. Ex. A-5 is the certified copy of the judgment.

3. The first petitioner got a notice issued through his advocate, the office copy of which is Ex. A-19, to respondents 1 and 2 claiming a sum of Rs. 10,914-95 Ps. being the damage to the property suffered by the first (petitioner) as a result of the accident according to the panchanama Ex. A-2 prepared by the Sub-Inspector of Police, Kothagudem. The first respondent got a reply notice issued admitting that the second respondent was its employee but he was only a clerk, that he was not entrusted with any such work such as driving the jeep and therefore, the first respondent was not responsible for the negligent driving of the jeep by the second respondent. Thereupon, the first petitioner filed O.P. No. 54/1972 claiming damages against the four respondents. It is contended in the petition that the Insurance Company is liable to pay damages under the terms of the Insurance Policy, Ex. B-2 dated 4-8-1971 issued by the 4th respondent. The second and third petitioners similarly filed O.P. Nos. 55 and 56 of 1972 against the four respondents claiming as damages Rs. 9,500/- and Rs. 7,500/- respectively for the bodily injuries and mental agony suffered by each of them.

4. In all the three petitions the first respondent resisted the claim contending *inter alia* that the third respondent alone was engaged as the driver of the jeep, A.P.H. 1502 involved in the accident of which he was the owner, that the second respondent was only employed as clerk and he was never entrusted with the vehicle and he was never asked or permitted to drive the jeep, that the second respondent without the knowledge and consent of the first respondent drove the vehicle and therefore, the first respondent was in no way liable for the unauthorized act of the second respondent. The quantum of compensation claimed by the petitioners was also challenged as excessive. The common stand of the second respondent in all the three petitions was that he was not the driver driving the jeep at the time of accident and that it was not true that the third respondent entrusted the jeep to him. The second respondent contended that one person by name Purushotham who was also an employee of the first respondent company was in the jeep and that the third respondent and Purushotham alone were responsible for the accident and he was in no way responsible.

5. The plea of the third respondent was that he never entrusted the jeep to the second respondent and did not allow the second respondent to drive the vehicle. He stated that he was not at all sitting by the side of the second respondent at the time of the accident and that the second respondent alone was liable for damages. According to him he parked the jeep and went to a laundry to get his clothes ironed and that the second respondent without his knowledge started the vehicle and as he was not a licensed driver, he could not control the vehicle and the jeep rushed into the shop of the first petitioner resulting in the accident. He denied his liability for the unauthorized and illegal acts of the second respondent.

6. The 4th respondent-Insurance Company filed a counter in all the three petitions contending *inter alia* that the Insurance Company was not liable for the acts of the second respondent who

was not a licensed driver and that the Insurance Policy does not cover such a risk. The amounts claimed by the petitioners towards compensation were also challenged as excessive.

7. All the three petitions were clubbed together and enquired into with the consent of the parties.

8. The following common issues were framed in all the three petitions :

1. Is the occurrence due to the rash or negligent driving of the vehicle A.P.H. 1502 ?
2. To what compensation, if any, is the petitioner entitled and against which of the respondents ?
3. To what relief ?

9. On behalf of the petitioners 7 witnesses were examined of whom P. Ws. 1 to 3 are petitioners 1 to 3. On behalf of the respondents only 3rd respondent was examined as R.W. 1, Exs. A-1 to A-37 were marked on behalf of the petitioners while Exs. B-1 and B-2 were marked on behalf of the respondents. On an evaluation of the entire evidence oral and documentary - adduced in the case, the Motor Accidents Claims Tribunal-cum-District Judge, Khammam, held on issue No. 1 that the occurrence was due to the rash and negligent driving of the jeep by the second respondent. On issue No. 2 the Tribunal, however, held that the petitioners were only entitled to claim damages against the second respondent. The Tribunal further held on issue No. 3 that the first petitioner failed to establish the actual quantum of damages suffered by him and, therefore, it was not possible to pass any decree in his favor. As regards the claim of petitioners 2 and 3, the Tribunal held that the compensation claimed by them was not excessive and accordingly passed a decree for Rupees 9,500/- against the second respondent in favor of the second petitioner and a decree for Rs. 7,500/- against the second respondent in favour of the third petitioner. In the result, the learned District Judge dismissed O.P. No. 54 of 1972 without costs and allowed O. P. Nos. 55 and 56 of 1972 against the second respondent alone with costs. Hence the petitioners in O. P. Nos. 54, 55 and 56 of 1972 have filed respectively C. M. A. Nos. 411/77, 582/75 and 450 of 1976.

10. The first and foremost contention of the learned counsel for the petitioners-appellants is that the Tribunal having held that the accident was the result of the negligence on the part of the third respondent in leaving the ignition key in the jeep and going away to the laundry erred in not granting a decree against respondents Nos. 1, 3 and 4. It may also be noticed that it is also the finding of the Tribunal that the second respondent was not trained in the driving of the motor vehicle, that he took fancy to drive the jeep in the absence of the authorized driver, the third respondent, and he could not control the vehicle and allowed the jeep in run into the shop of the first petitioner and the second respondent was, therefore, clearly guilty of negligence and was liable to pay damages to all the petitioners. The learned counsel submits that the 3rd respondent was guilty of neglect of duty when he left the jeep leaving the ignition key in it and the person left in charge of vehicle was an unlicenced person. He argued that the 3rd respondent should have foreseen that by leaving the ignition key an unauthorised person may attempt to drive the vehicle. The question, therefore, is. Did the accident happen because of the neglect of duty by the third respondent ?

11. In *Engelhart v. Farrant and Co*[1]. Lord Easher M. R., dealing with the liability of an employer

for wrongful and negligent act of his servant observed :

> "There is no rule of law to prevent a master being liable for negligence of his servant whereby opportunity was given for a third person to commit a wrongful or negligent act immediately producing the damage complained of Whether the original negligence was an effective cause of the damage is a question of fact in each case."

12. The facts in that case were; the defendant had employed e man by name Mears to drive a cart with instructions not to leave it and with a lad of seventeen called Tucker to go with the cart for the purpose of delivering the parcels. Tucker was not entrusted with the driving and in fact had been forbidden to interfere with it, Mears, the driver, left the cart leaving Tucker in the cart and went into the house to get some oil for the lamp in the cart. While the driver was absent, Tucker drove the cart and came into collision with the plaintiff's carriage. It was held that in an action to recover the damage caused by the collision, the negligence of the driver in so leaving the cart with the lad in the cart with the means of driving off at any moment was an effective cause of the damage and that the defendant was, therefore, liable.

13. In *Ricketts v. Tilling Ltd*[2]*.,* the facts were these : The driver of an omnibus allowed the conductor who was not authorized to driver the omnibus. The conductor being inexperienced and incompetent to drive the motor omnibus, the motor omnibus mounted the foot-pavement and knocked down and seriously injured the plaintiff, who was standing there. In an action brought by the plaintiff against the defendants, Phillimore L.J. stated :

> "The question here really is, was the driver still in charge of this omnibus, and did the accident happen because he neglected his duty ?
> Pickford L. J. summarized the position in these words :
> "It seems to me at any rate that there is evidence of negligence on his part, he being there and still having the duty of the controlling and the driving of the omnibus, in allowing the omnibus to be negligently driven whereby the accident happened."

And Buckley L. J. stated :

> "It is a question for the jury whether the effective cause of the accident was that the driver committed a breach of his duty (which was either to prevent another person from driving or, if he allowed him to drive, to see that he drove properly), or whether the driver had discharged that duty."

[1](1897) 1 QB 240
[2](1915) 1 KB 644

14. The liability of the master for servant's acts, laid down in Engelhart's case (1897-1 QB 248) and reiterated in Rickett's case ((1915) 1 KB 644) (referred to supra) has been enunciated in *Uttar Pradesh Govt. v. Ram Milan*[3]*,* In that case, D.2 the driver, and D-3, the mechanic, were servants of D-1, the Government of Uttar Pradesh. The driver was put in charge of the vehicle

and was authorized by the master to drive, control and manage it. The duty of the mechanic was only to repair the defects in the said vehicle and not to drive the same. While the vehicle was on the road, the driving of the vehicle which was within the scope of employment of the driver, was entrusted by him to the mechanic. The driver was sitting by the side of the mechanic. The vehicle met with an unfortunate accident while the mechanic was driving. The plaintiff, who was a passenger in the bus, received serious injuries. In a suit for damages by the injured plaintiff, the Government was held liable. The Court observed (at p. 291) :-

> "The act of the driver, in entrusting the mechanic with the task of driving the vehicle was an improper mode of performance of his own duty as a driver and was, therefore, an unauthorized mode of acting within the scope of his employment xx xx
> ..... there can be no manner of doubt that the master, i.e., the Government of Uttar Pradesh, must be held liable for the damages caused to the plaintiff because the damages were a result of the negligent performance of his duty by the driver. Even supposing for a moment that the Government had issued instructions to the driver not to delegate his duty, the Government would still be liable on the principle enunciated in Rickett's case (1915-1 KB 644)."

15. In *Managing Director, R.U.M. Service Ltd., Rasipuram v. Ramaswamy*[4], the Madras High Court held that the master was liable for the acts of his servant. In that case, the plaintiff sustained injuries while he was travelling in the defendant's bus the conductor of which was permitted to drive the bus. The driver was sitting by the side of the conductor when the accident occurred on account of the negligence on the part of the conductor. The learned Judge in that case referred to Rickett's case (1915-1 KB 644) and, following the principle laid down therein, held that the plaintiff was rightly entitled to damages from the master.

16. In *Tara Singh v. Mangal Singh*[5], the owner of the vehicle had given the vehicle for repairs. An unlicensed worker drove the vehicle and knocked down a cyclist. It was held that the truck would be deemed to have been driven by the unlicensed worker in the course of his employment and that the damages could be recovered from the owner of the vehicle.

17. Turning now to the texts on the Law of Torts, "Salmond on the Law of Torts", 13th Edition at page 122, enunciates the following principle :

> "A master is not responsible for a wrongful act done by his servant unless it is done in the course of his employment. It is deemed to be so done if it is either (1) a

[3] AIR 1967 All 287
[4] AIR 1956 Mad 641
[5] 1978 Acc CJ 53 (Punj and Har)

> wrongful act authorized by the master, or (2) a wrongful and unauthorized mode of doing some act authorized by the master"". In other words, a master is responsible not merely for what he authorizes his servant to do, but also for the way in which he does fraudulently that which he was authorized to do honestly, or if he does mistakenly that which he was authorized to do correctly, his master will answer for that negligence, fraud or mistake."

18. Later on at page 123, the learned author proceeds to observe.

> "There are however, cases in which it has been held that a servant who is authorized to drive a motor vehicle, and who permits an unauthorized person to drive it in his place, may yet be acting within the scope of his employment. The act of permitting another to drive is a mode, albeit an improper one, of doing the authorized work.
> The master may even be responsible, if the servant impliedly, and not expressly permits an unauthorized 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."(The underlining is mine).

19. The principles that can be gleaned from the aforesaid discussion devoted to the decided cases and texts are, (1) The master is not responsible for a wrongful act done by his servant unless it is done in the course of his employment, (2) It is deemed to be so done if it is either (i) the wrongful act authorized by the master or (ii) the negligent or fraudulent mode of doing the same act authorized by the master. In other words, a master is responsible not merely for what he authorized his servant to do but also for the way in which he does that which he was authorized to do. (3) The master may also be responsible even if the servant impliedly, though not expressly, permits an unauthorized person to do an act as where he leaves a vehicle such a manner that it is reasonably foreseeable that the third party will attempt to drive it.

20. Keeping the aforesaid principles in mind, let me now examine the facts of this case and see whether the accident occurred because of the negligent act of the driver-the third respondent.

21. The third respondent is examined as R.W. 1 in the case. It is in his evidence that he was the driver of the jeep A.P.H. 1502 owned by the 1st respondent-Firm and he drove the jeep on 22-1-1972 from the office to the bazaar Kothagudem on the work of the firm. According to this witness he parked the jeep in the bazar in front of Kamal Automobiles; left the ignition key in the jeep and went to the shop called Murali Tailors, while Satyanarayana, the second respondent was sitting in the jeep. He also admitted in the cross- examination that he had to keep the ignition key with him but he left the key in the jeep because second respondent was sitting in the jeep. He admitted that from the Tailor's shop he went to the laundry to get his shirt ironed and while he was at the laundry he heard some sound and he looked at the jeep and noticed the jeep moving forward and Satyanarayana sitting in the jeep and the jeep running into the fancy goods shop which is nearby resulting in the accident. It is thus clearly established by the evidence of the third respondent that he left the ignition key in the jeep and left the jeep leaving the second respondent in the jeep and went to the Murali Tailor Shop. At that time, the second respondent, an employee of the first respondent drove the jeep and caused the accident. The question is : Did the accident happen because of the negligent act of the driver. The answer must be in the affirmative. The mere fact that the third respondent left the jeep and went to the Tailor's shop is no act of negligence. But the third respondent left by leaving the ignition key in the jeep. That readily provided the means to the 2nd respondent who was in the jeep to start the vehicle and drive off. The third respondent should have reasonably foreseen that a third party will attempt to put the vehicle in motion in his absence if the ignition key was found in the vehicle. Therefore the

negligent act of he 3rd respondent in so leaving the ignition key was the real and effective cause of the accident and the master was answerable.

22. Under Section 84 of the Motor Vehicles Act responsibility is cast on the person who is driving or in charge of the vehicle when a vehicle is parked in a public place to take such measures that are essential to ensure that the vehicle cannot be accidentally put in motion in the absence of the driver, unless there is in the driver's seat a person duly licensed to drive the vehicle. The third respondent in leaving the ignition key in the vehicle knowing that the second respondent was not duly licensed to drive the vehicle failed to ensure that the vehicle cannot be accidentally put in motion in his absence. Thus he failed to discharge the statutory duty cast on him under Section 84 of the Motor Vehicle Act and is undoubtedly guilty of negligence and his master was liable for the negligent act. Therefore, the Tribunal below was in error in holding that neither the third respondent nor his master, the first respondent, was liable for the damages.

23. The learned counsel for the first respondent placing reliance on the decision of this Court in *M. Visalakshmi v. Treasurer, Council of India Mission of The Luthern Church in America*[6], submits that the first respondent who was the master was not vicariously liable for the act of the driver who had acted contrary to the statutory provisions. In that case, the driver of the Fiat car was taking the car from Rajahmundry to Guntur for servicing. On the way, the driver picked up some passengers to make some money for himself. The vehicle met with an accident and three of the passengers picked up by the driver died in the accident. In a claim application filed under Section 110-A of the Motor Vehicles Act by the dependants of the deceased passengers it was held that the master was not liable vicariously for the acts of the driver since the act of the driver in picking up the passengers fell outside the scope of his employment. In this case, as already found, the driver acted negligently in the course of his employment by leaving the ignition key in the car knowing that the person sitting in the car was not licensed to drive the car and it could reasonably be foreseeable that a third person could attempt to accidentally put the vehicle in motion in his absence.

24. On behalf of the 4th respondent Insurance Company, the learned counsel raises the contention that since the second respondent who drove the vehicle resulting in the accident had no driving license to drive the vehicle, Section 96(2) of the Motor Vehicles Act is a bar to the maintainability of the claim against the Insurance Company. Under Section 96(2)(b) breach of a specified condition of the policy is one of the grounds that can be pleaded in defense of an action against the Insurance Company. The learned counsel placed reliance on the Insurance Policy, Ex. B-2 issued by the Insurance Company wherein one of the conditions mentioned is that the vehicle should not be

[6] Guntur-2, (1978) 2 Andh WR 51

driven by a person other than the licensed person. In support of his submission much reliance is placed by the learned counsel on the decision of this Court in *V. Rajeswara Rao v. Karna Audemma*[7], In that case the learned Judges accepted the plea of the Insurance Company that the owner of the tractor himself allowed an unlicensed person to drive the tractor and came forward with a false case suppressing the truth from the Court that the 3rd respondent was the driver of the tractor. Therefore, the learned Judges held that the Insurance Co. was not liable to pay compensation so far as the liability of the owner of the tractor was concerned. But in this case, the first respondent had authorized only a licensed driver to drive the vehicle. If the 1st respondent had authorized only a licensed driver to drive the vehicle, then the defense under

Section 96(2) could be rightly invoked by the 4th respondent. But this is a case where due to the negligence of the authorized driver, the third respondent, a third person, drove the vehicle and, therefore, I do not think the decision relied upon by the learned counsel is of any relevance to the facts of this case. The Tribunal below was therefore in error in granting a decree only against the second respondent in O.P. Nos. 55 and 56 of 1972 and dismissing the petitions as against respondents 1, 3 and 4. Therefore, C.M.A Nos. 582/75 and 450/1976 are allowed with costs and there shall be a decree in each O.P. i.e., O.P. Nos. 55 and 56 of 1972 against all the respondents 1 to 4 instead of the 2nd respondent alone.

25. As regards C.M.A. No. 411 of 1977 which arises out of O.P. No. 54 of 1972 the Tribunal held that the actual quantum of damages is not established and therefore it is not possible to pass a decree for any definite amount. The learned counsel relies on Ex. A-32, the Panchanama, for the damage caused to the shop and the evidence of P.W. 7 who owns a shop opposite to the shop of the 1st petitioner. The Tribunal observed that it was mentioned in Ex. A-32, that show-cases and racks were lying on the ground helter-skelter and broken, but it was not stated whether those articles were totally unfit for sale and what happened to those articles. The police had not seized those articles and they were retained by the first petitioner himself. The Tribunal below therefore, observed that some damage was caused to the goods and that the first petitioner failed to establish the actual quantum of damages. I am in entire agreement with this finding. Accordingly, C.M.A. No. 411 of 1977 is dismissed with costs.
Order accordingly.
[7]1977 Acc CJ 462