GUJARAT HIGH COURT

Chief Officer, Bhavnagar Municipality

Vs.

Bachubhai Arjanbhai

First Appeal No. 458 of 1980

(R.K. Abichandani, J.)

12.07.1995

JUDGEMENT

R.K. Abichandani, J.

1. The appellants have challenged the judgment and order dated 13-7-1979 of the Motor Accident Claims Tribunal, Bhavnagar awarding compensation of Rs. 21,000/- with interest at 71/2 per cent per annum to the claimants against the appellants.

2. In a motor accident that took place on November 29, 1978 on Gogha Road at Bhavnagar, one Dahyabhai Bachubhai died and therefore, his parents and minor brother and sister preferred the claim petition against the driver, the State of Gujarat, who was the owner of the vehicle and the Bhavnagar Municipality i.e. the appellant No, 1 (now Municipal Corporation), who had used the vehicle through its driver-the appellant No. 2. It was found by the Tribunal that the accident had occurred due to rash and negligent driving of the appellant No. 2 of tanker No. GTP 4645 which had dashed against the deceased while he was walking by the road side. The deceased was 19 years of age, doing masonry work, but the Tribunal assessed his income only at Rs. 200/- per month. Applying the multiplier of 15 and assessing the dependency at Rs. 100/- per month, the Tribunal calculated the economic loss to the claimants at Rs. 18,000/- and adding to that some conventional figure of Rs. 3,000/ - on the count of loss of expectation of life, awarded Rs. 21,000/- to them.

3. The only contention which is raised on behalf of the appellants was that the Tribunal had committed an error in holding that the appellant Municipality was vicariously liable for the tort committed by its driver and that the present respondent No. 5-State of Gujarat was not liable as the owner of the vehicle. As the State of Gujarat was held not to be liable because it had allotted the tanker to the Municipality for distribution of water to the citizens, the Insurance Company which is respondent No. 6 in this appeal, could also not be liable. In fact the Insurance Company

was not impleaded as a party in the claim petition but the Tribunal had issued a notice to the Insurance Company and given it an opportunity of hearing in the matter, as required by the law.

4. The facts on record disclose that the vehicle in question which belonged to the State of Gujarat was at the relevant time handed over to the Bhavnagar Municipality for supply of water by it under the allotment orders issued by the Government. According to the State of Gujarat, after the vehicle was allotted to the Municipality it was driven by a driver employed by the Municipality and therefore, the vehicle was under the supervision and control of the said Municipality and not of the State Government. This contention found favour with the Tribunal which held that the vehicle was being driven by an employee of the Municipality and not by an employee of the State Government and since only master would be vicariously liable for the tort committed by his employee and not the real owner of the vehicle i.e. the State, the Municipality alone was vicariously liable for the tort committed by his driver. The Tribunal found that the State had entrusted the vehicle to the Municipality for distribution of water to its citizens and it had not retained any control on the vehicle and had no control whatsoever over the driver employed by the Municipality. Since the insured State of Gujarat was held to be not liable, the Insurance Company also could not be held to be liable.

5. The anxiety of the appellants appears to be that it the Insurance Company is not liable, the appellants will have to shell out the amount of compensation. No contention was urged by the appellants that they would not be themselves liable in respect of the said accident, but the entire effort was to implicate the Insurance Company, so that ultimately the insurer pays the amount. On behalf of the Insurance Company, heavy reliance was placed on a decision of this Court in *Rajkot Municipal Corporation v. Apabhai rendered*[1] by Hon'ble Mr. Justice D. C. Gheewala, in which while dealing with a similar fact situation it was held that it could not be said that the vehicle at the relevant time was being plied either for and on behalf of the State of Gujarat or that it was under the direct control of the State of Gujarat and therefore, the State was not liable. It was held that "if the owner of the vehicle has handed over the vehicle to an independent person and the vehicle when it meets with an accident due to the rash and negligent driving of a driver who was under the control of an independent person, then the owner cannot be held responsible, whereas if the vehicle is under the control of the owner then the owner would be vicariously responsible, irrespective of the fact whether the person driving it was an employee of the owner or of the independent person". This proposition of law was putforth while agreeing with the proposition laid down by the Madhya Pradesh High Court in the case of State of Madhya Pradesh .v. Prembhai, AIR 1979 Madhya Pradesh 85 in which the Madhya Pradesh High Court had held that "the owner's liability is not absolute. If the vehicle is entrusted to an independent person and it is in the complete control of that independent person, the owner cannot be made liable for the act of that independent person or his servant". The Madhya Pradesh High Court had approvingly cited the decision of the Madras High Court in *Govindrajulu v. Govindraj*[2], wherein it was held that "in case of motor vehicle, liability can be fastened as against a person only on proof that he was negligent and that negligence was responsible for the accident in question.

Therefore, when a motor lorry is entrusted to a workshop of a repairer, it cannot be held that the owner of the vehicle owed any duty or could have exercised any control or taken any precaution about the lorry. There is no law which throws a duty upon the owner to speculate and anticipate that some unauthorized person would take the lorry out from the carriage of the repairer. It is not one of the necessary natural consequences that would be expected to arise in the matter of entrustment of lorry for repair." The decision in Govindrajulu (supra) was followed by the Madras High Court in its later decision in *D.*

[1] on 13-3-1981 in First Appeal No. 282 of 1977

[2] AIR 1966 Mad 332

Rajapathi v. University of Madurai[3]

and it was held that the University which owned the jeep could not be rendered liable to pay compensation for injuries caused by negligence of the driver who was a servant of the State Government. In that case, an employee of the State Government had gone on an official inspection duty in a jeep belonging to the University which was allowed to be used by the State Government for the purpose and was driven at the relevant time by the driver who was an employee of the State Government. Thus, the above principle in Govindrajulu was followed in *State of Madhya Pradesh v. Prembhai* (supra) by the Madhya Pradesh High Court and by this Court in *Rajkot Municipal Corporation v. Apabhai* (supra) and was also followed by the Madras High Court in its later decision in *D. Rajapathi v. University of Madras* (supra). However, this principle has not found favour with the Supreme Court as can be seen from its decision in *Guru Govekar v. Filomena F. Lobo reported in*[4] in which the decision of the Madras High Court in D. Rajapathi (supra) was overruled in the following terms (at p. 1337 of AIR) :-

> "We do not agree with the decision in *D. Rajapathi v. University of Madurai*[5]*,* in which it has been held that the doctrine of vicarious liability would not be extended to a case where the accident had taken place on account of the negligence of the driver employed by an independent contractor even when the claim is made not under the law of torts but under the provisions of the Act. While it may be true, as we have observed earlier, that under the law of torts, the owner may not be liable on the principle of vicarious liability, the insurer would be liable to pay the compensation by virtue of the provisions of Section 94 and Section 95 of the Act referred to above."

6. The Supreme Court in paragraph 8 of its judgment held in context of the provisions of Sections 94 and 95 of the Motor Vehicles Act, 1939 that, "the liability to pay compensation in respect of death or injury caused to the person or property of a third party undoubtedly arises when such injury is caused when the insured was using the vehicle in a public place. It also arises when the insured has caused or allowed any other person including an independent contractor) to use his vehicle in a public place and the death of or injury to the person or property of a third party is caused on account of the said vehicle during such period, unless such other person has himself taken out a policy of insurance to cover the liability arising out of such an accident". In

the case before the Supreme Court the vehicle was given to the repairer who had not taken any policy of insurance covering the liability to pay compensation to a third party when a motor vehicle taken for repairing from its owner has caused the death or injury to any third party giving rise to the liability to pay compensation. It was held that when an owner of the motor vehicle entrusts his vehicle to a repairer to carry out repairs, he is in fact allowing the repairer to use his vehicle in that connection. It is also implicit in the said transaction that, unless there is any contract to the contrary, the owner of the vehicle also causes or allows any servant of the repairer who is engaged in the work of repairs to use the motor vehicle for the purpose of or in connection with the work of repairs, and, when such work of repairs is being carried out in a public place if on account of the negligence of either the

[3] reported in 1980 Acc CJ 113 [5]1980 Acc CJ 113

[4]1988 Acc CJ 585

repairer or his employee who is engaged in the repairing work, a third party dies or is injured, the insurer would become liable to pay compensation under the provisions of the Act. The Supreme Court noted the fact that under the law or torts the owner of a motor vehicle is no doubt not liable to pay compensation to any third party who suffers any injury on account of the negligence of the employee of an independent contractor, who has taken the vehicle from the owner for his own i. e. independent contractor's use. However, it held that the question involved was required to be resolved in light of the provisions of the Motor Vehicles Act particularly, the provisions of Section 94 which required every person using a motorehicle in a public place except as a passenger, to take out a policy of insurance to comply with the requirement of Chapter VIII of the Act. It also requires a person who causes or allows any other person to use his motor vehicle in a public place to take out policy of insurance complying with the requirements of Chapter VIII unless there is in force a policy of insurance in relation to the use of the vehicle by that other person as required by Chapter VIII of the Act. It was held that any other view will expose the innocent parties to go without compensation when they suffer injury on account of the motor accidents and will defeat the very object of introducing the necessity of taking out an insurance policy under the Act. Therefore, the insurer of the owner who had given the vehicle for repairs was held to be liable even though the accident had taken place when the vehicle was not under the supervision and control of the owner. The above proposition laid down by the Supreme Court in Guru Govekar would clearly show that the decisions of the Madras High Court in Govindrajulu (supra), of the Madhya Pradesh High Court in ***State v****. Prembhai (AIR 1979 Madhya Pradesh 85)* (supra) and of this High Court in *Rajkot Municipal Corporation v. Apabhai* (supra) to the extent they hold to the contrary are no longer good law.

7. The facts on record clearly indicates that the vehicle in question which belonged to the State of Gujarat was entrusted to the Municipality for distribution of water to the citizens. It was implicit in allowing the vehicle being used for such purpose that the State of Gujarat which owned the vehicle also caused or allowed any driver of the Municipality who was engaged in the work of distribution of water to the citizens, to use motor vehilce for the purpose. Therefore, when the vehicle was driven by the driver of the Municipality and the accident resulted due to his negligence, the insurer of the vehicle became liable to pay the compensation under the provisions

of the Act. It is therefore, held that the State, as the owner of the vehicle and the respondent Insurance Company as its insurer were also liable to pay the compensation awarded by the Tribunal. The appeal is therefore, allowed to the above extent and while confirming the award already made against the appellants, it is also directed that the respondent Nos. 5 and 6 will be jointly and severally liable along with the appellants. There shall be no order as to costs.
Order accordingly.