

MANU/TN/0946/1997

**Equivalent Citation:** 1999ACJ1228, AIR1998Mad86, 1997-2-LW958

**IN THE HIGH COURT OF MADRAS**

Appeal No. 767 of 1992

Decided On: 18.02.1997

Appellants: **Headmistress, Government Girls High School and Ors.**
**Vs.**
Respondent: **Mahalakshmi and Anr.**

**Hon'ble Judges/Coram:**
S.S. Subramani, J.

**Counsels:**
For Appellant/Petitioner/Plaintiff: P.M. Murugappan, GA

For Respondents/Defendant: V. Nicholas and A.R.L. Sundaresan, Advs.

**Subject: Civil**

**Disposition:**
Appeal dismissed

**Case Note:
Constitution - Liability - Trial Court allowed suit of Plaintiff and held that State was vicariously liable to compensate Plaintiff and awarded compensation to Plaintiff with interest - Hence, this Appeal - Whether, Defendant was liable to pay compensation to Plaintiff - Held, school was bound to provide water to school children and one of duties of Defendant No. 1 was to bring water to school children - Instead of Defendant doing that work, if she authorised some other person to did that, and during course of that employment, person so authorised suffered from any injury, her employer was also responsible for same -Thus, innocent school children could not refuse to obey direction given by staff - They could not discard directions given by them - School children hail from village and it was evident that practice of sending school children to fetch water had been in vogue for long time - That means, school children were really employed, when staff were engaged for that purpose - In such situation, if an injury was caused to one of children in course of such employment, it could only be school authorities were liable for same - It was for purpose of school, water was being brought by Plaintiff and naturally, State was also vicariously liable for injury sustained by Plaintiff - Hence, State could not disown its liability for negligent acts of its servants and State had not disowned its liability in any of grounds - Appeal dismissed.

Ratio Decidendi

"During course of employment, person authorised suffered from any injury, then employer is also responsible for that injury."**

**JUDGMENT**

**S.S. Subramani, J.**

1. Defendant Nos. 2, 3 and 4 in O.S. No. 372 of 1989, on the file of Subordinate Judge's Court, Dharma-puri, are the appellants.

2. Suit was filed by plaintiff, who is a minor through her next friend (father) as an indigent person, for the recovery of compensation for the injury caused to the minor plaintiff, on the following allegations:

Plaintiff, at the time of institution of the suit, was a 9th Std. student in the school of the appellant No. 1. It is a Government managed school. The defendant No. 1 in this case is an 'aya' in that school. On 7.8.1987, after the prayer was over in the morning, the defendant No. 1 ordered the plaintiff and another student by name Kavitha to fetch water from a boring pipe situated near the cinema talkies at Salig-ramam, 1 1/2 furlongs away. They were given a plastic pot and they were asked to take the cycle of one Viswanathan, who is also an employee of that school. Plaintiff, as instructed by the 'aya' took the cycle of Viswanathan and went to fetch water. After water was taken from the boring pipe, the pot was kept on the cycle-carrier. In order to facilitate the placing of the pot correctly and to hold the pot tightly, plaintiff pulled the upper holding portion of the cycle-carrier spring, but it came out forcibly and the spring pierced the right eyeball of the plaintiff. The cycle-carrier spring was not in perfect condition and it was negligently kept in such a poor and ill-maintained condition that it broke and damaged the right eye of the plaintiff. The cornea was perforated and plaintiff lost her vision in the right eye completely.

3. It is the case of the plaintiff that even though it is duty of the 'aya' to bring water, it was all along her habit, with the implied consent of the school authorities, to ask the school children to bring water from the nearby bore-pipe. It is said that since the injury was caused at the instance of the defendant No. 1 with the consent of the school authorities, all the defendants are jointly and severally liable. It is her case that the State of Tamil Nadu should also be made liable vicariously.

4. A total amount of Rs. 1,00,000 was claimed as compensation.

5. In the written statement filed by the defendant No. 1, she said that the plaintiff did not attend the school on that day. She denied the incident.

6. Defendant No. 2, the Headmistress (appellant No. 1 herein) also said that the plaintiff did not attend the school on 7.8.1987. But she admitted that she had given a certificate to the plaintiff as to the cause of the injury. She denied in her written statement the plaintiff's allegation that she went to fetch water along with Kavitha. She further said that it was all along the defendant No. 1 who was fetching water to the school.

7. On the above pleadings, the trial court took oral and documentary evidence, and came to the conclusion that the plaintiff attended the school on 7.8.1987, and while she brought the water from the bore-pipe on the cycle belonging to Viswanathan at the instance of the 'aya' plaintiff sustained injury in her right eye. It further found that the act of defendant No. 1 was with the knowledge and consent of the authorities of the school, and that was the usual practice. It, therefore, found that the State is also vicariously liable to compensate the plaintiff. A decree was granted for Rs. 57,500 with 9 per cent interest per annum, and costs were also awarded. Court fee was directed to be realised from defendant Nos. 1 to 4.

8. It is against the judgment and decree of the lower court, defendant Nos. 2 to 4 have preferred this appeal.

9. The only point that has been urged by the learned Counsel (Government Advocate) for the appellants was that when 'aya' has been appointed for the purpose of fetching water, she cannot give instructions to the students to fetch water, and she has been specifically prohibited from employing the children for such purpose. When specific duties have been earmarked for the employees, it means that the employees should do that work and she cannot authorise or delegate that duty to any other person. If so, any such direction by defendant No. 1 will be unauthorised and not in the course of employment and, therefore, the State is not liable for the damage caused.

10. On the basis of the above argument, the only point that requires consideration is, whether the State and the appellants are vicariously liable for the injuries caused to the plaintiff.

11. Before going to the legal point, the finding of the trial Judge may be of some importance. Exhs. A-2 and A-3 are the two certificates issued by the Headmistress, i.e., the appellant No. 1, Exh. A-2 is in English and Exh. A-3 is in Tamil. Exh. A-3 reads as follows:

(Omitted as in vernacular)

The issuance of this certificate is admitted and the same is self-explanatory. It says that for the purpose of use by her class students, plaintiff went to fetch water, and in the course of that, the injury was caused. It is the case of the appellants that it is the duty of defendant No. 1 to bring water for the children. As an 'aya', she is duty-bound to do it, and she cannot delegate the same to the children. It has been taken note of by the trial Judge that even in her evidence, the Headmistress has admitted that "she has issued the certificate voluntarily, after knowing its contents and all its seriousness. Even though in the written statement, some other explanation is given, the same is given a go-by in her deposition. The evidence is irresistible to come to the conclusion that it was for the purpose of the school children, plaintiff was asked to bring water. In such circumstances, what is the liability of the State, is to be seen.

12. In two recent decisions of the Supreme Court, one reported in State of Maharashtra v. Kanchanmala Vijaysing Shirke, MANU/SC/0781/1995 : AIR1995SC2499 and the other reported in Sohan Lal Passi v. P. Sesh Reddy, MANU/SC/0662/1996 : AIR1996SC2627 , the principle of vicarious liability is elaborately considered. Their Lordships have considered the liability of a motor vehicle owner when the servant discharges his act negligently and in the course of employment. The circumstances under which the master is liable are fully discussed in those decisions.

13. In the first decision reported in State of Maharashtra v. Kanchanmala Vijaysing Shirke, MANU/SC/0781/1995 : AIR1995SC2499 , their Lordships, in para 11, have said thus:

...A person who is a servant has always a personal independent sphere of life and at any particular time he may be acting in that sphere. In that situation, the master cannot be responsible for what he does. When the act of the servant causes injury to a third party the question is not answered by merely applying the test whether the act itself is one which the servant was ordered or forbidden to do. The employer has to shoulder the responsibility on a wider basis. In some situation *he becomes responsible to third parties for acts which he has expressly or implicitly forbidden the servant to do.*

(Emphasis supplied)

In that case, the employer, the owner of a jeep, had employed a permanent driver. But, at the time of accident, another person who was under influence of liquor, drove the same. In fact, that person who drove the vehicle had no licence. It was against the wishes of the employed driver, he took the vehicle. The allegation was that the person who drove the vehicle snatched away the keys from the driver and drove the vehicle and at that time the accident happened. While considering the same, their Lordships accepted the passage in Salmond's Law of Torts and some of the English decisions to come to the conclusion that owner of the vehicle is vicariously liable. Their Lordships said thus:

... In Salmond's Law of Torts, 20th Edn. at p. 458, it has been said:

'On the other hand, it has been held that a servant who is authorised to drive a motor vehicle, and who permits an unauthorised person to drive it in his place, may yet be acting within the scope of his employment. The act of permitting another to drive may be a mode, albeit an improper one, of doing the authorised work. The master may even be responsible if the servant impliedly, and not expressly, permits an unauthorised 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, at least if the driver retains notional control of the vehicle.'

In Halsbury's Laws of England, 4th Edn., Vol. 16, para 739, it has been stated:

'Where the act which the employee is expressly authorised to do is lawful, the employer is nevertheless responsible for the manner in which the employee executes his authority. If, therefore, the employee does the act in such a manner as to occasion injury to a third person, the employer cannot escape liability on the ground that he did not actually authorise the particular manner in which the act was done, or even on the ground that the employee was acting on his own behalf and not on that of his employer.'

In the case of London County .Council v. Cattermoles (Garages) Ltd. (1953) 2 AER 582 a workman was employed as a general garage hand, for moving cars by pushing them or giving guidance to the drivers. He was not competent to drive, had no licence, and had been forbidden to do so. He got into a stationary van, started the engine, drove the van and went on to the highway. On the highway he collided with the plaintiff's van. The employers were held liable. A person who is a servant has always a personal independent sphere of life and at any particular time he may be acting in that sphere. In that situation, the master cannot be responsible for what he does. When the act of the servant causes injury to a third party the question is not answered by merely applying the test whether the act itself is one which the servant was ordered or forbidden to do. The employer has to shoulder the responsibility on a wider basis. In some situation he becomes responsible to third parties for acts which he has expressly or implicitly forbidden the servant to do.

It was said in the case of Ilkiw v. Samuels 1958 ACJ 445:

'The driver of the vehicle, Waines, as I see it, was employed not only to drive, but also to be in charge of his vehicle in all circumstances during any such times as he was on duty. That means to say that, even when he was not himself sitting at the controls, he remained in charge of the lorry, and in charge as his employers' representative. His employers must remain liable for his negligence as long as the vehicle was being used in the course of their business. As I understand the authorities, the employers escape liability if, but only if, at the time of the negligent act, the vehicle was being used by the driver for the purpose of what has been called a 'frolic' of his own. That is not this case. Here, at the material time, this vehicle was in fact being used in the course of the defendant's business.'

It was further said at pp. 454-55:

'If, as in Ricketts' case (1915) 1 KB 644, and in the present case, the master puts the vehicle in the charge and control of his servant to be used for the purposes of the master's business, he thereby delegates to the servant his duty so to control it that it is driven with reasonable care while being used for that purpose, and an express prohibition on allowing any other person to drive it whilst being used for that purpose is no more than a direction as to the mode in which the servant shall perform the duty. It is a prohibition dealing with conduct within the sphere of employment.'

In respect of a contention that the driver to whom the vehicle had been entrusted for driving had no authority from the employer to delegate the driving of the vehicle to another person and because of that the employer cannot be made vicariously liable for the negligence of someone to whom he had purported to delegate the control of the vehicle, it was said at p. 455:

'The duty in tort of which he was in breach was, in my view, a duty delegated to him by the defendants under his contract of employment, and for that breach the defendants are vicariously liable notwithstanding that it resulted from *his breach of an express prohibition by the defendants against permitting any other person to drive, for that prohibition did not limit the sphere of his employment, but dealt with the conduct of Waines within that sphere.'*

It need not be pointed out that different considerations might arise if the servant or some stranger was using the vehicle for purposes other than the purpose of his master's business and the accident occurred while the vehicle was being used for that other purpose. But once it is found and established that vehicle was being used for the business of the employer, then the employer will be held vicariously liable even for the lapse, omission and negligence of his driver to whom the vehicle had been entrusted for being driven for the business of the employer.

In Staveley Iron & Chemical Co. Ltd. v. Jones, (1956) 1 AER 403 it was said that the legislation has in no way altered the standard of care which is required from workmen or employers or 'that the standard can differ according to whether the workman is being sued personally or his employer is being sued in respect of his acts or omissions in the course of his employment'.

(Emphasis supplied)

In the latter decision, the driver authorised the cleaner to drive the vehicle which met with an accident. Their Lordships said that the master cannot escape the liability so far as third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. It was the negligent act of the driver in the course of employment and, therefore, the owner was liable. Their Lordships followed the principle enunciated under the English law and reiterated in Hals-bury's Laws of England, 4th Edn., Vol. 16, para 739, wherein it was said that:

Where the act which the employee is expressly authorised to do is lawful, the employer is nevertheless responsible for the manner in which the employee executes his authority. If, therefore, the employee does the act in such a manner as to occasion injury to a third person, the employer cannot escape liability on the ground that he did not actually authorise the particular manner in which the act was done, or even on the ground that the employee was acting on his own behalf and not on that of his employer.

Their Lordships further went on to say thus:

In that connection reference can be made to the cases of London County Council v. Cattermoles (Garages) Ltd. (1953) 2 AER 582; Ilkiw v. Samuels 1958 ACJ 445 (CA, England); Staveley Iron & Chemical Co. Ltd. v. Jones (1956) 1 AER 403 and the case of Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343 (SC). The crucial test is whether the initial act of the employee was expressly authorised and lawful. Then the employer shall nevertheless be responsible for the manner in which the employees, that is, the driver and the respondent No. 4 executed the authority. This is necessary to ensure so that the injured third parties who are not directly involved or concerned with the nature of authority vested by the master in his servant are not deprived of getting compensation. If the dispute revolves around the mode or manner of execution of the authority of the master by the servant, the master cannot escape the liability so far third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. This aspect of the matter has been recently examined by a Bench of this Court of which one of us (N.P. Singh, J.) was a member, in the case of State of Maharashtra v. Kanchanmala Vijaysing Shirke, MANU/SC/0781/1995 : AIR1995SC2499 . From the facts of that case it shall appear that the jeep which caused the accident belonged to the State of Maharashtra, the appellant in that case. The regular driver of the jeep allowed respondent No. 4 of that appeal who was a clerk in the Department of the Stale Government to drive the jeep when the accident took place. The High Court in that case recorded a finding that respondent No. 4 of that appeal, was driving the jeep while on official duty. This court held that a master is liable even for acts which he had not authorised provided they are so connected with the acts which he had authorised. If the act of the servant, on the other hand, is not even remotely connected within the scope of the employment and is an independent act, the master shall not be responsible because the servant is not acting in the course of his employment but has gone outside.

It was said in the aforesaid case of State of Maharashtra v. Kanchanmala Vijaysing Shirke, MANU/SC/0781/1995 : AIR1995SC2499 :

... The High Court has also found that the respondent who was the clerk in the office of appellant No. 2 was driving the vehicle under the authority of the driver who was in charge of the said vehicle and as the driver had consumed more liquor on that day he permitted the respondent to drive the vehicle that night. The facts of the present case disclose and demonstrate that an authorised act was being done in an unauthorised manner. The accident took place when the act authorised was being performed in a mode which may not be proper but nonetheless it was directly connected with 'in the course of employment'-it was not an independent act for a purpose or business which had no nexus or connection with the business of the State Government so as to absolve the appellant State from the liability.'

In the case of Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343 (SC), it was said:

' ... we would like to point out that the recent trend in law is to make the master liable for acts which do not strictly fall within the term 'in the course of the employment' as ordinarily understood. We have referred to Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt 1966 ACJ 89 (SC), where this Court accepted the law laid down by Lord Denning in Ormrod v. Crosville Motor Service Ltd., (1953) 2 AER 753 that the owner is not only liable for the negligence of the driver if that driver is his servant acting in the course of his employment but also when the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes. This extension has been accepted by this Court. The law as laid down by Lord Denning in Young v. Edward Box and Co. Ltd. (1951) 1 TLR 789, already referred to, i.e., the first question is to see whether the servant is liable and if the answer is yes, the second question is to see whether the employer must shoulder the servant's liability, has been uniformly accepted as stated in Salmond's Law of Torts, 15th Edn., p. 606 in Crown Proceedings Act, 1947 and approved by the House of Lords in Staveley Iron & Chemical Co. Ltd. v. Jones (1956) 1 AER 403 and I.C.I. Ltd. v. Shatwell, (1965) AC 656'.

In view of the aforesaid two decisions of the Supreme Court, I do not want to deal with any other case law, and the same is exhaustive. In this case, the school is bound to provide water to the school children, and one of the duties of the 'aya' (defendant No. 1) is to bring water to the school children. Instead of her doing that work, if she authorises some other person to do that, and during the course of that employment, the person so authorised suffers from any injury, her employer is also responsible for the same. The innocent school children cannot refuse to obey the direction given by the staff. They cannot discard the directions given by them. The school children in this case hail from a village, and it is evident that the practice of sending the school children to fetch water has been in vogue for a long time. That means, the school children were really employed, when staff are engaged for that purpose. In such a situation, if an injury is caused to one of the children in the course of such employment, it can only be said that the school authorities are also liable for the same. It was for the purpose of the school, water was being brought by plaintiff and naturally, the State is also vicariously liable for the injury sustained by the plaintiff. The State cannot disown its liability for the negligent acts of its servants. Even though such an argument was advanced, on going through the memorandum of appeal, I do not think the State has disowned its liability in any of the grounds. But, being a substantial question of law, I permitted learned Counsel for the appellants to advance arguments on that question.

14. Regarding the quantum of damages, a feeble argument was put forward that the quantum fixed by the court below was without any basis. I cannot agree with the said submission. Plaintiff, who is a young girl, has lost her right eye. In my opinion, it has to be compensated fully. The quantum awarded by court below is nearly Rs. 58,000. I do not think the same is without any basis.

15. In the result, the appeal is dismissed with costs.

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