Iqbal Kaur and Another Vs Chief of the Army Staff and Others

Court: Allahabad High Court

Date of Decision: May 26, 1978

Citation: (1978) ACJ 403

Hon'ble Judges: R.B. Misra, J; J.M.L. Sinha, J

Bench: Division Bench

Advocate: Gur Pratap Singh, for the Appellant; J.N. Tewai, for the Respondent

Final Decision: Allowed

Judgement

J.M.L. Sinha, J.
This appeal is directed against an order dated 30th of July, 1973, passed by Motor Accidents Claims Tribunal, Meerut.

2. The fact leading to this appeal can briefly be stated as under:

On 11th of November, 1970 at about 8 a.m. Mr. Jaswant Singh Dhillan, aged 50 years, a Transport Agent died in an accident with military truck

on the junction of Delhi-Baghpat Road at Meerut, Mrs. Iqbal Kaur and Km. Gorinderjit Kaur the widow and minor daughter respectively of

Jaswant Singh Dhillan deceased, filed a claim before the Claims Tribunal for Rs. 50,000/- as compensation for the loss suffered by them.

The allegation made by them in the claim petition briefly stated was that the accident took place as a result of the rash and negligent driving by

sepoy Ram Niwas, Respondent No. 4, who was driving the vehicle at the time of the accident. Besides sepoy Ram Niwas the Chief of Army Staff,

the Commandant A.S.C. Centre (North) and Sub-Area Commander, Meerut were impleaded as C.Ps. It appears at a later stage Union of India

was also impleaded.

3. The petition was opposed on behalf of the opposite parties. In the written statement filed by them it was not denied that the accident culminating

in the death of Jaswant Singh Dhillan took place with the military vehicle driven by sepoy Ram Niwas. It was, however, pleaded that the accident

took place as a result of the negligence of the deceased himself and not on account of the sepoy Ram Niwas. It was also pleaded that the petition

was not maintainable against the Chief of Army Staff, Respondent No. 1, the Commandant A.S.C. Centre (North), Respondent No. 2 and the

Sub-Area Commander Meerut, Respondent No 3 because the vehicle did not belong to anyone of them and further that the Union of India,

Respondent No. 5, was also not liable to pay any compensation because the vehicle was detailed for training of M.T. recruits and the driver of the

vehicle was performing a statutory duty when the accident took place. In regard to the quantum of compensation claimed by the claimants, the

Respondents pleaded that it was excessive.

4. The Claims Tribunal framed the following issues in the case.

1. Whether the accident took place due to rash and negligent driving of vehicle No. 43420 or whether the deceased himself dashed against the

rear wheel of the vehicle and was negligent?

2. Whether the petition is maintainable against O. Ps. 1 to 3, as alleged in para 26 of the written statement.

3. Whether the Union of India is not liable to pay any compensation because when the alleged accident took place, the vehicle was detailed for

training of M.T. recruits and the driver of the vehicle was performing a statutory duty?

4. To what compensation, if any, are the Applicants entitled from which of the opposite parties?

In answer to issue No. 1, the Claims Tribunal held that the military truck was not being driven rashly and negligently and the truck driver was not

responsible for the fatal accident. In answer to issue No. 2 the Claims Tribunal held that Respondent Nos. 1 to 3 were not liable for the

consequences of the fatal accident as the truck did not belong to any one of them but belonged to the Union of India. In answer to issue No. 3 the

Claims Tribunal held that, since Respondent No. 4 was performing the statutory duty in driving the truck at the time of the accident the Union of

India was not liable to give any compensation. In answer to issue No. 4 the Claims Tribunal held that, if the finding on issues No. 1 and 3 were not

in favour of the claimants, they would have been entitled to get a sum of Rs. 20,000/- as compensation.

5. In consequence of the findings on issues Nos. 1 to 3 the Claims Tribunal dismissed the claim for compensation and hence this appeal.

6. The first question that falls for consideration is whether the claimants succeeded in proving negligence on the part of Respondent No. 4, who

was driving the vehicle at the time of the accident.

7. The claimant examined Kartar Singh (P.W. 1) and Sher Singh (P.W. 2) in order to establish that fact. Kartar Singh deposed that on the date of

the occurrence he was going to his company situated near Baghpat Bus Station and that he then saw a military truck No. UD 43420 coming from

in front at a very high speed. Kartar Singh further deposed that all of a sudden the truck turned on the Baghpat Road as a result of which one

person who was moving on a cycle was knocked down by the front wheel thereof. According to him, he witnessed the accident from a distance of

about 30 or 40 paces. Sher Singh deposed that at the time of the accident he was present at a tea stall and that he saw the military truck coming at

a fast speed from the city side. He further deposed that the deceased was at that time going on a cycle along the left side of the road and that the

truck struck against him when it turned towards the Baghpat Road.

8. As opposed to the above, Respondent No. 4 only examined himself in that connection. He did not deny that he was driving the truck when the

accident took place. He, however, said that the truck was not being driven at a fast speed and that he had sounded the horn twice before he

turned the truck on the Baghpat road. According to him he came to know about the accident when he had covered a distance of about 25 paces

from the turning.

9. Now, it is worthy of notice that, while Kartar Singh and Sher Singh are independent witnesses, Ram Niwas, Respondent No. 4 (D.W 1) was an

interested witness for, obviously, he could not make a statement that he was driving the truck rashly and negligently. The evidence of Kartar Singh

and Sher Singh should therefore, be preferred over the testimony of Ram Niwas. The Claims Tribunal, however, refused to rely on the evidence of

Kartar Singh and Sher Singh, because, during their examination before the Military Court of Enquiry, they deposed that on reaching the place of

occurrence, they enquired from the crowd assembled there and came to know that Jaswant Singh cyclist had met an accident with a military

vehicle. On the basis of the statements made by Kartar Singh and Sher Singh before the Military Court of Enquiry, the Claims Tribunal held that in

all probability Kartar Singh and Sher Singh reached the place after the accident was over and did not see anything for themselves. There is more

than one reason for which this criticism does not appear to be justified.

10. The record of the Military Court of Enquiry, on which reliance was placed by the Claims Tribunal to disbelieve the evidence of Kartar Singh

and Sher Shingh, was filed by Ram Niwas, Respondent No. 4. That record does contain copies of the statements purporting to have been made

by Kartar Singh and Sher Singh before the Military Court of Enquiry. They are, however, not certified copies, Kartar Singh on being confronted

with the statement purporting to have been made before the Military Court of Enquiry denied to have stated what was contained therein. Sher

Singh, on being confronted with that statement first said that he did say before the Military Court of Enquiry that on enquiry from persons

assembled at the spot, he came to know that Jaswant Singh, a cyclist, had met an accident. He, however, added that he himself had seen the

accident. In the context of the aforesaid statements made by Kartar Singh and Sher Singh and particularly in view of the denial made by Kartar

Singh, it was necessary for the Respondents to have produced the original record and further to have examined the person who had recorded the

statements of Kartar Singh and Sher Singh. We do not think the Claims Tribunal could disbelieve the statement of Kartar Singh and Sher Singh

made before it on the basis of uncertified copies filed by Ram Niwas, Respondent No. 4.

11. Yet another thing worthy of notice is that on the first page of the record of the Military Court of Enquiry filed by Respondent No. 4 it is written:

Additional Summary of Evidence recorded by Capt. Dilbagh Singh.

In the context of the aforesaid endorsement existing on the top of the record of the Military Court of Enquiry, it cannot be said with certainty that

the statements contained in the record are the only statements made by Kartar Singh and Sher Singh. It is quite likely that Kartar Singh and Sher

Singh had been examined earlier as well and thereafter they were examined again and the additional summary of evidence filed by Respondent No.

4 only consists of statements made by Kartar Singh and Sher Singh for the second time.

12. Again, while Kartar Singh and Sher Singh during their examination before the Military Court of Enquiry did state that on reaching the place of

occurrence they asked the crowd assembled there and came to know that Jaswant Singh had met the accident with a truck. They did not say that

they did not themselves see any person being knocked down by the military truck. It is quite likely that Kartar Singh and Sher Singh first saw the

man being knocked down by the military truck and on reaching the place of occurrence they enquired of the people assembled there about the

identity of the person who was knocked down and the people assembled there told them about it. The record of their statement filed by

Respondent No. 4 being merely a summary of evidence, cannot belie the statements made by Kartar Singh and Sher Singh in Court that they had

also seen the accident for themselves.

13. The Claims Tribunal has also observed in its judgment that, according to the statement made by Kartar Singh and Sher Singh, the road was

clear so much so that they could see the truck from a distance of 30 to 40 yards. The Claims Tribunal has further observed that in that context it

does not appear probable that the driver of the truck was acting rashly and negligently and the accident was the result of his rash and negligent act.

We are once again unable to agree. All that can be inferred from the statements made by Kartar Singh and Sher Singh is that there was no heavy

traffic on the road. The fact that there was traffic on the road is borne out from the statement of Ram Niwas, Respondent No. 4 himself, who said

that from Begum Pul upto the place where the road for Baghpat meets there remains sufficient traffic. The fact that there was no heavy traffic on

the road could prompt Respondent No. 4 to drive the truck with greater speed than was warranted which could result in the unfortunate accident

that culminated in the death of Jaswant Singh. The criticism made by the Claims Tribunal is therefore not well founded.

14. In the result, therefore, on the basis of the statements on oath made by Kartar Singh and Sher Singh we find that the Claimants succeeded in

proving that Respondent No. 4 was driving the truck rashly and negligently and it was as a result thereof that the accident took place.

15. The second question that falls for consideration is whether Respondent No. 5 could be held liable for the damages suffered by the claimants, It

was urged by the learned Standing Counsel before us, as was also done before the Claims Tribunal, that the act of Respondent No. 4 in driving the

vehicle at the time of the accident fell within the sovereign powers of the State and consequently, Respondent No. 5 could not be held liable for

any damage resulting out of the accident. We have given our careful thought to the contention raised, but we regret our inability to accept this

argument.

16. It is true that the State cannot be held liable for damages for any act done in exercise of its sovereign powers. Every act of a government

servant cannot, however, constitute an act done in the exercise of sovereign power. In the instant case Respondent No. 4 was going with the truck

for imparting training in motor driving to new recruits. We do not think that that can constitute an act in exercise of sovereign power. In the case of

Union of India Vs. Jasso and Others, , an accident took place by a military truck when it was transporting coal to General Headquarters at Simla.

The act was being done by the driver of the vehicle in discharge of his duties. One of the contentions raised before the Full Bench was that the

Union of India was not liable for any damages, the act having been committed during the performance of sovereign powers. The full Bench after

taking into consideration a number of decisions rejected the contention with the following observation (at p. 318):

Applying this test to the present case it is difficult to see how it can possibly be held that such a routine task as the driving of a truck loaded with

coal from some depot or store to the General Head quarters'' building at Simla presumably for the purpose of heating the rooms, is something done

in exercise of a sovereign power, since such a thing could obviously be done by a private person.

This question also arose in the case of Union of India v. Sugrabai 1968 A.C.J. 252. In that case also an accident took place with a military vehicle

as a result of which one Abdul Majid died. His wife and children filed a pauper suit. The plea of sovereign power of the State was raised in that

case also and rejected with the following observations (at p. 254):

The principles which determine the immunity of the State in respect of the torts committed by its servants during the course of their duty can now

be taken as well settled. The extent of the immunity of the State is the same as the extent to which the East India Company was immuned from

liability for similar torts committed by its employee while performing a duty which amounted to the exercise of a sovereign power delegated to him.

In other cases the vicarious liability of the East India Company was the same as the liability of an ordinary employer. It follows that the Union of

India would be liable for the tort of Defendant No. 1 unless it is found that Defendant No. 1, while driving the truck from the Military workshop to

the School of Artillery, was doing a duty in discharge of a sovereign power delegated to him.

17. In the case of Shyam Sunder v. State of Rajasthan 1974 A.C.J. 296, Navneetlal, an Executive Engineer was going by a Government truck

from Bhilwara to Banswara in connection with famine relief work undertaken by the Government. The engine of the truck caught fire. Navneetlal

jumped out of the truck. While doing so, Navneetlal struck against a stone lying by the side of the road and died instantaneously. The widow of

Navneetlal filed a suit against the State of Rajasthan for damages. One of the contentions raised in the case was that the accident took place when

the State was engaged in performing functions pertaining to its character as sovereign and consequently the State was not liable for any damage.

This contention was turned down with the following observation (at p. 300):

We are of the view that, as the law stands today, it is not possible to say that famine relief work is a sovereign function of the state as it has been

traditionally understood. It is a work which can be and is being undertaken by private individuals. There is nothing peculiar about it so that it might

be predicated that the State alone canl egitimately undertake the work.

In view of what has been stated above, the contention raised by the learned Standing Counsel that the Union of India, Respondent No. 5 is not

liable for any damages cannot be accepted.

18. As already stated earlier, the court below has held that Respondents Nos. 1 to 3 are not liable for the damages as the vehicle with which the

accident took place did not belong to any one of them. That finding has not been assailed before us. In view of our conclusion recorded earlier,

that the accident took place as a result of the negligence on the part of Respondent No. 4 and further in view of the fact that the truck belonged to

Respondent No. 5, it is Respondents Nos. 4 and 5 who shall be liable for damages.

19. The only question that remains for consideration is as to what amount of damages are the claimants entitled. Smt. Iqbal Kaur, claimant, (P.W.

3) stated that deceased jaswant Singh was working as an agent in R.T.O. and used to earn Rs. 450/- or Rs. 500/- per month from the Khatauli

Motor Union. In cross-examination she conceded that she was not aware if any accounts were maintained in the office of the Union regarding the

remuneration paid to her husband and that she had not summoned any papers. Since the statement made by Smt. Iqbal Kaur regarding the monthly

income of her husband was not supported by any document, the Tribunal held that the deceased Jaswant Singh was probably not earning more

than Rs. 250/-per mensem. The Claims Tribunal has further held that the deceased must have been spending about one-third of his earning on

himself. In other words, according to the Claims Tribunal, the deceased contributed about Rs. 160/- to his family. The deceased was about 50

years of age at the time of accident. The Claims Tribunal has held that he would have been an earning member for another ten years. On that basis

the Claims Tribunal has held that the Claimants can be entitled to a sum of Rs. 20,000/- only. In our opinion the probable monthly income assessed

by the Claims Tribunal errs on the lower side.

According to the statement on oath made by Smt. Iqbal Kaur, besides herself the deceased left behind one daughter who was aged about 16 or

17 years. She also deposed that her daughter was reading in Raghunath Girls College in Intermediate second year and that she used to go to the

College in a rikshaw for which she paid Rs. 10/- per month. She also stated that she paid Rs. 13/- towards tuition fee of her daughter. In view of

that statement made by Smt. Iqbal Kaur, it appears that the deceased must have been earning more than Rs. 250/- per month, otherwise he could

not have incurred all that expenditure. Since, however, the Claims Tribunal did not make any deduction towards the lump sum payment, we do not

consider it necessary to interfere with the finding recorded by the Claims Tribunal regarding the probable income and we agree that the claimants

should be entitled to get Rs. 20,000/- as compensation to be shared half and half between them.

20. According to Section 110-CC, where any court allows a claim for compensation, such court may direct that in addition to the amount of

compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claims as it may specify in

this behalf. We accordingly direct that the claimants shall also get simple interest on the amount of compensation awarded to them from the date on

which the claim petition was filed viz. 3rd May, 1971 to the date of the payment thereof.

21. The appeal is, accordingly, allowed the judgment and degree passed by the Claims Tribunal are set aside and it is held that the claimants shall

get Rs. 20,000/- as damages from Respondents Nos. 4 and 5 together with simple interest at the rate of 6% per annum from 3rd of May, 1971

upto the date of the payment and the cost of both the Courts. This amount shall be shared half and half between the two claimants.