Lalremsiami and Another Vs Principal Chief Conservator of Forest and Others

MAC Appeal No. 5 of 2012

Court: Gauhati High Court (Aizawl Bench)

Date of Decision: Dec. 14, 2012

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 140, 166#Penal Code, 1860 (IPC) â€" Section 279, 304(A), 304A, 427, 447

Citation: (2013) 4 GLT 227

Hon'ble Judges: Prasanta Kumar Saikia, J

Bench: Single Bench

Advocate: M. Zothankhuma, Mr. Lalfakawma, Ms. D. Lalrinchhani and Ms. Nancy Lalruatkimi, for the Appellant; B. Lalramenga, for the Respondent

Final Decision: Dismissed

Judgement

Prasanta Kumar Saikia, J.
This appeal is directed against the award dated 21.11.2011 passed by learned MAC Tribunal, Aizawl in

MACT Case No. 36/2008 refusing the claimants therein to grant the award, claimed on an in application, filed u/s 166 of the Motor Vehicle Act

of 1988 (in short "the Act") on holding that claimants could not prove that the servant of the state respondents committed the accident in question

in the course of employment of public servants. Being aggrieved by and dissatisfied with such an award, appellants/claimants preferred this appeal

citing several infirmities in the award dated 21.11.2011 rendered by learned Tribunal in MACT Case No. 36/2008.

2. Heard Mr. M. Zothankhuma, Sr. Advocate, assisted by learned the counsel Mr. Lalfakawma, Ms. D. Lalrinchhani and Ms. Nancy Lalruatkimi,

all appearing for and on behalf of appellants. Also heard Mr. B. Lalramenga, learned counsel for respondents No. 1, 2 & 3.

3. The brief facts necessary for disposal of the present appeal are that on 31.07.2004, al function under the caption ""Green Mizoram Day"" was

organized at Zemabawk, Aizawl. The said function was attended to by Chief Minister, Mizoram as the Chief Guest The meeting was attended to

by one Mr. Liankhama, a Government servant in the Department of Environment & Forest, Mizoram and he came there in the vehicle which

department had allotted to him. He was, however, accompanied by his daughter Lalhlimpuii, since deceased. The vehicle was driven by on Mr.

P.C. Lalrintluanga, a driver on contract basis working under the department aforesaid.

4. On getting down from the vehicle at Zemabawk, Mr. Liankhama instructed his driver to take his daughter in his allotted vehicle to his farm,

situated near Tuirial Airfield runway since his daughter wanted to plant some seedlings in the farm aforesaid. Unfortunately, on the way back, the

said vehicle met with an accident near the Tuirial Airfield runway while it was driven by Mr. Lalrintluanga.

5. Smt. Lalhlimpuii, the daughter of Mr. Liankhama sustained serious wounds on her person for which she was taken to Greenwood Hospital but

she succumbed to her injuries in hospital sometime later. Owing to such accident, a case was filed with Police at Bawngkawn P.S. which was

registered as Bawngkawn P.S Case No. 555/04 under Sections 279 /304A /427 IPC following which the driver of the vehicle bearing No. MZ-

01-4791 was arrested.

6. During the course of investigation, police examined the witnesses, acquainted with the facts and circumstances of the case. It also suspected that

some mechanical defects might have occasioned the accident in question since the MVI Report reveals that the said accident occurred due to ""the

rear left wheel fell off from the axle causing the vehicle to rollover several times"".

7. In due course, the investigating officer submitted offence report u/s 279 /304A /447 IPC against the accused person, namely, P.C. Lalrintluanga

seeking his trial on the allegations aforementioned. The Court, thereafter, summoned the accused person. He entered appearance and on being,

explained and read over the accusations, leveled against him, he pleaded guilty to the allegations so made. Accordingly the driver was held guilty of

offence u/s 279 /304A /427 IPC and was sentenced to undergo imprisonment for a day and to pay a fine of Rs. 1000/- in default S.I. for a month.

8. Subsequently, on 13.5.2008, the present appellants, through their next friend, their grandmother, had preferred an MACT Case vide MACT

Case No. 36708, before the Motor Accident Claims Tribunal, Aizawl u/s 166 of the MV Act against the respondent No. 1 claiming, amongst

other things, such compensation as is permissible under the law.

9. Notice on being served upon the respondent, he entered appearance and contested the case having filed written statements. It has been

contended that the claim application is not maintainable, that there is no cause of action that it is barred by principle of limitation, estoppel, waiver

and acquiescence and that same is also bad for non-rejoinder of necessary party.

10. Their further case was that when the accident took place, the driver of vehicle was plying the same not in discharge of his duties for which he

was employed or for any purpose, connected therewith. Rather he plied the vehicle for transacting the private affairs of Government servant to

whom the aforesaid vehicle was allotted or for some other members of his family.

11. It was also contended that at the time relevant, the deceased was working as a teacher on contract basis at a salary of Rs. 4000/- pm and as

such, amount, claimed as compensation, was unreasonably high and as such, same cannot be awarded under any circumstances, whatsoever. The

opposite party therefore, urged the Tribunal to dismiss the proceeding.

12. Upon the pleadings of the parties the learned Tribunal framed the following points for determination:--

(1) Whether the claim application is maintainable or not;

(2) Whether there was fault on the part of driver or owner of the vehicle involved in this case and

(3) Whether claimants are entitled to compensation and if so, who is liable to pay and to what extent.

13. Both sides adduced the evidence of two witnesses each. The claimants also submitted a number of documents in support of their claims. On

conclusion of the trial and on hearing the arguments, advanced by the parties, Ld. Presiding Officer, MACT, Aizawl answered all those issues in

favor of the claimants and vide its award dated 20.4.2010 granted Rs. 7,54,000/- as being compensation with an interest thereon @ 9% per

annum till full and final realization of the same.

14. However, the Award, so passed in MACT Case No. 36/2008 was challenged in appeal before this Court. This Court on hearing the parties

set aside and quashed the award on holding that said proceeding was bad for non joinder of necessary party, State of Mizoram being such a party

and remanded the case to the Tribunal for passing necessary order afresh after impleading the State of Mizoram as respondent in the aforesaid

MACT Case.

15. The Tribunal on receipt of the case on remand impleaded the State of Mizoram as a party and after hearing all the parties passed the award as

aforesaid on 21.11.2011. It is that award which has been assailed in this present appeal citing several serious infirmities in the award under

challenge.

16. I have heard the learned counsel for the parties. Opening up argument, learned counsel for the appellants has contended that the judgment,

rendered in MACT 36/08 on 21.11.2011 is unsustainable in law since the Tribunal could not appreciate the evidence before it in proper

perspective and such wrong appreciation of facts on record caused it to arrive a finding which is absolutely without any basis and as such

unsustainable in law.

17. It also contends that the award is also liable to be set aside for some other reasons as well, such as, (i) the Tribunal failed to appreciate the fact

that the negligence on the part of the driver occasioned the accident in question and at the time, relevant, he was driving the vehicle in the course of

his employment. This clearly shows that State respondents, being the employer of the driver, aforesaid, were vicariously liable for the negligent act

on the part of its employee.

18. Further case of the appellants was that the Office Memorandum No. F.15017/191-GAD/VOL-1 dated 27.2.2011 allows a Government

employee to use the vehicle allotted to such officer even for private purpose, off course, subject to the conditions that (i) vehicle must be plied

within the Aizawl station area; (ii) such vehicle can be used for travelling upto 250 km in a month and (iii) the allottee officer must pay Rs. 500/-

per month for use of official vehicle for his private purposes.

19. Thus, even one assumes for the sake of argument for a moment that at the time, relevant, the vehicle was used in attending some private affairs

of the Government servant yet the Office Memorandum dated 27.2.2011 makes such trip to Tuirial Airfield, a trip, in the course of his employment

and in that view of the matter, the appellants were entitled to claim compensation from the State respondents since both the father of the deceased

as well as his driver are the officer/staff of the State respondents.

20. However learned Tribunal on wrong appreciation of facts on record and on wrong interpretation of Office Memorandum as well as the laws

which hold the field in question came to the finding that the driver aforesaid committed the accident while he was, not in the course of employment

but it in the course of attending the private purposes of officer whom he was attached with. On the aforesaid considerations, the learned Tribunal

refused to give the appellants compensation, they have prayed for and all those make the judgment impugned unsustainable in law.

21. On the other hand learned counsel for State respondents has submitted that on the materials on record, perhaps one cannot differ with the

findings of the learned Tribunal to the effect that at the time in question, the driver of the vehicle bearing No. MZ-01-4719 was not in the course of

his employment, and that, at such a crucial part of time, he was engaged in execution of private affairs of the deceased as well as her father. They,

therefore, urge this Court to dismiss the appeal.

22. I have given my anxious consideration to the arguments advanced by learned counsel for the parties having regard to materials on record. But

before we proceed further, I find it necessary to notice briefly the relevant aspects of law of torts vis-Ã¯Â¿Â½-vis liability of an owner of a car for the

acts of his driver. In that connection, we may profitably peruse the decision of the Hon''ble Supreme Court in the case of Sitaram Motilal Kalal Vs.

Santanuprasad Jaishankar Bhatt, .

23. The Hon''ble Supreme Court in the case of Sitaram Motilal Kalal (supra) takes notice of the principles which decides the liability of an owner

of a car for the act of his driver. They are as follows:--

(8) The general principle is well settled and it is neatly given by Pearson, L.J., in Norton v. Canadian Pacific Steamships Ltd., 1961-2 All ER 785

at p 790 thus.

The owner of a car, when he takes or sends it on a journey for his own purposes, owes a duty of care to other road users, and it any of them

suffers damage from negligent driving of the car, whether by the owner himself or by an agent to whom he had delegated the driving, the owner is

liable.

The limitation on this principle has been succinctly stated by Cockburn, CJ, in Storey v. Ashton, (1869) 4 QB 476 at p 479 thus.

The true rule is that the master is only responsible so long as the servant can be said to be doing the act, in the doing of which he is guilty of

negligence, in the Course of his employment as servant.

24. In the same judgment, vicarious liability of the master for the acts of his servant has been explained in the following manner:--

The law, is settled master is vicariously liable for the act office servant acting in the course of his employment. Unless the act is done in the course

of employment, the servant''s act does not make employer liable. In other words, for master''s liability arises, the act must be wrongful act

authorized by the master or a wrongful unauthorized mode of doing some act authorized by the driver. The driver of a car taking the car on the

master''s business makes him victoriously liable if he commits an accident. But it is equally well settle that if the servant, at the time of accident, is

not acting with the course of employment but is doing something for himself, the master, is not liable.

25. Hon''ble Supreme Court in the same judgment, on the point of vicarious liability of the master, quoted with approval, the decision rendered in

the case of Britt Vs. Galmoye and Nevill reported in (1928) 44 TLR 294 in the following manner:--

(16) In Britt v. Galmoye and Nevill, (1928) 44 TLR 294, the first defendant, who had the 2nd defendant in his employment as a van driver, lent

him his private car after the day''s work was finished to take friends to a theatre and the 2nd defendant by his negligent driving injured the plaintiff.

It was held that the journey was not on the master''s business and the master was not in control and, therefore, he was not liable for the servant''s

act The principle of this decision is that a owner of a car will not be liable for the accident caused by his employee if it was caused outside the

master''s employment.

26. A careful perusal of the above principles reveals that the scope of employment of a servant need not always be viewed narrowly but essential

element that wrong must be committed by the servant during the course of employment i.e. in doing master business must always be present

Therefore a master is not always responsible for negligence or other wrongful act of his servant simply because it is committed at a time when the

servant was engaged on master''s business. What is important is that it must be committed during the course of business so as to form part of it,

and not actually coincidence in time with it.

27. The law which holds the field as far as vicarious liability is concerned having been discussed as before, I find it necessary to look into the

evidence on record to see how far materials on record make out the claims brought against the State respondents. On the perusal of evidence on

record, I have found that Mr. P.C. Lalrintluanga, a driver on contract basis, was attached to Mr. P. Liankhama, the father of the deceased. I have

also found that opposite party No. 1-3, in MACT Case No. 36/2008 are the employers both of Mr. P. Liankhama as well as Mr. P.C.

Lalrintluanga.

28. Being so, since the proceeding in question is a proceeding u/s 166 the Act, unless it is shown that the driver was negligent in attending his duty

which occasioned the accident which extinguished the life of a lady in her early thirties and unless it is shown that accident arouse during and in the

course of employment of the driver aforesaid, the appellants cannot validly make any claim to get compensation from the State respondents. To

put it slightly differently, in order to saddle the State respondents with the responsibilities arising out of wrong, committed by its servant, it needs to

be established that when such wrong was committed, public servant was executing the duty for which he was employed.

29. Another factor that deserves discussion here is whether the driver of the vehicle bearing No. MZ-01-4791 was negligent in driving the vehicle

which ultimately occasioned the accident causing the death of mother of the claimants on 31.07.2004. In this connection, it may be stated that the

driver being examined as opposite party No. 2 in MACT Case No. 36/2008 has stated that at the time relevant, the vehicle was driven not by him

but by the daughter of Mr. P. Liankhama against whom the vehicle'' aforesaid was allotted.

30. But then, he admitted that he was convicted of offence under Sections 279 /304(A) /427 IPC and that too on his own admission. The

judgment, so passed, convicting and punishing him has never been assailed in any forum whatsoever at any point of time. In my opinion, the

judgment aforesaid has therefore attained finality and it has established once for all that vehicle which met an accident near Tuirial Airfield on

31.07.2004 was driven by none other than one Mr. P.C. Lalrintluanga. Being so, now, he cannot be allowed to resile from his earlier stance to

shift the blame to the deceased.

31. It is in those legal backdrops, I propose to consider the relevant part of evidence of witnesses. Evidently and admittedly, the most important

witness on the part of the claimants is Mr. P. Liankhama, the father of the deceased. According to him, during the time, under consideration, he

was working as DFO in the Department of Environment & Forests. While he was in service, the department had allotted him a vehicle to attend his

official duties. So also to attend his private affairs as per the terms and conditions, specified in Office Memorandum dated 27.02.2001.

32. On 31.07.2004, he went to Zemabawk, Aizawl to attend an official function under the caption ""Green Mizoram Day"". He went to such place

by his vehicle. His daughter, the deceased, too accompanied him to such place. However, after getting down from his vehicle at Zemabawk, he

instructed his driver to take his daughter to his farm near the Tuirial Airfield since his daughter wanted to plant some seedlings there. However,

while traveling to such place, the vehicle met with an accident and his daughter got injured and killed. In his re-examination, he has further stated

that the vehicle was driven by the driver himself

33. PW1 Smt. Lalnunmawii is the grandmother of the claimants and who filed the MACT case in her capacity as next friend of her granddaughters.

According to her, on 31.07.2004, her daughter died in a motor accident near abandoned Tuirial Airfield for which Police registered a case against

the driver and was subsequently convicted of offences under Sections 279 /304(A) /427 IPC on the basis of his own admission. She deposes that

when she died on 31.07.2004, she was working as teacher drawing a salary of Rs. 5500/- pm only.

34. She also produced some documents which were proved as Ext.1-Ext.12. In her cross examination, she has admitted that on the day of

accident, the vehicle allotted to the father of the deceased was not detailed to attend some duty near the abandoned Tuirial Airfield. In her re-

examination, she however, clarified that she did not know if there was any derailment order requiring the driver of ill-fated vehicle to take the same

to the place where accident occurred on the day in question.

35. Mr. P.C. Lalrintluanga, the driver of the vehicle, was examined as witness No. 2 from the side of the opposite party. According to him, on the

fateful day, he took deceased, her brother and their father to the Zemabawk, Aizawl where an official function was conducted on that day.

However, at Zemabawk he dropped off the father of the deceased and thereafter, he took the deceased and his brother to their farm, situated near

abandoned Tuirial Airfield.

36. It is also in his evidence that at the relevant time, the deceased drove the vehicle and the accident under consideration occurred when the

deceased was trying to negotiate a depression which comes in her way. In his cross examination, he has, however, admitted that he was convicted

of offences under Sections 279 /304(A) /427 IPC and was sentenced to punishment as well.

37. Witness No. 1 for the opposite party was one Shri. Lalduhthanga. He deposes that the father of the deceased was DFO in the Department of

Forests in the Environment & Forests Department. On 31.07.2004 at abandoned Tuirial Airfield, daughter of Mr. P. Liahkhama met an accident

for which she died same day. The vehicle, involved, in the accident, was the vehicle allotted to the father of the deceased as an incidence of

employment.

38. In his cross examination, he admitted that the owner of the vehicle was Principal Chief Conservator of Forests, Government of Mizoram and

the driver was the employee of the aforesaid department Now, let us see how far such evidence makes out the claim of the appellants that at the

time of incident, the driver was discharging his duty in the course of employment.

39. A careful perusal of the evidence on record reveals that at the time relevant, one Mr. P.C. Lalrintluanga was the driver of the vehicle, allotted

to the father of the deceased, that the deceased was the daughter of Mr. P. Liankhama who worked as DFO in the Department of Environment &

Forests when incident in question took place, that on the day of incident, he went to Zemabawk, Aizawl to attend an official function, that his

daughter too accompanied him upto Zemabawk, that all of them travelled to such place in a vehicle allotted to him and that at Zemabawk, he got

down from his official vehicle.

40. The evidence on record further reveals that the deceased went to their farm near Tuirial Airfield in the official vehicle allotted to her father, that

she went to such place to plant some seedlings in their farm, that the official vehicle in which they were travelling met with an accident near Tuirial

Airfield and that the daughter of Mr. P. Liankhama, the officer to whom such vehicle was allotted, died same day in hospital for sustaining wounds

in the incident aforesaid. The parties were in agreement on facts up to this far.

41. However, on further perusal of the record, I have also found that though the exact purpose for which the deceased visited a place near

abandoned Tuirial Airfield remains unclear yet there is no doubt whatsoever that such journey was performed not in connection with official duty

attached or entrusted to driver of the father of the deceased, admittedly a Government officer on the day of incident. His own admission that he

sent his daughter in his official vehicle to his farm near Tuirial Airfield to plant some seedlings there only confirms that the visit was absolutely not in

connection with the official duty or any duty ancillary thereto.

42. The above revelations unfortunately very vividly demonstrate that while the accident took place on the day in question which extinguished the

live of a mother of the claimants, the driver was not driving the official vehicle allotted to the father of the deceased in the course of his employment.

Quite contrary to it, it was driven to execute some private affairs-of the deceased as well as her father. Being so, respondent No. 1, 2 & 3, being

the employers/masters of the driver of vehicle cannot be saddled with the liability arising out of negligent conduct on the part of the driver aforesaid

vehicle.

43. Referring to the Office Memorandum dated 27.02.2001, issued by the Secretary to the Government of Mizoram, General Administration

Department, it has been contended that the officer concerned was allowed to use his official vehicle even for private purpose on fulfillment of

certain conditions which were already referred to here-in-before.

44. Therefore, it has been argued that even if the driver of the vehicle concerned caused the accident negligently in the course of execution of

private affairs of the father of the deceased, who was admittedly Government servant, State respondents cannot escape being found responsible

for the lapses on the part of its employee which ultimately occasioned the death of the daughter of the deceased, more so, since there is absolutely

nothing on record to show that conditions, enumerated in the Office Memorandum dated 27.02.2001 for the use of official vehicle for private

purposes were violated in any manner, whatsoever.

45. I have very carefully considered the above submissions advanced from the side of the learned counsel for the claimants. On reading the Office

Memorandum above in between the lines, I have found that such memorandum allows a Government servant to use an official vehicle, allotted to

him, even for his private purposes on fulfillment of certain conditions enumerated therein and to that extent, Office Memorandum above, prevents

private trip in such official vehicle from becoming illegal or irregular.

46. But then, by no stretch of imagination, it can be concluded that since there was no violation of the conditions, so enumerated in the Office

Memorandum above, the later, makes a private trip in such official vehicle with the Government driver in the wheel, a trip, done in the course of

employment of such driver. Situations being such, Office Memorandum dated 27.02.2001, in my considered opinion, could render no help in

showing that the all eventful trip on 31.07.2004 was conducted by the driver, attached to father of the deceased, in course of his employment

47. Being so, I am quite in agreement with the learned Tribunal that the trip which the deceased and the driver undertook to a place near

abandoned Tuirial Airfield on 31.07.2004 and which abruptly cut short the life of the daughter of Mr. P. Liankhama was out and out a private trip,

no way connected with the purposes for which the driver aforesaid was employed by State respondents and as such, the State respondents cannot

be saddled with the responsibility arising out of wrong committed by its servant even if he committed such wrong negligently.

48. Learned counsel for the respondent has, however, questioned the award of the Tribunal contending that the learned Tribunal which refused to

grant any relief to the claimants u/s 166 of the Act cannot legally give any relief to the claimants invoking the provisions u/s 140 of the Act. Such an

argument is found without any basis.

49. This is because of the fact that ""No fault liability"" as envisaged in Section 140 of the Act requires the owner of the vehicle to pay compensation

to the victims of vehicular accident at the scale fixed therein depending on the nature of the injuries to the victims and such amount needs to be paid

regardless of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made.

50. That being so, there cannot be an escape from the conclusion that the learned Tribunal having granted no fault liability u/s 140 of the Act in

favour of claimants with interest thereon at the rate of 9% payable from the date of filing of the claim petition committed no wrong whatsoever.

Rather in the Fact and circumstances of the proceeding in question, by granting such an amount, the Tribunal has furthered the purpose for which

such a beneficial and benevolent legislation was brought into existence.

51. In view of what I have discussed herein before and what have emerged therefrom, I am of the opinion that the findings of the learned Tribunal

that the State respondents cannot be held vicariously liable for the tortuous act of its servant cannot be faulted with. Consequently, this appeal

lacks of merit and is accordingly dismissed but however without costs. Return the LCR.