The President, Union of India, New Delhi and Others Vs Sadashiv Vinayak Vaikar and Another

Court: Bombay High Court

Date of Decision: Jan. 7, 1985

Acts Referred: Constitution of India, 1950 â€" Article 300

Citation: (1986) ACJ 767 : AIR 1985 Bom 345 : (1985) 87 BOMLR 243

Hon'ble Judges: V.V. Vaze, J

Bench: Single Bench

Advocate: N.D. Hombalkar, Asst. Govt. Pleader, for the Appellant; A.A. Agarwal, for V.B. Joshi, for the Respondent

Judgement

1. Military Crane No. 430143 having developed trouble, was being towed by a military tractor driven by defendant 4 Gurucharansing

Bhaktawarsingh Sikh, from Dapodi to Poona. The plaintiff Sadashiv Vaikar''s son Sham was also proceeding towards Poona from Fugewadi on

his bicycle. A narrow bridge called Harris Bridge was a mute witness to an accident between the cyclist Sham and the military tractor diver, and

according to the parents of the cyclist the military drivers were negligent in driving their vehicles as a result of which Sham was fatally knocked

down by the tractor and the Crane, Sadashiv Vaikar filed Special Civil Suit No. 32 of 1971 in the Court of the Civil Judge, Senior Division,

Poona, which decreed the claim of Rs. 10,000/- with interest. The Union of India, feeling aggrieved, has filed this appeal.

2. The first contention raised by the Union is that as the tractor as well as the crane belonging to the Defence Department were being driven on

military purposes by the Jawans of the Indian Army, the Union of India is not liable under the principles of sovereign immunity. Such an argument

has been traversed by the Supreme Court in State of The State of Rajasthan Vs. Mst. Vidhyawati and Another, , where the official jeep of the

Collector of the District brought from the workshop after repairs had knocked down a pedestrian and fatally injured him. It was held that the State

can be made vicariously liable for the tortious act, like any other employer, and the mere fact that the car was being maintained for the use of the

Collector, in the discharge of his official duties, is not sufficient to take the case out of the category of cases where vicarious liability of the

employer could arise even though the car was not being used at the time of the occurrence for any purpose of the State.

3. In the instant case the crane could have been towed away for the purposes of repairs by any other private agency and the function of towing

away like the function of driving a jeep back from the repair''s workshop cannot be said to bear the imprint of any sovereign function.

4. It is regrettable that in spite of the distress expressed by the Supreme Court in a later case viz. In Kasturilal Ralia Ram Jain Vs. State of Uttar

Pradesh, , that under our Constitution , citizen should have no remedy against the State in respect of a civil wrong : and in spite of the First Report

of the Setalvad Law Commission on the subject presented some three decades ago, no legislative action has been undertaken. The Crown''s

immunity from suit has been abrogated in Britain, New Zealand and Federal Australian jurisdiction, (See (U.K.) Police Act 1964 S. 48; (N.Z.)

Crown Proc. Act 1950 S. (illegible) (C''th) Austr. Federal Police Act S. 648; See ''The Law of Torts'' by John G. Fleming, Sixth Edition, page

346). An abortive attempt was made by the Government to introduce a bill on the subject sometime in 1965. Numerous exceptions carved out to

the liability of the State for torts committed by its servants decimated the bill to such an extend that no tears need be shed that the bill, already

bleeding copiously by these exceptions, was allowed to die its natural death. May be, Government had, valid reasons for not introducing a fresh

bill, and thought that such incidents being few and far between, quick relief can be granted ex gratia departmentally. But Government can, and

often do, give up technical pleas like limitation etc. in some cases and there is no reason why they should not do likewise in cases like the present

one by not pleading sovereign immunity and proceed to defend the action on merits.

5. Coming now to the question of negligence, the claimant has put in the box a private practitioner Dr. Kanitkar who was proceedings from

Dapodi to Chinchwad in his own car and as the tractor-crane combination as coming from the opposite direction he had enough opportunity to see

the accident. Dr. Kanitkar found that the crane driven by the tractor was a huge one and its hook was moving like a pendulum due to the torque

and movements of the towing tractor. He noticed that a boy was also coming to Kirki from Dapodi side and that the swinging hook of the crane

struck the bicyclist. As Dr. Kanitkar crossed the bridge he heard hue and cries from the people assembled which confirmed his worst fears that the

boy has been injured. Dr. Kanitkar found that the boy had died on the spot and as no useful purpose could be served by attending to him. Dr.

Kanitkar proceeded to his dispensary.

6. As against this version of Dr. Kanitkar, the Union has examined the defendant No. 4 the tractor driver, according to whom the cyclist was

coming from opposite direction an decided to take the wrong side and came in between the railing and the sides of the tractor. There appears to

be no earthly reason why a cyclist coming from opposite direction should at the spur of moment decide to cross the road and take a wrong side

knowing fully well that the huge tractor towing a crane will leave little room for him to negotiate.

7. The evidence of Dr. Kanitkar was challenged on the ground that he, like a good samaritan, should have attended to the deceased or reported

the matter to the police. No doubt this was a failing on the part of a good citizen and reflects the general apathy of the public in volunteering

information to the police. This failure, alone and by itself, does not discredit the testimony of Dr. Kanitkar who after discovering that the boy was

dead, thought it better to attend his daily routine of seeing the patients in his dispensary rather than visit the police station. In this view of the matter,

I find that the learned Judge was right in finding the driver of the tractor guilty of negligence.

8. As respects the quantum of damages, the respondents did not seriously canvass the same, and I find that the sum of Rs. 10,000/- awarded by

the trial Court to an aspiring gold-smith is rather on the low side.

9. In the result, the appeal fails and the same is dismissed with costs.

10. Appeal dismissed.