

(b) The parties through their counsel, who are represented before me, are directed to appear before the trial Court on the 27th day of August, 1984 for proceeding with the suit.

H.S.B.

Before J. M. Tandon, J.

RAJ KUMARI GOYAL,—*Petitioner*

versus

PUNJABI UNIVERSITY PATIALA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 480 of 1984

August 22, 1984

Constitution of India 1950—Article 14—Punjabi University Calendar, Chapter XXVI, Paragraph 2(iii)—Student standing first in the University Examination applying for re-evaluation of answer book—Marks reduced in re-evaluation and said student relegated to second position—Paragraph 2 of Chapter XXVI providing that the awards shall be made to the candidates obtaining first division only or to candidates obtaining the highest aggregate marks in the examination—Decision of Syndicate deciding that merit list prepared before re-evaluation be treated as final for purposes of University medals and scholarships—Such decision—Whether violates paragraph 2(iii) aforesaid—Said decision—Whether also violative of Article 14.

Held, that the object of the decision of the Syndicate to the effect that the University medal and scholarship be awarded on the basis of merit list prepared on declaration of result of original evaluation is to make the merit determined on the basis of the first re-evaluation incorporated in the declared result final and not to let it remain fluid till the re-evaluation result is declared which may come about after the admission in other classes are over. It may not be prudent to keep the merit fluid even for the purpose of admission to other class till the finalisation of the re-evaluation result. It is understood that a candidate who has not secured first division in the first evaluation incorporated in the declared result shall not be entitled to the award in terms of paragraph 2(iii) of Chapter XXVI of the Punjabi University Calendar. There is, therefore, no conflict between paragraph 2(iii) and the decision of the Syndicate aforesaid.

(Para 11).

Held, that the decision of the Syndicate has been taken by the competent authority with an object to make the merit list prepared

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before the re-evaluation process, final. As such the aforesaid decision does not suffer from the vice of arbitrariness and is, therefore, not violative of Article 14 of the Constitution, 1950.

(Para 13).

Amended Writ Petition under Articles 226/227 of the Constitution of India, praying that the record concerning the case of the petitioner may please be called and after a perusal of the same this Hon'ble Court may be pleased to:—

- (i) *issue a writ in the nature of Mandamus or any other writ, order or direction for directing the respondents No. 1 to 3 to rectify the result and to declare the petitioner having stood first and the respondent No. 4 as second in the M.A. Final (Part-II) Hindi Examination held in April, 1983;*
- (ii) *Strike down the Resolution/Decision (Annexure P/4);*
- (iii) *quash the admission of respondent No. 4 in M. Phil and to direct the authorities to admit the petitioner in M. Phil and also to award the Gold Medal to the petitioner;*
- (iv) *direct the respondent-authorities to grant all benefits to the petitioner to which a student getting first position is entitled to;*
- (v) *any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the present case.*
- (vi) *certified copies of Annexures P/1 to P/4 be dispensed with;*
- (vii) *Cost of the petition be awarded to the petitioner. It is further prayed that the award of Gold Medal to respondent No. 4 be stayed till the disposal of the present writ petition.*

J. R. Mittal with Pawan Bansal, for the Petitioner.
Kuldip Singh Bar-at-Law with Mr. M. M. Sharma Advocate.

JUDGMENT

J. M. Tandon, J.

(1) Raj Kumari Goel petitioner and Rakesh Kumar respondent appeared in M.A. final (Hindi) examination of the Punjabi University, Patiala in April, 1983. The result was declared in July, 1983.

The respondent secured first position with 496 marks and the petitioner second with 491 marks out of 800. The respondent applied for re-evaluation of his answer books and as a result thereof he was declared to have secured 483 marks instead of 496. According to the Punjabi University Rules, a topper in M.A. examination is entitled to be awarded a gold medal and admission in M.Phil against a reserved seat. The petitioner having failed to secure admission in M.Phil and gold medal, has filed the present writ praying *mandamus* that she be declared first in M.A. final (Hindi) examination held in April 11, 1983, and be given the resultant benefits.

(2) The Registrar, Punjabi University has averred in his return that in pursuance to the decision of the University Syndicate dated May 17, 1982, merit list prepared on the basis of first evaluation incorporated in the declared result is to be taken as final. He has further averred that Rakesh Kumar was admitted to M.Phil Class on the basis of University declared result and it happened before the re-evaluation result was announced. The petitioner could not be admitted to this class due to her lower merit as compared to the respondent. By the time the re-evaluation result was declared more than half of the first semester of M.Phil was over and at this stage no admission could be offered to any candidate, including the petitioner.

(3) The stand of Rakesh Kumar is that he took the risk of re-evaluation because of the University rules that original merit list will not undergo a change as a result thereof.

(4) On May 17, 1982, the Syndicate of the Punjabi University, Patiala, approved the following recommendation of the Academic Council:

"2.38 that from the examinations of 1982 the University medal and scholarship be awarded on the basis of the merit list prepared on declaration of result of original evaluation i.e. the merit list prepared before the re-evaluation process be treated as final".

(5) The merit in M.A. final in the context of decision dated May 17, 1982, is for all practical purposes limited to the topper. It is not disputed that Rakesh Kumar respondent secured admission in M.Phil Class against a seat reserved for the topper in M.A. Hindi final examination and that too before the re-evaluation result was announced. More than half of the first semester of M.Phil course was over by

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the time the re-evaluation result was declared. The petitioner could not be given admission in M.Phil Class after the declaration of evaluation result. The learned counsel for the petitioner, therefore conceded during arguments that the petitioner cannot justifiably claim the cancellation of the admission of Rakesh Kumar respondent in M.Phil Class at this stage.

(6) The contention of the learned counsel for the petitioner is that the decision of the Syndicate dated May 17, 1982, is illegal inasmuch as it runs counter to paragraph 2(iii) of Chapter XXVI of the Punjabi University Calendar (hereafter the Calendar) and is also unconstitutional being violative Article 14 of the Constitution. The argument proceeds that in view of the fact that the respondent has secured 483 marks on re-evaluation, the result is liable to be rectified in terms of the provisions contained in Chapter XXXVIII of the Calendar and further the petitioner should be given admission in M.Phil Class in 1984 on the basis of her result in 1983 examination.

(7) Chapter XXXVIII of the Calendar deals with the rectification of results and paragraph 3 hereof reads:

“If any mistake is discovered as a result of rechecking of an answer book (s) as provided in (2) above the Vice-Chancellor shall rectify the result. In such cases the fee and the inspection fee, if paid, shall be refunded”.

(8) It is obvious that the result declared on re-evaluation is not a mistake discovered as a result of re-checking in terms of paragraph 3. The provision contained in Chapter XXXVIII of the Calendar can hardly be made applicable to the instant case.

(9) The relevant part of paragraph 2 of Chapter XXVI of the Calendar reads:

The following rules shall apply to the awards:

- (i) All awards shall be made on the result of the annual examination only. No award is to be made on the result of Biannual or supplementary examination.

* * * *

(ii) Only such candidates shall be entitled to the award as pass the examination at the first attempt.

* * * *

(iii) All awards shall be made to the candidates obtaining first division only. In the case of an examination in which no division is designated, the award shall be made to the candidate obtaining the highest aggregate number of marks in the examination.

* * * *

(10) The contention of the learned counsel for the petitioner is that under paragraph 2(iii) reproduced above, the awards can be given to the candidates obtaining first division and a student having secured first division in the first evaluation incorporated in the declared result is placed in the second division on re-evaluation shall continue to be entitled to the award in terms of the decision dated May 17, 1982. In such a situation, the decision dated May 17, 1982, will run counter to the provision contained in paragraph 2(iii) of Chapter XXVI of the Calendar. The learned counsel for the University has argued that the Syndicate of the University was competent to take decision dated May 17, 1982, and there is no conflict between the two provisions. The contention of the learned counsel for the University must prevail.

(11) The object of the decision dated May 17, 1982, is to make the merit determined on the basis of first evaluation incorporated in the declared result final and not to let it remain fluid till the re-evaluation result is declared which may come about after the admission in other classes like M.Phil are over. It may not be prudent to keep the merit fluid even for the purpose of admission to other class till the finalisation of the re-evaluation result. It is to avoid this uncertainty that the University Syndicate took the decision dated May 17, 1982, according to which the merit of first evaluation incorporated in the declared result is final. It is understood that a candidate who has not secured first division in the first evaluation incorporated in the declared result shall not be entitled to the award in terms of paragraph 2(iii) of Chapter XXVI of the Calendar. There is thus no conflict between paragraph 2(iii) and decision dated May 17, 1982.

(12) The learned counsel for the petitioner has argued that the decision dated May 17, 1982, is arbitrary and thus violative Article 14 of the Constitution. The argument proceeds that in a rare case

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a topper in the final result may be placed in third division on re-evaluation but still he will get the benefit as topper in terms of the decision dated May 17, 1982. The contention is without merit.

(13) The decision dated May 17, 1982, has been taken by the competent authority (University Syndicate) with an object to make the merit list prepared before the re-evaluation process, final. The example cited by the learned counsel is too hypothetical and remote from reality. The decision dated May 17, 1982, does not suffer from the vice of arbitrariness and is, therefore, not violative Article 14 of the Constitution.

(14) In the result, the writ petition fails and is dismissed with no order as to costs.

H.S.B.

Before S. S. Sodhi, J.

TIRLOK SINGH,—Appellant

versus

KAILASH BHARTI AND OTHERS,—Respondents.

First Appeal from Order No. 439 of 1980.

September 10, 1984.

Motor Vehicles Act (IV of 1939)—Section 110-B—Accident between a motor-cycle and cycle leading to the death of the cyclist—Driver of the motor-cycle not owner thereof—Motor-cycle being driven without the knowledge or consent of the owner—Such motor-cycle not being driven wholly or partially for the purposes of the owner—Owner of the motor-cycle— Whether can be held to be vicariously liable for the accident.

Held, that the position in law is indeed well settled that mere ownership of a motor vehicle and permission by its owner to another to drive it would not render the owner vicariously liable for the damages recoverable from the driver for the accident caused by his negligence. The mere permission to drive the vehicle cannot by itself constitute the driver the agent of the person who grants permission or who has the right either by way of ownership or as a bailee to control the vehicle. In order to become liable for the driving of the vehicle, the owner or the bailee of the vehicle who has