APPELLATE CIVIL

Before R. S. Sarkaria, J.

versus

V. K. KALIA,—*Respondent.*

F.A.O. 47 of 1967

August 28, 1968

Motor Vehicles Act (IV of 1939)—Ss. 110, 110-A, 110-B, 110-C and 121—Award of compensation under—Proof of negligence—Whether essential—Law of Torts—Doctrine of "Absolute Liability"—Meaning and scope of—Application of the doctrine—Duties of the Courts—Stated—Acts of the claimant and his driver amounting to an offence—Such claimant—Whether entitled to compensation.

Held, that there is nothing either in Sections 110, 110-A, 110-B or 110-C of the Motor Vehicles Act, which says that compensation can be awarded by the Claims Tribunal only when negligence on the part of the driver of the vehicle concerned is established. These provisions, however, do not lay down any criterion for awarding compensation. They merely substitute the Motor Accidents Claims Tribunal for the Civil Courts, for adjudicating claims to compensation in respect of accidents, involving death of or bodily injury to persons, arising out of the use of motor vehicles. They do not deal with the question as to who is to be held liable and in what circumstances, if any injury results from an accident. For fixing liability, in the absence of any specific statutory provision, one has to go back to the law of torts, according to which, generally speaking, negligence in causing the accident is essential to hold the negligent person liable. (Para 8)

Held, that "absolute liability" which means liability without any fault or negligence on the part of the respondent, is exceptional under the common law, the general rule being that a person is liable only for the injury or harm directly flowing from his intention or negligence, and not for any harm resulting from an unavoidable accident. The rule of absolute liability has grown in modern times. An extension of this rule casts vicarious liability on employers towards their employees. (Para 9)

Held, that in applying the doctrine of absolute liability, the Courts have to perfom a delicate task. They have to give a new look to the old principles in the light of the present-day circumstances. They have to adapt the old principles to the modern world. If the old principles are to live and not to become flintfossils of time, they must be constantly renovated, moulded and attuned to the changing social conditions. The Courts play a limited role in this process by placing, what is called a dynamic interpretation on

principles which carry behind them the sanction of tradition and precedent. They cannot, however, in the absence of any statutory provision, sanctioning that course, cut themselves completely adrift from their past moorings, and arrogate to themselves the functions of the Legislature, introducing entirely new principles, radically differing from or conflicting with the fundamental principles of Common Law that have evolved through the centuries. (Para 10)

Held, that the act of a driver in driving a dangerous and un-safe vehicle on a rainy day with its unserviceable tyres and also the act of claimant in allowing his subordinate driver to drive the vehicle on that day amount to the commission of an offence by the claimant as well as the driver under section 121 of the Act. Thus the claimant and the driver both committing a wrongful act which is interdicted as an offence, the claimant cannot be compensated for a harm flowing from his own wrongful act or negligence. (Paras 14 & 15)

First appeal from the order of the court of the Motor Accidents Claims Tribunal, Punjab, at Chandigarh, dated 4th January, 1967, awarding the applicant Rs. 4,000 as compensation under section 110-B of the Motor Vehicles Act.

GOPAL SINGH, ADVOCATE-GENERAL, PUNJAB, (13-3-1968), G. R. MAJITHIA, DEPUTY ADVOCATE-GENERAL, PUNJAB, (3-4-1968), for the Appellant.

K. S. THAPAR, AND MISS SURJIT KAUR, ADVOCATES, for the Respondent.

JUDGMENT

SARKARIA, J.—The circumstances giving rise to this appeal are as follows:—

Shri V. K. Kalia respondent was at the material time posted as Superintendent of Police, Gurdaspur. A Government jeep was supplied to him for official use. It was being maintained at Government expense. The tyres of this jeep became worn out. Shri V. K. Kalia, therefore, on the 7th June, 1966 wrote a letter to the Controller of Stores, Punjab, Chandigarh, that, *inter alia*, some tyres and tubes for Government jeep and other transport under his charge were urgently required by him. The Controller was requested to intimate the amount involved so that sanction of the competent authority to purchase those articles might be obtained. He followed this by a reminder, dated 23rd June, 1966, requesting the Controller to make necessary arrangements for the supply of tyres and tubes at an early date. The Controller of Stores, in reply, sent the

letter, dated 24th June, 1966, requesting the respondent to send his demand in the new prescribed indent forms, which were available from the Controller of Printing and Stationery, Punjab. He added that further action would be taken on hearing from him (respondent).

(2) On the 20th July, 1966, Shri Kalia proceeded in the Government jeep No. PNP-15, registered in the name of Superintendent of Police, Gurdaspur, on official duty, to Pathankot. The jeep was driven by Constable Shivcharan Dass, No. 43. It was raining, at about 6.45 p.m., when the jeep was on the road near village Paniar, it skidded and overturned, as a result of which Shri V. K. Kalia received injuries. His right clevical bone was fractured. He remained in plaster for 6 weeks, suffering intense pain. Mr. V. K. Kalia, therefore, made an application to the Motor Accidents Claims Tribunal, Punjab, Chandigarh, claiming Rs. 5,000 as compensation. It was alleged that the accident occurred due to the worn out tyres of the Government vehicle, which were not replaced by the appellant-State, despite repeated requests, in time. At the time of the accident it was raining and the road was wet; consequently, the vehicle skidded and over-turned.

(3) The application was opposed by the State of Punjab through its Secretary in the Home Department. In its written statement, the State denied its liabilty to pay any compensation. It was added that the officer had taken out the jeep on the road against the instructions of the Inspector-General of Police, and that the Superintendent of Police, Gurdaspur, being himself the registered owner of the vehicle, could not claim compensation against himself.

The Tribunal framed these issues:—

(1) Was the accident due to any negligence on the part of the driver of the vehicle or due to any defect in the vehicle involved in the accident?

(2) What is the quantum of compensation due if any and from whom?

(3) Is not the claimant entitled to any compensation?

(4) Is the Government not liable to pay any compensation to the claimant?

(4) After recording the evidence produced by the parties, the Tribunal found :—

> "The accident no doubt took place because the tyres were worn out and had become unserviceable and the driver was not to blame as it was raining that day and the tyres slipped, but the driver was negligent in the performance of his duties as he did take the defective vehicle on the road and did not inform his officer about its unserviceableness that day. The accident was, therefore, both due to the negligence of the driver as well as due to the defect of the tyres. The respondents have also admitted that requisition had been made to the Controller of Stores by the applicant much before the accident for the supply of new tyres. Had they been supplied prior to the accident, it would not have occurred."

(5) The two-pronged issue No. 1 was thus decided entirely in favour of the claimant. The remaining issues were also decided against the State. In the result, Rs. 4,000 were awarded as compensation under Section 110-B of the Motor Vehicles Act, 1939, to the claimant against the appellant-State, with costs. It was further directed that the amount be paid within a month of the date of the award, failing which it will carry interest at 6 per cent per annum. Hence this appeal by the State.

(6) Mr. Majithia, the learned counsel for the appellant-State, has canvassed these points in the course of his arguments:—

> (1) The claimant as Superintendent of Police was the registered owner of the vehicle, and, at the material time, it was being driven by his own subordinate, Constable-driver. It was a rainy day; the claimant knew or should have, by the exercise of ordinary diligence, known that the tyres of the vehicle were worn out and unserviceable, and it was dangerous to take it out on a rainy day on the road. This act of the claimant, Shri V. K. Kalia, and his Constable-driver in taking out the jeep, which was not in a road worthy condition, on that rainy day, amounted to offence under Section 121 of the Motor Vehicles Act, read with Rules 5.1 and 5.3 of the Motor Vehicle Rules. The claimant, therefore, could not claim compensation for his own wrong or negligence.

(2) The State was not liable, because no negligence either on the part of the Controller in not supplying the new tyres, or the driver in driving the vehicles, was established.

(3) There were several transport vehicles under the control of the Superintendent of Police, Gurdaspur. The claimant could avoid travelling on that rainy day in that unsafe vehicle, by selecting some other vehicle, or adopting any other mode of conveyance. The accident was, therefore, self-invited and the direct result of the negligence on the part of the claimant.

(7) Mr. K. S. Thapar, the learned counsel for the claimant-respondent contends, in reply, that in the first place, the accident occurred as a result of the negligence of the appellant-State in not replacing the worn out tyres of the Government jeep in time, despite requisitions made by the claimant; secondly, even if there was no such negligence, the liability of the State to compensate its servant for an injury sustained by him in the performance of his duty was absolute. It was not dependent on proof of any negligence either on the part of the Controller in not supplying the new tyres in time, or on the part of the driver of the vehicle in driving it. The claimant as well as the driver both were servants of the State. The claimant was required to go on official tours in this jeep, while it was the duty of the Constable-driver to drive it. A jeep with worn out tyres when driven on the road on a rainy day, is an intrinsically dangerous vehicle. It was only in answer to the call of duty, which was paramount, that the claimant-respondent took the risk of taking the unsafe vehicle on the road, and thereby met an accident and got injured. It was the duty of the master to keep the vehicle in a roadworthy condition, in which the servant was required to travel in the performance of his duties. It is maintained that the principle of *res ipsa loquitur* will be attracted. It is also said that Section 110-B of the Motor Vehicles Act does not say that compensation can be awarded only when negligence on the part of the driver of the vehicle or its owner is established. In support of this contention, Mr. Thapar has referred to *Shri Ram Partap* v. *General Manager, the Punjab Roadways, Ambala* (1); *Baker* v. *James Brothers and Sons, Limited* (2), *Jones* v. *Stabeley Iron and Chemical Co., Ltd.* (3) and *Bowater* v. *Mayer, Aldermen, etc* (4).

(1) 1962 P.L.R. 448.
(2) (1921) 2 K.B. 674.
(3) (1955) I A.E.R. 6.
(4) (1944) I. A.E.R. 465.

(8) Before entering on the merits of the case, it will be worthwhile to elucidate the law on the point. It is true that there is nothing either in Sections 110, 110-A, 110-B or 110-C of the Motor Vehicles Act, which says that compensation can be awarded by the Claims Tribunal only when negligence on the part of the driver of the vehicle concerned is established. These provisions, however, do not lay down any criterion for awarding compensation. They merely substitute the Motor Accidents Claims Tribunal for the Civil Courts, for adjudicating claims to compensation in respect of accidents, involving death of or bodily injury to persons, arising out of the use of motor vehicles. They do not deal with the question as to who is to be held liable and in what circumstances, if an injury results from an accident. For fixing liability, in the absence of any specific statutory provision, we have to go back to the law of torts, according to which, generally speaking, negligence in causing the accident is essential to hold the negligent person liable. As observed by I. D. Dua, J., in *Shri Ram Partap's case,* the cardinal principle of liability in tort, when death or bodily injury has been caused to a person, is negligence or failure to take the requisite amount of care required by law. Similarly, in *Nand Singh Virdi* v. *Punjab Roadways, Amritsar and another* (5), the accident in which the claimant received injuries while travelling in a bus, run by the State, was not proved to be due to any rash or negligent act of the driver. It was held that the claimant was not entitled to claim any compensation from the State for the injuries received by him.

(9) It must be remembered that 'absolute liability—which means liability without any fault or negligence on the part of the respondent, is exceptional under the common law, the general rule being that a person is liable only for the injury or harm directly flowing from his intention or negligence, and not for any harm resulting from an unavoidable accident. The rule of absolute liability has grown in modern times. In *Rylands* v. *Fletcher* (6), it was laid down that a person who brings dangerous things on his land and a harm results due to their escape, is liable. An extension of this rule casts vicarious liability on employers towards their employees. Employing servants or workmen in industry or business under the present conditions in this machine age is attended with risk of injury due to the negligence or mischief of the employees, which

(5) A.I.R. 1963 Punj. 214.
(6) (1865) 3 H. & C. 774.

their employer cannot avoid with any amount of care. Statutory provisions, such as workmen's Compensation Act, have been made to put the employer in the position of an insurer against harm done to the employees or its workmen within the scope of the employment. This principle of insurance against harm is in consonance with the socialistic pattern of society envisaged in our Constitution.

(10) In applying the doctrine of absolute liability, the Courts have to perform a delicate task. They have to give a new look to the old principles in the light of the present-day circumstances. They have to adapt the old principles to the modern world. If the old principles are to live and not become flint fossils of time, they must be constantly renovated, moulded, and attuned to the changing social conditions. The Courts play a limited role in this process by placing, what is called a dynamic interpretation on principles which carry behind them the sanction of tradition and precedent. They cannot, however, in the absence of any statutory provision, sanctioning that course, cut themselves completely adrift from their past moorings, and arrogate to themselves the functions of the Legislature, introducing entirely new principles, radically differing from or conflicting with the fundamental principles of Common Law that have evolved through the centuries. Leaving aside the cases governed by special statutory provisions, such as Workmen's Compensation Act, in cases of the kind before me, negligence on the part of the master or his agent must be proved before he can be fastened with the liability to compensate his servant, sustaining an injury in the course of the service.

(11) The above being the law on the point, I pass on to consider whether in the present case, the accident resulting in injury to the claimant was due to negligence—actual or presumed—on the part of the employer—State or its servant, the driver of the vehicle concerned.

(12) It was first on the 7th June, 1966, that the claimant wrote to the Controller of Stores that some tyres and tubes for Government jeep and other transport under his charge were urgently required by him. This letter was more or less of an exploratory nature, inasmuch as the Controller was requested to intimate the amount involved so that sanction of the competent authority to purchase those articles might be obtained. To this letter, the Controller of Stores sent a reply, dated 24th June, 1966, asking the claimant-

respondent to send his demand in the prescribed indent form available from the Controller of Printing and Stationery, Punjab. There is nothing on the record to show that the claimant-respondent had sent his demand in the prescribed form thereafter. In the letter, dated 7th June, 1966, Exhibit D.B., the claimant-respondent did not even say that the tyres of the vehicles had become unserviceable or worn out. The only thing mentioned therein is, that certain number of tyres and tubes were urgently required. On the other hand, the Controller of Stores, in his letter, Exhibit D.D., dated 24th June, 1966, clearly, intimated the claimant-respondent that further action in the matter could be taken only on receipt of his demand on the prescribed indent forms No. "UF 88". It is true that the knowledge of the employer or the Controller about this unserviceable or dangerous condition of the motor vehicle concerned is not a *sine qua non* for fixing him with the liability. It is, however, an important piece of evidence showing that there was no negligence on his part. Thus, it was not established that there was any negligence on the part of the appellant or its servant, the Controller of Stores, in not replacing the worn out tyres of the vehicle in time. Indeed, there was negligence on the part of the claimant in not making the demand well in time in the prescribed form. The Claims Tribunal, also, has not recorded any clear finding that there was negligence on the part of the State in replacing the worn out tyres, though it has said that the accident occurred due to the defect in the tyres.

(13) Having seen that no negligence on the part of the employer State has been proved, I pass on to consider, whether any negligence on the part of the driver had been established. The Tribunal has held that the driver was not to blame for the accident, which occurred due to the rain and the worn out and unserviceable condition of the tyres. The Tribunal has, however, held that the driver was negligent as he did take the defective vehicle on the road and did not inform his officer about its unserviceableness that day.

(14) I am unable to appreciate this reasoning. It was the claimant's own case that the tyres of the vehicle had become worn out and unserviceable and they required urgent replacement. The knowledge of the claimant about the worn out condition of the tyres can be inferred from the circumstance that he wrote to the Controller as far back as the 7th June, 1966, that the tyres and tubes of the Government jeep and other transport vehicles were urgently

needed by him. He followed up this letter by a reminder, dated 23rd June, 1966. Thereafter, he received the reply of the Controller that the requisition should be sent in the prescribed form. The accident occurred only about 4 weeks after the receipt of this letter. It is, therefore, preposterous to suggest that Mr. Kalia did not know about the worn out and unserviceable condition of the tyres. He further knew that it was a rainy day. By ordinary diligence, therefore, be ought to have known that it was dangerous to take out the vehicle with unserviceable tyres on a rainy day. He did not require to be told by the Constable-driver about the condition of the tyres and the consequent roadunworthy condition of the jeep on that rainy day. This act of the driver in driving that dangerous and unsafe vehicle on that rainy day, with its unserviceable tyres, and also act of Shri Kalia in allowing his subordinate driver to drive the vehicle on that day, might amount to the commission of an offence by the claimant as well as the driver under Section 121 of the Motor Vehicles Act. Section 121 of the Act reads as follows:—

> "121. *Using vehicle in unsafe condition.*—Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees, or if as a result of such defect an accident is caused causing bodily injury or damage to property, with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both."

(15) Thus, the claimant and the driver both committed a wrongful act which is interdicted as an offence by Section 121 of the Act. The claimant, therefore, cannot be compensated for a harm flowing from his own wrongful act or negligence.

(16) The facts of the cases referred to by Mr. Thapar were materially different from those of the instant case. The sheet-anchor of Mr. Thapar is the case, *Baker* v. *James Brothers and Sons, Limited* (7). The plaintiff, Mr. Baker, a commercial traveller, was

(7) (1921) 2 K.B. 674.

employed by the defendants, who were wholesale grocers. His duties were to travel round the district, show samples, take orders and deliver goods, and for that purpose he was supplied by the defendants with a motor-car, the starting gear of which was defective. He complained of this on several occasions to the defendants, who admitted that it was defective, but failed to remedy the defect. While the plaintiff was upon one of his journeys the car stopped, and in trying to restart it, he was severely injured. In an action brought by the plaintiff to recover damages in respect of personal injury resulting from the negligence of the defendants, it was held that the plaintiff, notwithstanding his knowledge of the defect in the starting gear, had never undertaken or consented to take upon himself the risks arising from continuing to use the car, that he had sustained the injury owing to the personal negligence of the defendants, and that, not having been guilty of contributory negligence, he was entitled to recover.

(17) It is important to note that Mr. Baker had repeatedly complained to his employers about the defect in the starting gear of the car. But the defect was not removed. The last time he complained about the defect to his employers, he was told: "Well, we do not want you to be laid up. Use the car this week, as no other car is available. I will then have it seen to when you get back and you can go your next round by rail". It was in compliance with this direction of the employer that Mr. Baker started on his journey in the car, with the starting gear still defective.

(18) In the instant case, it was neither alleged nor proved by the claimant that he was peremptorily required by his employer or any superior officer to use the jeep with its defective tyres on that rainy day and thus run the risk of being injured. The claimant has not alleged, much less proved, (1) that the official work for which he had to travel on that day was so urgent and paramount that he could not, as a devoted and faithful servant of the State, avoid, and (2) that in the circumstances, he had no choice but to use this very defective jeep. It is apparent from the letter written by the claimant to the Controller that there were several Government transport vehicles under his control. He has not alleged that all the other vehicles were unserviceable and in a more unroadworthy condition than the jeep concerned. Indeed, it was never the claimant's case that the exigencies of the official mission to be performed by him were so urgent and imminent that

he had no choice but to travel in this defective jeep, except at the cost of committing dereliction of the official duty and the consequent incurrence of displeasure of the master. There was no proof that the master had done some act either by issuing peremptory direction to the servant to use this defective vehicle on that day and thereby expose him to danger, or had in any manner put the servant in that dangerous situation which he could not, by the exercise of ordinary diligence or discretion, avoid.

(19) In *Banker* v. *James Brothers and Sons Limited*, (7), it has nowhere been laid down that the master's liability is absolute and is not dependent on his personal negligence towards the servant. Mr. Justice McCardie, who decided this case, agreed that in order to cast liability on the master it was not necessary to prove that the master knew of the danger and that the servant was ignorant of the danger. In his opinion, both these branches of the proposition as enunciated in *Griffiths' case* (8), were erroneous. The learned Judge further observed :—

> "I do not think it was ever essential nor is it now essential to show that the master had actual knowledge of the danger or defect. The action against the master by a servant for negligence was based, as it purported to be based, on negligence and not on knowledge. It may well be that negligence could not in certain cases be shown without proof of knowledge. It may also be that once knowledge was shown the inference of negligence would be drawn. But proof of knowledge was only a useful method of proving negligence. Negligence could exist and can exist without actual knowledge by the master of the danger or defect. Indeed the absence of knowledge may itself be the basis of the charge of negligence.
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> "The relationship between master and servant normally places upon the master the duty of care towards his servant.....
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> "Now what does the duty of care involves? The answer is supplied by the well-known words of Alderson B. in *Blyth* v. *Birmingham Waterworks Co.*, (9), where he defines negligence as "the omission to do something which

(8) 13 Q.B.D. 259.
(9) (1856) 11 Ex. 781, 784.

a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do." Subject to the observations in *Le Lievre* v. *Gould* (10), the words of Alderson B. are still a useful guiding rule.

"It follows therefore that a master may be liable for a danger or defect (causing hurt to his servant) not only where he knew but where he ought to have known of it. The negligence may be either (a) where he knows and negligently fails to remedy, or (b) where he ought to have known but negligently fails in acquiring knowledge and therefore negligently fails to remove the danger or defect."

(20) Thus, from what has been quoted above, it is quite clear that negligence on the part of the master is still the basis of an action for compensation in cases of this kind. In the case before me, the master was not apprised of the fact that the tyres of all the vehicles, including the jeep in question had become unserviceable. Secondly, it was not the master who put the servant in that situation. It was the claimant's own negligence that exposed him to that danger. The claimant's negligence consists first in not placing the indent in time in the prescribed form, and further allowing the jeep to be taken out in that roadunworthy condition on a rainy day. Thus, the rule in *Baker's case* does not advance the proposition expounded by Mr. Thapar. The general rule is that the plaintiff must establish some negligence or a breach of duty by the defendant towards him and its casual connection with his injury. I do not agree that the case is covered by the principle of *res ipsa loquitur*. This rule has been very succinctly stated in the leading English case, *Scott* v. *London Dock Co.* (11). There the plaintiff, a customs officer, went into the defendant's docks on business and in passing from one door way to another, six bags of sugar which were hung by a chain, fell on him. It was held that on these facts negligence of the defendant's servant could be inferred. The rule applicable to such cases was enunciated as follows:—

"Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those

(10) (1893) 1 Q.B. 491.
(11) (1865) 3 H. & C. 566.

who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care."

(21) In the case before me, the vehicle concerned was *not under the 'management'* of the appellant-State or its servant, the driver. It was registered in the name of the Superintendent of Police, Gurdaspur, and was under his control. That is to say, it was under the management of the claimant himself, and the accident would not have happened if the claimant, who had the management and control, used proper care either to get the tyres replaced in time or to avoid using this dangerously unsafe vehicle on that rainy day. The accident occurred for want of care on the part of the claimant himself. The rule of *res ipsa loquitur* (which for the sake of convenience may be called the rule of presumptive negligence on part of the defendant), has, therefore, no application to the facts of the present case.

(22) It is not necessary for me to overburden this judgment by discussing all the cases cited by Mr. Thapar. It would suffice to say that their facts were entirely different.

(23) For all the reasons aforesaid, I have no hesitation in holding that the claimant was not entitled to any compensation. In the result, I would allow this appeal, and dismiss the claimant's application, leaving the parties to bear their own costs throughout.

R.N.M.

APPELLATE CIVIL.

Before S. B. Capoor and H. R. Sodhi, JJ.

WALI RAM,—Appellant

versus

MUKHTIAR KAUR,—*Respondent.*

R.S.A. 732 of 1967

August 28, 1968.

Hindu Adoptions and Maintenance Act (LXXVIII of 1956)—S. 20—Scope of—Obligation of Hindu parents to maintain unmarried daughter—Whether absolute irrespective of daughter's age—Evidence Act (I of 1872)—Ss. 101 to 104—Burden to prove daughter's ability to maintain herself—Health or age of daugnter—Whether raises presumption of such ability.