

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.245 of 2000.

Judgment reserved on:27.04.2007.

Decided on: April 30, 2007

M/s.AKM Construction & Engineering Co.Appellant.

VERSUS

Master Naveen Kumar & Ors.Respondents.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?¹ No

**For the Appellant: Mr.Chandranarayana Singh,
Advocate.**

**For respondent 1 & 2: Mr.K.R.Thakur, Advocate with
Mr.Virender Thakur, Advocate.**

For respondent No.3: Mr.K.D.Sood, Advocate.

Kuldip Singh, Judge.

The owner of the truck is in appeal against the award dated 1.3.2000 passed by the learned M.A.C.T. Shimla in M.A.C.C. No.10-S/2 of 1997 awarding Rs.10,000/- compensation to the claimants along with interest at the rate of 12% per annum from the date of filing the petition till payment which is to be paid by owner of the vehicle.

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

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2. The brief facts, as pleaded by the claimants in the petition, are that Naveen Kumar aged 8 years filed a petition through his grand mother Smt.Vidya Devi for award of compensation for injuries which he allegedly suffered in an accident involving truck No.HR 03A-0495. It has been alleged that the truck belongs to M/s.A.K.M. Construction & Engineering Company. The father of injured petitioner was employed as driver on the truck. On 15.10.1996 the truck met with an accident and the father of the claimant was driving the truck. The accident took place on 15.10.1996 at a place called *Sonu Bungalow* near Taradevi. The claimant suffered multiple injuries and remained admitted in Hospital for many days. He claimed compensation of Rs.1 lac. It has been alleged that accident has taken place due to rash and negligent driving of the truck driver who died in the accident.

3. The owner of the truck filed the reply and admitted the accident of the truck on 15.10.1996 and the injuries suffered by the claimant. It has been alleged that the driver of the truck was not authorized to allow claimant to travel by the truck and thus the driver acted beyond his authority. The rash and negligent driving of the truck at the time of accident has not been denied specifically.

4. The insurer submitted that claimant was unauthorized passenger and the driver did not possess a valid and effective driving licence nor was possessed with other valid documents of the truck.

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5. The learned Tribunal held that accident has taken place due to the rash and negligent driving of the truck driver. The claimant Naveen Kumar is entitled to Rs.10,000/- compensation which is to be paid by owner only. It has been held that the claimant was in the truck at the time of accident with the permission of the driver and, therefore, owner is liable under the principle of vicarious liability. It has been held that insurer is not liable to pay the compensation.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. A perusal of the F.I.R. Ext.P-1 amply proves that at the time of accident the truck was being driven carelessly by the driver and due to this reason the accident took place due to the rash and negligent driving of the vehicle. The learned Tribunal has rightly appreciated the facts and has correctly come to the conclusion that accident has taken place due to rash and negligent driving of the driver.

8. Smt. Vidya Devi, next friend of the claimant, has appeared as PW-3 and has deposed that she has spent Rs.20,000/- to Rs.25,000/- on the treatment of the claimant. PW-4 Dr.Kashmir Singh has stated that claimant had one injury on his forehead which was stitched. He has stated that no fracture of any bone or serious injury was noticed. It means the claimant only suffered simple injury. There is no other evidence on record regarding the seriousness of the injury

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sustained by claimant in the accident. The Tribunal after assessing the material on record has rightly awarded Rs.10,000/- to the claimant.

9. It has come on record that claimant was in the truck at the time of accident with the permission of his father who was driving the truck. The owner has taken the stand that driver was specifically instructed not to give lift to any person but this will not absolve the owner to pay compensation to the claimant. It is now well settled that if a driver of a vehicle in the course of his employment happens to act in an unauthorized manner or in violation of specific instruction of his master and an accident takes place the master is still liable under the principle of vicarious liability. The learned Tribunal in support of this principle has noticed many judgments in the impugned award. In my opinion, the view taken by the learned Tribunal fixing liability on the owner to pay compensation to the claimant who was in the truck with the permission of the driver calls for no interference. The compensation awarded to the claimant in the facts and circumstances of the case is just and reasonable and no exception can be taken with the impugned award. No case for interference has been made out.

10. No other point was urged.

11. In view of above discussion, the appeal is dismissed and the impugned award is affirmed. The parties are left to bear their own costs.

April 30, 2007_(soni)

(Kuldip Singh)
Judge.

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