

Vicarious Liability

Liability of a person for the wrong done by another is vicarious liability. Generally it is thought that it is limited to liability of master for the act of servant but the connotation of this term extend far while. A liability originates from the principles enunciated in following maxims.

- A) ***Qui facit per alium facit per se*** – “ he who acts through another is deemed in law as doing it himself.” When a person enters some act to be done by another then he is liable to evil consequences resulted from the said act. The condition required here is that the act must have been done by the person under employment or entitlement.
- B) ***Respondent superiore*** – the superior must be responsible or let the Principal be liable in view of this maxim the person who commands and obeys are equally liable. Relationship of Master-Servant, Principal-Agent and other similar relationship come under the ambit of this maxim.

Besides these maxims jurist like Salmond, and the judgement of the common law courts fortified this liability. The liability may appear strange and rough justice but as described by Windfield "*the liability represents prevailing stage of legal opinion and the future may bring further extensions of vicarious liability*". True to his predictions vicarious liability dominates the law of damages and compensation for negligent driving, compensation for the injuries and deaths in factories in workplaces. A liability may arise as liability of ratification that is when defendant has ratified wrongful act or omission, liability arising out special relationships that is where the dependants stands in relation to the wrongdoer like master-servant, principal-agent, company and its director, firm and its partners, guardian and ward, husband and wife, and liability by abetment.

In India catena of judgements of the High Courts and Supreme Court's develop the law on vicarious liability. The Motor Vehicles Act codified the said liability and enlisted the criteria's to determine the compensation. In *Trilok Singhs Case (ACJ 1987 SC 757)* younger brother taking away motor cycle of elder brother without his knowledge and causing accident, was considered to be not case of making elder brother vicarious liable. In *Indrajit Singh and Company (AIR 1989 BOM 331)* it is observed that it is not necessary to prove the liability when party paying compensation accepts vicarious liability. In *S J Tailoring House (1974 (2) SCC 498)* it is observed that right to control manner of work is exclusive test to determine the relationship of employer and employee. The basic test that the ownership of tools and machines on which the person is working when accident occurs is an important consideration for deciding relationship of master and servant. In *Laxmi Narayan Ramgoal (AIR 1964 SC 364)* it is observed that a servant acts under the direct control and supervision of his master and is bound to conform to all reasonable orders given to him to perform his work. The agent on the other hand is independent contractor, he undertakes to produce specified results employing his own means and is not working under direct control of the master. An agent though bound to exercise his authority in accordance of lawful instructions of principal but he is also not under direct control or supervision of the principal.

There are settled principles making master liable for the act of servant

- I) The wrong committed by servant may be the natural consequences of something done by him with ordinary care in execution of his master specific orders.
- II) Master will be liable for negligence of his servant when the act is done in the course of employment. In *Pushpabai Udeshi (AIR 1997 SC 442)* it is observed that the expression in

course of employment should be taken in broader sense. In the case *Ramu Chelaram Vs Amircand (1988 ACJ 54)* the Bombay High Court considered the case of accident by car when it was given for repairs in garage. It is observed that when a car is given for repairs in garage ownership is transferred to owner of garage but the owner of the car has given the car to the owner of garage with specific instruction to the owner of garage becomes agent of the owner of the car and therefore any accident by the owner of the garage while using the car will make the owner of the car vicariously liable.

- III) The servants wrong may consist in access or exception of lawful authority or authority usurped by mistake. The case will come in this criteria when it is shown that the servant intended to do on behalf of his master something which he was authorised to do and if it would have been done in proper manner it would have been lawful but the servant have done it improperly.
- IV) The wrong may be wilful wrong but done on the masters behalf and with the intention of serving his purpose.
- V) The wrong may be due to servant fraudulent act.

The doctrine of common employment emerges from the vicarious liability. As per this doctrine the master is not responsible for negligent harm done by one of his servant, who a fellow servant engaged in common employment with him. For implementing this doctrine, firstly it must be proved that the servant injured another servant and both were in common employment of master. The term fellow servant include person who gratuitously or temporarily assist servant in his work. Secondly, the safety of one servant must and ordinary and natural course of things depend on care and skill of the other.

It is not that the master who is compelled by the law to pay compensation for the wrong done by the servant is remediless. A servant is liable to his master for the consequences of wrongful omission when the master has to pay damages to third person by reason of servant's negligence such damages can be recovered from the servant by the master.
