

# VICARIOUS LIABILITY OF EMPLOYERS IN THE LAW OF TORT: DECIPHERING *BANGLADESH BEVERAGE INDUSTRIES VS. ROSWAN AKHTER AND OTHERS*

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## ABSTRACT

*While Bangladesh is certainly no stranger to cases of negligence, tort litigation remains virtually nonexistent because victims of negligence do not usually seek relief in tort law. It is in this context that the Supreme Court of Bangladesh's recent decision in Bangladesh Beverage Industries v Rowsan Akhter and Others ordering a company to pay damages worth Taka 1.7 crore to family members of a pedestrian killed by the negligent driving of their employee is a historic milestone for tort law in Bangladesh. This seminal legal development has immense potential to not only substantiate the vicarious liability of employers for torts committed by their employees but also pave the way for wider and more robust tort litigation in Bangladesh. As such, this paper is an in depth study of the Bangladesh Beverage case and it seeks to assess the precedential effect the case is likely to have with regard to the vicarious liability of employers in tort and the applicable limitation periods within which tort claimants must sue.*

## I. INTRODUCTION

The term vicarious liability denotes the strict liability which a person may incur for damage caused to a claimant by the tort of someone under his control, such as an employee.<sup>1</sup> The vicarious liability of the employer will certainly not exonerate the initial tortfeasor (i.e. the employee) or insulate him from liability<sup>2</sup>, but it is seldom the case that he will be sued or that the judgment will be enforced (or rather, practically enforceable) against him.<sup>3</sup> This is because given the monetary nature of the most commonly sought relief in tort (i.e. damages), a claimant would naturally prefer to sue the person or entity in the best financial position to pay compensation, which is usually the employer rather than the employee. The case of *Bangladesh Beverage Industries vs.*

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<sup>1</sup> Rogers, W. V. H., *Winfield and Jolowicz on Tort*, 19<sup>th</sup> ed (Sweet and Maxwell, South Asian Edition), London, 2010 at p. 943.

<sup>2</sup> *Standard Chartered Bank v. Pakistan National Shipping Corp* [2002] UKHL 43.

<sup>3</sup> *ibid.*

*Romsan Akbter and Others*<sup>4</sup> is one such example of an employer being held vicariously liable for its employee, who during the ordinary course of his employment while driving a delivery van, struck and killed a pedestrian. While road accidents caused by negligent drivers leading to personal injuries and deaths frequently occur in Bangladesh, suing the driver or his employer for compensation still remains very rare.<sup>5</sup> This is precisely why the *Bangladesh Beverage* case can potentially be a historic turning point for not just victims of negligence but for tort claimants in general. Three judgments were released in *Bangladesh Beverage Industries Ltd. v. Romsan Akbter* over the course of its twenty five year litigation period: (i) a trial judgment in the District Court; (ii) an appeal judgment of the High Court Division; and (iii) a judgment by the Appellate Division dismissing a leave to appeal application, all of which will be considered in turn. Part II of this article gives an overview of the case's history and material facts. Parts III, IV and V each examine judgments by District Court, High Court Division and Appellate Division respectively, with particular emphasis on the High Court's decision since it is the most extensive of the three and the major findings and rationes decidendi of the case lie there. Part VI discusses the subsequent interpretation and reception of the case by foreign courts and seeks to assess the judicial precedent and legal effect it is likely to have.

## II. BACKGROUND OF THE CASE

### A. Case History

The case was initiated as a money suit before the Joint District Judge, Dhaka, by the family members of a pedestrian who was killed by a delivery van near Press Club, Dhaka.<sup>6</sup> The court decreed in favour of the plaintiffs by awarding an astonishing Taka 3.5 crore in damages. On appeal, the High Court Division partially allowed the appeal by reducing the quantum of damages

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<sup>4</sup> *Bangladesh Beverage Industries Ltd. vs. Romsan Akbter*, March 3, 2003 (District Court), varied 62 DLR 483 (High Court Division), November 5, 2010, leave to appeal dismissed 69 DLR 196 (Appellate Division), April 13, 2016. For the purposes of clarity and brevity subsequent citations to this case will be made in terms of the court in which it was heard rather than their differing citation numbers.

<sup>5</sup> Global Status Report on Road Safety 2015, World Health Organisation, Management of Noncommunicable Diseases, Disability, Violence and Injury Prevention (NVI) (Geneva, Switzerland) at p. 90 <[http://www.who.int/violence\\_injury\\_prevention/road\\_safety\\_status/2015/en](http://www.who.int/violence_injury_prevention/road_safety_status/2015/en)> (Last visited 15 December 2016). This report reflected information from 180 countries and found that there were at least 21,316 reported cases of deaths from road accidents in Bangladesh since 1994, based on data collected from Bangladesh Road Transport Authority (BRTA).

<sup>6</sup> Appeal was filed by defendant No.1, Bangladesh Beverage Industries Limited, directed against Judgment and decree dated 20-3-2003 passed by the learned Joint District Judge, 3rd Court, Dhaka decreeing Money Suit No.3 of 1991.

against Bangladesh Beverage Industries Ltd. The Appellate Division then rejected the company's leave to appeal and affirmed the High Court's decision.

The plaintiff-respondents are the wife, Rowsan Akhter, and the two minor sons of the deceased while the appellant-defendant is the driver's employer, Bangladesh Beverage Industries Ltd.<sup>7</sup> The plaintiffs filed a money suit on 1<sup>st</sup> January, 1991 claiming a total of Taka 3,52,97,000 as compensation on the following heads, which can roughly be translated and labelled as, compensation for the<sup>8</sup>: (i) loss of potential earnings (ii) damage caused to the infants for being deprived of father's affection, care and nursing (iii) damage caused to the widow for being deprived of husband's affection, care and nursing (iv) loss of post retirement earnings (v) loss of sons' ability to use their father's goodwill (vi) damage and shock caused to the deceased's other family members by the premature death.<sup>9</sup>

The appellant-defendant, Bangladesh Beverage, was not initially made a party to the suit at the time of filing but was later added on 4<sup>th</sup> March, 2003. Thereafter, the appellant filed a written statement in which he did not challenge or deny the facts or occurrence of the accident, rather he essentially questioned the legal basis of the compensation claims, asserting that they are wholly imaginary and ought to be dismissed. The District Judge Court decreed in favour of the plaintiffs awarding them the amount claimed but the amount was reduced to Taka 2,01,47,008 by the High Court Division on appeal in 2010. Bangladesh Beverage appealed again but the Appellate Division disposed of their leave to appeal in 2016, although they reduced the quantum of damages to Taka 1,71,47,008.

### ***B. Material Facts***

Mozammel Hossain Montu was an established journalist, news reporter, broadcaster, playwright and poet. On December 3, 1989, while he was crossing the road after having purchased a pack of cigarettes from a street-side shop, the appellant's minivan rushed from the wrong side of the road, hit Mr. Montu and fled away. Mr. Montu sustained fatal injuries on the head and face while the collision left his skull completely shattered. He was rushed to the hospital

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<sup>7</sup> For the purposes of brevity, the appellant defendant will henceforth be referred to as simply Bangladesh Beverage.

<sup>8</sup> The differing heads of claims for compensation have been translated from Bangla to the best of the author's ability and understanding, taking into account the High Court Judge's own translation of the heads found in paragraph 68 of the judgment, 62 D.L.R. 483 (2010).

<sup>9</sup> The suit was initially dismissed for default on 29-1-2001. The plaintiffs then amended their plaint accordingly against which, defendant No.1 filed additional written statement on 14-9-2002. Thereafter, it was restored.