Guru Govekar

Vs

Miss Filomena F. Lobo and Others

Civil Appeal Nos. 1684-85 of 1988

(E. S. Venkataramiah, N. D. Ojha JJ)

06.05.1988

JUDGMENT

VENKATARAMIAH, J. –

1. The short question involved in this case is whether an insurer who has issued a policy insuring any person specified in the policy against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of a motor vehicle in a public place, is liable to pay compensation to such third party or to his or her legal representatives as the case may be when the liability arises when the motor vehicle is in the custody of a repairer.

2. One Sayed Hussain was a partner of a firm by name M/s International Ship Repairers carrying on business at Vasco-da-Gama, Goa which was the owner of an Ambassador car. He entrusted the said car to Guru, proprietor of M/s Auto Electrical Works on February 26, 1983 with instructions to carry out electrical repairs to the car and handed over the keys of the car to the repairer for that purpose. The car had been insured by the owner with M/s Oriental Insurance Co. Ltd. as required by the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act').

3. On the evening of February 26, 1983 Filomena F. Lobo, respondent 1 herein, aged 27 years was returning home along with her friend and was walking on the left side of the road. She noticed a car parked near Damodar Mandap and proceeded further only to be knocked down by the very car which had reversed and dashed against her back. The front tyre of the car passed over her abdomen and she had to be treated at Dr Vernekar's hospital and thereafter at Salgaoncar's Medical Research Centre. After being discharged from the hospital where she spent about 20 days she was advised further treatment at Jaslok Hospital, Bombay and she was undergoing treatment even when she instituted a claim petition before the Motor Accidents Claims Tribunal, South Goa at Margao impleading the firm of which Sayed Hussain was a partner, Guru, the proprietor of M/s Auto Electrical Works, Momad Donttach, the employee of the repairer, who was repairing the car at the time of the accident and the insurer M/s Oriental Insurance Co. Ltd. as respondents. She filed the claim petition under Section 110-A of the Act claiming a compensation of Rs. 1,00,000 for injuries sustained by her on account of the motor vehicle accident referred to above. The respondents contested the petition. The owner of the car, that is the insured and M/s Oriental Insurance Co. Ltd. the insurer pleaded that the car had been entrusted to the repairer to do electrical repairs job as an independent contractor and that Momad Donttach attached to the garage of the repairer had taken away the car for driving without holding a valid driving licence and without the consent of the owner of the motor vehicle owner. Hence neither the insurer that is the insurance company, nor the insured, that is, the owner of the vehicle was liable to pay any compensation. Momad Donttach the

employee of the repairer pleaded that he did not drive the vehicle involved in the accident at any time, that the vehicle had been entrusted to carry out the repairs to Guru, the repairer, that ho being a mechanic was carrying put the repairs by sitting on the front seat, i.e., the seat other than that of the driver, that suddenly the vehicle got into motion and started going the reverse direction and that before he could take the driver's seat and apply the brakes the vehicle got into ditch and stopped. He further contended that the applicant was guilty of contributory negligence inasmuch as she in exercise of due diligence ought not to have walked through the very little space between the vehicle and the wall. He, however, did not deny that she suffered injuries on account of one of the wheels of the vehicle running over her body. Guru, the repairer pleaded that Momad Donttach was not his employee and he had never engaged him for any work and that it was not true that he was driving the vehicle when the said vehicle was allegedly given for electrical repairs. On the above pleadings the Tribunal framed among others the following issues : (i) whether the applicant proved that the accident which caused injuries to the claimant on February 26, 1983 at Vasco, was due to the rash and negligent driving on the part of the mechanic; (ii) whether the applicant proved that the amount of compensation claimed was due reasonable and adequate; and (iii) whether the owner of the vehicle and the insurer proved that the mechanic had driven the car without holding a valid licence and without the consent of the owner. The Tribunal on a consideration of the oral and documentary evidence placed before it found that the claimant had suffered injuries on February 26, 1983 on account of the rash and negligent handling of the motor vehicle by Momad Donttach; that the claimant was not guilty of any contributory negligence; that she was entitled to a compensation of Rs. 90,000 for the injuries suffered by her; that Momad Donttach had a valid driven licence; that the car had been entrusted by the owner to Guru, the repairer for carrying out repairs; Momad Donttach was an employee of Guru; that the accident had taken place when the repairs were being effected to the car; and that the insurer and all other respondents were liable to pay the compensation of Rs. 90,000 jointly and severally with interest thereon at six per cent per annum from the date of the claim till its complete satisfaction. The Tribunal passed its award accordingly.

4. Aggrieved by the decision of the Tribunal the insurer M/s Oriental Insurance Co. Ltd. and Guru to whom the car had been entrusted for carrying out the repairs filed appeals before the High Court of Bombay, Panaji Bench. The High Court allowed appeal filed by the insurer M/s Oriental Insurance Co. Ltd. but however held that under Section 92-A of the Act the insurer was liable to the extent of Rs. 7500 only. The appeal filed by Guru was dismissed holding that he and his mechanic Momad Donttach alone were jointly and severally liable to pay the compensation. The result of the judgment of the High Court was that the entire compensation minus Rs. 7500 which the insurer was asked to pay under Section 92-A of the Act had to be paid by Guru the repairer of the car and his mechanic Momad Donttach. Aggrieved by the decision of the High Court Guru has filed the above appeals by special leave.

5. There is no dispute that the insurer had issued a policy in respect of the car in question as provided in the Act; that the claimant had suffered injury on account of the negligence of the employee of the repairer, the appellant herein; and that the car had been entrusted by the owner to the repairer to carry out the repairs. The only question of law which arises for consideration in this case is whether the insurer is liable to pay compensation to the claimant.

6. Under the Law of Torts the owner of a motor vehicle is no doubt not liable to pay compensation to any third party who suffers an injury on account of the negligence of the employee of an independent contractor, who has taken the vehicle from the owner for his own (independent contractor's) use. The question involved in this case has, however, to be resolved in the light of the provisions of the Act. The material part of Section 94(1) of the Act reads thus;

94. Necessity for insurance against third-party risk. - (1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

7. The above provision requires every person, who uses a motor vehicle in a public place, except as a passenger, to take out a policy of insurance complying with the requirements of Chapter VIII of the Act. It also requires a person, who causes or allows any other person, to use his motor vehicle in a public place to take out the policy of insurance complying with the requirements of Chapter VIII of the Act unless there is in force a policy of insurance in relation to use of the vehicle by that other person, as required by Chapter VIII of the Act. Section 95 of the Act contains the requirements of such policies and limits of liability. The relevant portion of Section 95 of the Act reads thus :

> 95. Requirements of policies and limits of liability. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -
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> (a) is issued by a person who is an authorised insurer or by a cooperative society allowed under Section 108 to transact the business of an insurer, and
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> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -
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> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place....

8. The portion of Section 95 of the Act, extracted above, requires every person, who is the owner of a motor vehicle to take out a policy against any liability which may be incurred by him in respect of the death of or injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, from an authorised insurer or a cooperative society allowed under Section 108 of the Act to transact the business of an insurer. Under Section 95(2)(c) of the Act in the case of motor vehicles other then those referred to in clause (a) or (b) of Section 95(2) the policy of insurance should cover the amount of liability incurred. Under Section 125 of the Act whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 94 of the Act shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both. Thus if a policy is taken in respect of a motor vehicle from an insurer in compliance with the requirements of Chapter VIII of the Act, the insurer is under an obligation to pay the compensation payable to a third party on account of any injury to his/her person or property or payable to the legal representatives of the third party in case of death of the third party caused by or arising out of the use of the vehicle at a public place. The liability to pay compensation in respect of death of or injury caused to a person or property of a third party undoubtedly arises when such injury is caused when the insured is using the vehicle in a public place. It also arises when the insured has caused or allowed any other person (including an independent contractor) to use his vehicle in a public place and the death of or injury to, the person or property of a third party is caused on account of the use of the said vehicle during such period, unless such other person has himself taken out a policy of insurance to cover the liability arising out of such an accident.

9. In the instant case neither Guru Govekar, the repairer, nor his mechanic Momad Donttach had

taken a policy of insurance covering the liability to pay compensation payable to a third party, when a motor vehicle taken for repair from its owner has caused the death or injury to any third party giving rise to the liability to pay compensation. When the owner of a motor vehicle entrusts his vehicle to a repairer to carry out repairs he is in fact allowing the repairer to use his vehicle in that connection. It is also implicit in the said transaction that unless there is any contract to the contrary the owner of the vehicle also causes or allows any servant of the repairer who is engaged in the work or repairs to use the motor vehicle for the purpose of or in connection with the work of repairs and when such work of repair is being carried out in a public place if on account of the negligence of either the repair or his employee, who is engaged in connection with the work of a repair, a third party dies or suffers any injury either to his person or property, the insurer becomes liable to pay the compensation under the provisions of the Act. In this context we may refer to the provisions of Section 35(1) of the Road Traffic Act, 1930 which was in force in England, which at the relevant time reads as follows :

> 35(1) Subject to the provisions of this Part of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part of this Act.

10. The above provision came up for consideration before the English Court of Appeal in Monk v. Warbey [(1935) 1 KB 75]. In that case the plaintiff claimed damages for personal injuries sustained by him as the result of a collision between an motor coach driven by him and motor car belonging to the defendant, Warbey. The motor car had been lent by Warbey to the defendant Knowles on whose behalf it was being driven at the material time by the defendant May, and as the plaintiff alleged, being driven negligently. Warbey, the owner of the car, was insured against third party risks, but neither Knowles nor May was insured against those risks. The plaintiff alleged that the defendant Warbey by permitting the car to be used by Knowles and May, when when no policy of insurance was in force in relation to such user, committed a breach of the duty imposed by Section 35 of the Road Traffic Act, 1930. The plaintiff further alleged that neither Knowles nor May was possessed of any means with which to pay any sum in respect of the damage sustained by the plaintiff. The defendant Warbey pleaded in the course of his defence (i) that the action against him was based upon the alleged breach of a statutory duty and it was not such a breach as gave a cause of action to an injured member of the public; (ii) that in any event the damage was too remote in law; and (iii) that the action against the defendant Warbey was premature in that he could not be joined with Knowles and May until the rights, if any, against them had been exhausted. The trial court rejected the defence of Warbey and made a decree against him for Pounds 70. Warbey appealed to the Court of Appeal. Greer, L. J. in the course of his judgment explained the object of enacting Section 35 of the Road Traffic Act, 1930 and the basis of the liability of the owner of the vehicle at pages 80-81 thus :

> Consequently the Road Traffic Act, 1930, was passed for the very purpose of making provision for third parties who suffered injury by the negligent driving of motor vehicles by uninsured persons to whom the insured owner had lent such vehicles. How could Parliament make provision for their protection from such risks if it did not enable an injured third person to recover for a breach of Section 35 ? That section which is in Part Ii of the Act headed "Provision against third party risks out of the use of Motor vehicles", would indeed be no protection to a person injured by the negligence of an uninsured person to whom a car had been lent by the insured owner,

> if no civil remedy were available for a breach of the section. The Act requires every person who runs a car to have an insurance on the use of the car, and to provide himself with a certificate stating the terms of the insurance. Section 35, sub-section (1) says that "subject to the provisions of this Part of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part of this Act". There is no dispute that the appellant committed a breach of the section, but it is argued that taking the Act as a whole it is clear that it was not intended to confer a right upon an injured third person to claim damages for such a breach. It seems to me that the situation is exactly within the language of A. L. Smith, L. J. in Groves v. Lord Wimborne [(1898) 2 QB 402], where he said (at page 406) :

"The Act in question," - the Factory and Workshop Act, 1878 - "which followed numerous other Acts in pari materia, is not in the nature of a private legislative bargain between employers and workmen, as the learned Judge seemed to think, but is a public Act passed in favour of the workers in factories and workshops to compel their employers to do certain things for their protection and benefit". The Lord Justice ten said (at page 407) : 'Could it be doubted that, if Section 5 stood alone, and no fine were provided by the Act for contravention of its provisions, a person injured by a breach of the absolute and unqualified duty imposed by that section would have a cause of action in respect of that breach ? Clearly it could not be doubted. That being so, unless it appears from the whole 'purview' of the Act, to use the languages of Lord Cairns in the case of Atkinson v. Newcastle Water-works Co. [(1940) 2 All ER 179], that it was the intention of the legislature that the only remedy for breach of the statutory duty should be by proceeding for the fine imposed by Section 82, it follows that, upon proof of a breach of that duty by the employer and injury thereby occasioned to the workman, a cause of action is established." The result of the above construction may be stated as follows : prima facie a person who has been injured by the breach of a statute has a right to recover damages from the person committing it unless it can be established by considering the whole of the Act that no such right was intended to be given. So far from that being shown in this case, the contrary is established. To prosecute for a penalty is no the sufficient protection and is a poor consolation to the injured person though it affords a reason why persons should not commit a breach of the statute.

11. Maugham, L. J. and Roche, L. J. agreed with the above view expressed by Greer, L. J. The above decision was later on approved by the House of Lords in McLeod (or Houston) v. Buchanan [(1940) 2 All ER 179]. Summarising the effect of the decision in Monk v. Warbey [(1935) 1 KB 75] in Shawcross on Motor Insurance, 2nd edn. at page 655 it is observed thus :

> (1) The owner who delivers his car to a repairer will be liable to a third party who sustains personal injuries and is unable to recover from the repairer because the repairer has no insurance.

12. We agree with the view expressed in Monk v. Warbey [(1935) 1 KB 75]. In India the opinion appears to be divided on the liability of the insurer of a motor vehicle when the accident giving rise to the claim takes place when the motor vehicle is in the custody of a repairer. In Vijayanagaram Narasimha Rao v. Ghanashyam Das Tapadia [(1986) 2 ACJ 850], Ramaswamy, J. of the High Court of Andhra Pradesh held that once the owner had entrusted the motor vehicle to the licensed mechanic to effect repairs, testing being integral part of effecting repairs and the accident had taken

place during the course of testing the vehicle, the necessary conclusion was that the mechanic acted within his limits of authority and in the course of the employment for and on behalf of the owner. Therefore, the owner should be vicariously liable for the acts of the mechanic. Accordingly, he held that both the owner and the insurance company were also jointly and severally liable for the payment of the compensation to the third party, who had suffered the injury by virtue of the provisions of the Act. The decision of the High Court of Madhya Pradesh in Shantibai v. Principal, Govindram Sakseria Technological Institute, Indore [1972 ACJ 354] is also to the same effect. G. L. Oza, J., as he then was, in the course of the said decision rejected the contention of the insurance company based on the exemption clause which excepted the insurance company from liability arising out of an accident during the period when the motor vehicle was used 'for hire or used for organised racing, pace-making, reliability speed testing', which was also one of the contentions urged before us in the present case although the said contention could not be urged in the circumstances of this case. We do not agree with the decision in D. Rajapathi v. Universrty of Madurai [1980 ACJ 113] in which it had been held that the doctrine of vicarious liability could not be extended to a case where the accident had taken place on account of the negligence of the driver employed by an independent contractor even when the claim is made not under the Law of Torts but under the provisions of the Act. While it may be true, as we have observed earlier, that under the Law of Torts, the owner may not be liable on the principle of vicarious liability, the insurer would be liable to pay the compensation by virtue of provisions of Section 94 and Section 95 of the Act, referred to above.

13. We may now refer to the decision of this Court in the New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani [(1964) 7 SCR 867 : AIR 1964 SC 1736 : 34 Com Cas 693]. In that case the owner of a motor car had insured it with the appellant, insurance company, under a comprehensive policy. He had permitted another person, who had insured his own car with another company, to drive it and while the other person was driving the car it met with an accident. As a result of the accident one person died and another person sustained injuries. Both of them were in the car. The heirs of the man who died and the person who sustained injuries filed suits for damages. This court held that on a consideration of the provisions of Sections 93 to 96 of the Act the insurer was liable to indemnify the person or class of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. If the policy covers the insurer for his liability to the third party, the insurer was bound to indemnify the person or classes of person specified in the policy. The same was the effect of sub-section (1) of Section 96 of the Act which provided that the insurer was bound to pay to the person entitled to the benefit of a decree he had obtained in respect of any liability covered by the terms of the policy against any persons irrespective of the fact that the insurer was entitled to avoid or cancel the policy. This meant that once the insurer had issued a certificate of insurance in accordance with sub-section (4) of Section 95 of the Act the insurer had to satisfy any decree which a person receiving injuries from the use of the vehicle insured had obtained against any person insured by the policy. He was liable to satisfy the decree when he had been served with a notice under sub-section (2) of Section 96 of the Act about the proceedings in which the judgment was delivered.

14. Thus on the facts of the case before us we are of the view that the insurer is liable to pay the compensation found to be due to the claimant as a consequence of the injuries suffered by her in a public place on account of the car colliding with her on account of the negligence of the mechanic who had been engaged by the repairer who had undertaken to repair the vehicle by virtue of the provisions contained in Section 94 of the Act which provides that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a

policy of insurance complying with the requirements of Chapter VIII of the Act. Any other view will expose innocent third parties to go without compensation when they suffer injury on account of such motor accidents and will defeat the very object of introducing the necessity for taking out insurance policy under the Act.

15. We, therefore, allow the appeal and modify the order passed by the High Court and direct the insurer, the Oriental Insurance Company Ltd. to pay to the claimant Miss Filomena F. Lobo a sum of Rs. 90,000 along with interest and costs as directed by the Tribunal. The parties shall, however, bear their own costs in this Court and in the High Court.

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