

SUPREME COURT OF INDIA

Uttar Pradesh State Road

Vs.

Kulsum & Ors.

C.A.No.5901 of 2011

(Dalveer Bhandari and Deepak Verma,JJ.,)

25.07.2011

JUDGMENT

Deepak Verma,J.,

SLP.(Civil) No.1969 of 2008

1. Leave granted.
2. Since common questions of law and facts are involved in this batch of appeals, six of which have been filed by Uttar Pradesh State Road Transport Corporation, etc. ...(contd.) (hereinafter referred to as 'Corporation'), and one has been preferred by Insurance Company, against the identical judgments and orders passed by High Court of Allahabad, it is proposed to dispose of the same by this common judgment. For the sake of brevity and convenience, facts of appeal arising out of S.L.P.(C)No.1969 of 2008 have been taken into consideration.
3. The Appellant herein (UPSRTC) had challenged the award passed by Motor Accident Claims Tribunal (hereinafter referred to as the 'MACT'), Barabanki in claim case therein, holding the Appellant - Corporation along with Ajai Vishen and Narottam, owner and driver of the mini bus, respectively, liable to pay compensation to the claimants.
4. In appeal before the High Court of Allahabad, it awarded compensation to the claimants vide impugned judgment and order dated 12.04.2007, recording the findings against the Appellant. The question of law that arises for consideration in the instant and connected appeals is formulated as under:

“If insured vehicle (in this case a mini bus) is plying under an Agreement of Contract with the Corporation, on the route as per permit granted in favour of the Corporation, in case of an accident, whether the Insurance Company would be liable to pay compensation or would it be the responsibility of the Corporation or the owner?”

5. Since it is a vexed question, with no unanimity in the judgments of various High Courts and as it has not been considered directly so far by this Court, we deem it fit and appropriate to do so.

6. Thumbnail sketch of the facts is mentioned hereinbelow:-

“Ajai Vishen, the owner of mini bus, bearing Registration No. UP 32T/7344 entered into an Agreement of Contract with the Corporation on 07.08.1997 for allowing it to ply mini bus, as per the permit issued in favour of Corporation, by the concerned Road Transport Office (R.T.O.). On account of State amendment incorporated in Section 103 of the Motor Vehicles Act, 1988 (hereinafter called 'the Act') vide Uttar Pradesh Amendment Act 5 of 1993; the Corporation is vested with right to take the vehicles on hire as per the contract and to ply the same on the routes as per the permit granted to it. According to the terms and conditions of the Agreement, the mini bus was to be plied by the Corporation, on the routes as per the permit issued by R.T.O. in its favour. Except for the services of the driver, which were to be provided by the owner, all other rights of owner were to be exercised by the Corporation only. The conductor was to be an employee of the Corporation, and he was authorised and entitled to collect money after issuing tickets to the passengers and had the duty to perform all the incidental and connected activities as a conductor on behalf of the Corporation. The collection so made was to be deposited with the Corporation.”

7. While the mini bus was running on the specified route on 13.06.1998, at about 9.00 a.m., Vijay Pal Singh (deceased), along with his minor children namely, Km. Rupa (deceased), Rohit (deceased) and Km. Laxmi (deceased), was present near Gumti shop of a Barber at the side of National Highway, near Swastic Biscuit Factory, Police Chauki Mohammadpur, Post Safedabad, District Barabanki.

8. The Mini Bus, plying under the contract of the Corporation, driven by Narottam, suddenly rammed into the Gumti causing injuries to Vijay Pal, his children and also to the Barber-Majeed, owner of the Gumti shop. On account of severe bodily injuries suffered by them, they died.

9. Smt. Lallan Devi, w/o deceased Vijay Pal Singh and mother of the three deceased children filed four claim petitions claiming compensation. Smt. Kulsum w/o deceased Majeed, filed a separate claim petition for awarding compensation for death of Majeed in the said accident before the aforesaid M.A.C.T.

10. Although, all the above five claim petitions were allowed and different amounts of compensation were awarded by the Tribunal alongwith interest @ 12% per annum but, relying on a judgment of this Court in the case of *Rajasthan State Road Transport Corporation Versus Kailash Nath Kothari and others* reported in¹ the liability of payment

has been fastened on the Corporation as, at the time of accident, the offending vehicle, i.e., the mini bus was being run by it under the contract.

11. Feeling aggrieved by the awards of the Tribunal, Corporation preferred appeals and the owner of the bus, Ajai Vishan, filed cross objection against the finding on issue No. 4 recorded by the Tribunal, holding therein that Insurance Company was not liable to make payment and fastening the liability on the owner also, on account of alleged breach of Insurance Policy. However, it had a caveat that liability of the owner would arise only in case the Corporation fails to make the payment. The National Insurance Company Ltd., with which admittedly the said bus was insured for the relevant period, has been exonerated from payment of any compensation. Hence, the appeals.

12. We have accordingly heard Ms. Garima Prashad, Mr. Laxmibai Leitanthem, Mr. Pradeep Kumar, and Mr. Shadab Khan, learned counsel for Appellant, Mr. Kishore Rawat, learned counsel for the Respondent Insurance Company and Mr. J.P. Dhanda, Mr. Rajeev Mishra for Ajai Vishen, owner of the Mini Bus and perused the records.

13. However, before we proceed to decide the question formulated hereinabove, it is necessary to look into some of the provisions of the Act. Section 2 (30) of the Act defines the 'owner':

"Owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

14. Section 103 of the Act deals with the provision of issue of permits to State Transport Undertakings. However, vide Uttar Pradesh Amendment Act 5 of 1993, following sub-Section (1A) was inserted after sub-section (1) thereof, w.e.f. 16.1.1993 reproduced hereinbelow:

"(1A) It shall be lawful for a State transport undertaking to operate on any route as stage carriage, under any permit issued therefor to such undertaking under sub-section (1), any vehicle placed at the disposal and under the control of such undertaking by the owner of such vehicle under any arrangement entered into between such owner and the undertaking for the use of the said vehicle by the undertaking."

15. By virtue of the aforesaid incorporated sub-section (1A) to Section 103 of the Act, the Corporation became entitled to hire any vehicle which could be plied on any route for which permit had been issued by the Transport Authority in its favour.

16. Chapter XI of the Act deals with the provisions of insurance of Motor Vehicles against third party risks.

Relevant Portions of sections 146 and 147 thereof are reproduced hereinbelow:

"146. 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 :"

147. Requirement 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 –

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub - section (2) –

(i)against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii)against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required -

(i).....

(ii)to cover any contractual liability.

Explanation. - For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2)Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely :-

(a) save as provided in clause (b), the amount of liability incurred.

(b) in respect of damage to any property of a third party, a limit of rupees six thousand :.."

17. Section 149 of the Act casts a duty on the insurer to satisfy the judgment and award against persons insured in respect of third party risks. Section 157 of the Act deals with Transfer of Certificate of Insurance, reproduced hereinbelow:

"157. Transfer of certificate of insurance.- (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

[Explanation. - For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.] (2)The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance."

18. It is relevant to mention here that under Section 196 of the Act, Insurance of vehicle is mandatory and compulsory, otherwise it exposes the driver and owner to criminal liability.

19. In the light of the aforesaid provisions of the Act, we shall now consider various judgments of this Court and High Courts to reach our conclusion.

20. Even though several judgments have been cited by both sides, but the question which arises in the instant case is unique in nature and we would answer the same taking cue and help of the various judgments of this Court and High Courts.

21. In the matter of Kailash Nath Kothari and others (supra), a question had arisen with regard to the liability of Insurance Company, where the bus plied as per the contract with Rajasthan State Road Transport Corporation. However, the said case was dealing with earlier Motor Vehicle Act of 1939. Taking into consideration the definition of 'owner' as it existed then in Section 2 (19) of the old Act, it has been held in para 17 as under:

"17. The definition of owner under Section 2(19) of the Act is not exhaustive. It has, therefore to be construed, in a wider sense, in the facts and circumstances of a given case. The expression owner must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of "owner" to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening of

liability in case of an accident. The liability of the "owner" is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident. In this case, Shri Sanjay Kumar, the owner of the bus could not ply the bus on the particular route for which he had no permit and he in fact was not plying the bus on that route. The services of the driver were transferred along with complete "control" to RSRTC, under whose directions, instructions and command the driver was to ply or not to ply the ill- fated bus on the fateful day. The passengers were being carried by RSRTC on receiving fare from them. Shri Sanjay Kumar was therefore not concerned with the passengers travelling in that bus on the particular route on payment of fare to RSRTC. Driver of the bus, even though an employee of the owner, was at the relevant time performing his duties under the order and command of the conductor of RSRTC for operation of the bus. So far as the passengers of the ill-fated bus are concerned, their privity of contract was only with the RSRTC to whom they had paid the fare for travelling in that bus and their safety therefore became the responsibility of the RSRTC while travelling in the bus. They had no privity of contract with Shri Sanjay Kumar, the owner of the bus at all. Had it been a case only of transfer of services of the driver and not of transfer of control of the driver from the owner to RSRTC, the matter may have been somewhat different. But on facts in this case and in view of Conditions 4 to 7 of agreement, (supra), the RSRTC must be held to be vicariously liable for the tort committed by the driver while plying the bus under contract of the RSRTC. The general proposition of law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption."

22. In the light of the aforesaid judgment, learned counsel for Respondent Insurance Company, Mr. Kishore Rawat, strenuously contended before us that the question has already been answered against the Appellant -Corporation, thus, nothing survives in this and the connected appeals filed by the Corporation.

23. In our considered opinion, in the light of drastic and distinct changes incorporated in the definition of `owner' in the old Act and the present Act, Kailash Nath's case (supra) has no application to the facts of this case.

24. However, we were unable to persuade ourselves with the specific question which arose in this and connected appeals as the question projected in these appeals was neither directly nor substantially in issue, in Kailash Nath's case (supra). Thus, reference to the same may not be of much help to us. Admittedly, in the said case, this Court was dealing with regard to earlier definition of owner as found in Section 2 (19) of the old Act.

25. Section 2 (19) of Motor Vehicles Act, 1939 is reproduced hereinbelow:

"2(19) `owner' means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, the person in possession of the vehicle under that Agreement."

26. Critical examination of both the definitions of the `owner', would show that it underwent a drastic change in the Act of 1988, already reproduced hereinabove.

27. In our considered opinion, in the light of the distinct changes incorporated in the definition of `owner' in the old Act and present Act, Kailash Nath Kothari's case shall have no application to the facts of this case.

28. Before we proceed further to decide the aforesaid question of law, it is necessary to refer to some of the relevant clauses in the Agreement entered into between the Appellant and the owner of the vehicle on 07.08.1997. In the said Agreement, the Appellant has been referred to as the `First Party' and owner Ajay Vishen has been referred to as 'Second Party'. Relevant clauses 2.1, 3.2, 4.2, 4.3 and 4.4 of Annexure P-2 are reproduced hereinbelow:

"2.1 The Second Party shall be liable and responsible to discharge all the legal liabilities under the Motor Vehicle Act, 1988 or any other Acts, Registration, payment of taxes of the vehicle, Comprehensive Insurance and all such liabilities as may be fixed from time to time by any law on the owner of vehicle and the First Party shall be deemed to have no liability whatsoever. 3.2 The driver shall remain and shall be deemed to be the employee of Second Party. That driver shall not under any circumstances be treated as employee of First Party. The Second Party shall be fully liable to procure driving licence, etc. and to meet all other legal requirements under Motor Vehicle Act 1988 or any other Act.

4.2 The driver of the bus under contract will drive the bus carefully. He shall stop the bus at every designated spot to enable passenger to board/get down from the bus and shall get in-out entries of the bus recorded wherever required. Driver of Bus shall ensure that tickets are issued to all the passengers and only after that would drive the bus at its next destination.

4.3 Bus driver shall not himself sell the tickets but this restriction shall not be applicable in the circumstances mentioned in clause-31 of the agreement.

4.4 The conductor appointed and deputed by the First Party shall have total responsibility for issuing tickets to the passengers, receiving fare and completing various papers/ records in this regard. The First Party shall appoint/depute the conductors."

29. Critical examination thereof would show that the Appellant and the owner had specifically agreed that the vehicle will be insured and a driver would be provided by owner of the vehicle but overall control, not only on the vehicle but also on the driver, would be that

of the Corporation. Thus, the vehicle was given on hire by the owner of the vehicle together with its existing and running insurance policy. In view of the aforesaid terms and conditions, the Insurance Company cannot escape its liability to pay the amount of compensation. There is no denial of the fact by the insurance company that at the relevant point of time the vehicle in question was insured with it and the policy was very much in force and in existence. It is also not the case of the insurance company that the driver of the vehicle was not holding a valid driving license to drive the vehicle. The Tribunal has also held that the driver had a valid driving license at the time of accident. It has also not been contended by it that there has been violation of the terms and conditions of the policy or that the driver was not entitled to drive the said vehicle.

30. During the course of hearing, we had asked the following pertinent questions to Mr. Kishore Rawat, learned counsel for the Insurance Company:

“i) Since the Insurance Company had admittedly received the amount of premium for the period when the mini bus had met with the accident then why should it not be made liable to make the payment of compensation? According to him, in normal circumstances, if the said vehicle would not have been attached with the Corporation for being plied by it on the route of permit granted to it, then of course, the Insurance Company would have no option but to make the payment.

ii) We had also enquired if there exists different tariffs of premium for the vehicle insured at the instance of owner or for the vehicle which is being attached with the Corporation for being plied by it. He categorically admitted that there is no such difference in the tariff in either of the aforesaid situation and it is same for both.

iii) We further enquired from him that if an intimation would have been given to the Insurance Company that the vehicle is being attached with the Corporation then what would have been the position? He again informed us that in that case, the Insurance Company would have met the liability of compensation, in case of an accident.

(iv) Lastly, we enquired from him as to under which provision of the Act or the Rule, any statutory duty or otherwise is cast on the owner to seek permission or give an intimation to the Insurance Company in case the vehicle is attached with the Corporation for being plied by it? He candidly conceded that there is neither any statutory duty cast on the owner under the Act or under any Rules to seek permission from the Insurance Company nor it is under any of the orders issued by the Company. According to him, it would have been desirable for the insured to have informed about such a contract.

31. Thus, in the light of the aforesaid, it is clear that Insurance Company is trying to evade its liability on flimsy grounds or under misconception of law.

32. On account of the aforesaid discussions, it is crystal clear that actual possession of the vehicle was with the Corporation. The vehicle, driver and the conductor were under the direct control and supervision of the Corporation.

33. Black's Law Dictionary defines "Vicarious Liability" as follows:

"Liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) because of the relationship between the two parties". (Page 927, Black's Law Dictionary, 7th Edition)."

34. So, through the above definition, it can be inferred that the person supervising the driver through the principle of Respondeat Superior should pay for the damages of the victim.

35. In the instant case, the driver was employed by Ajay Vishen, the owner of the bus but evidently through Clause 4.4. of the Agreement, reproduced hereinabove, driver was supposed to drive the bus under the instructions of conductor who was appointed by the Corporation. The said driver was also bound by all orders of the Corporation. Thus, it can safely be inferred that effective control and command of the bus was that of the Appellant.

36. Thus, for all practical purposes, for the relevant period, the Corporation had become the owner of the vehicle for the specific period. If the Corporation had become the owner even for the specific period and the vehicle having been insured at the instance of original owner, it will be deemed that the vehicle was transferred along with the Insurance Policy in existence to the Corporation and thus Insurance Company would not be able to escape its liability to pay the amount of compensation.

37. The liability to pay compensation is based on a statutory provision. Compulsory Insurance of the vehicle is meant for the benefit of the Third Parties. The liability of the owner to have compulsory insurance is only in regard to Third Party and not to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 146 of the Act does not provide that any person who uses the vehicle independently, a separate Insurance Policy should be taken. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice.

38. Third Party rights have been considered by this Court in several judgments and the law on the said point is now fairly well settled.

39. The Apex Court in the case of *Guru Govekar v. Filomena F. Lobo and Ors*². has held that:

"8. ...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 the 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.

13. ...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. ...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."

40. In a recent judgment of this Court, in the case of *United India Insurance Company Limited v. Santro Devi and Ors*³. it has been held as under :-

"16.The provisions of compulsory insurance have been framed to advance a social object. It is in a way part of the social justice doctrine. When a certificate of insurance is issued, in law, the insurance company is bound to reimburse the owner. There cannot be any doubt whatsoever that a contract of insurance must fulfil the statutory requirements of formation of a valid contract but in case of a third-party risk, the question has to be considered from a different angle.

17.Section 146 provides for statutory insurance. An insurance is mandatorily required to be obtained by the person in charge of or in possession of the vehicle. There is no provision in the Motor Vehicles Act that unless the name(s) of the heirs of the owner of a vehicle is/are substituted on the certificate of insurance or in the certificate of registration in place of the original owner (since deceased), the motor vehicle cannot be allowed to be used in a public place. Thus, in a case where the owner of a motor vehicle has expired, although there does not exist any statutory interdict for the person in possession of the vehicle to ply the same on road; but there being a statutory injunction that the same cannot be plied unless a policy of insurance is obtained, we are of the opinion that the contract of insurance would be enforceable. It would be so in a case of this nature as for the purpose of renewal of insurance policy only the premium is to be paid. It is not in dispute that quantum of premium paid for renewal of the policy is in terms of the provisions of the Insurance Act, 1938."

41. Perusal of the ratio of aforesaid judgments of this Court, shows that Section 146 of the Act gives complete protection to Third Party in respect of death or bodily injury or damage to the property while using the vehicle in public place. For that purpose, insurance of the vehicle has been made compulsory to the vehicles or to the owners. This would further reflect that compulsory insurance is obviously for the benefit of Third Parties.

42. Certificate of Insurance, between the owner and the Insurance Company contemplates, under what circumstances Insurance Company would be liable to pay the amount of compensation. The relevant conditions are reproduced hereinbelow :

"Rules with respect to use of the Vehicle Use only for carriage of passengers in accordance with permit (contract carriage or stage carriage) issued within the meaning of the Motor Vehicles Act, 1988. This policy does not cover:

1. Use for organised racing pace making reliability trial speed testing.

2. Use whilst drawing a trailer except the towing (other than to reward) of any one disabled mechanically propellor vehicle Persons who are qualified to use the Vehicle: Any person including the insured provided that person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such licence. Provided also that a person holding an effective learner's licence may also drive the vehicle when non used for transport of passenger at the time of the accident and such a person satisfies the requirement of rule No. 3 of this Central Motor Vehicle Rule, 1989."

43. Perusal thereof would show that there has not been any violation of the aforesaid terms and conditions of the policy. Respondent-Insurance Company has also failed to point out violation of any Act, Rules or conditions of the Insurance. Insurance Company has no legal justification to deny the payment of compensation to the claimants.

44. In the light of the foregoing discussions, the Appeal filed by Insurance Company fails, wherein it has been directed that the amount would first be paid by the Company, with right to it to recover the same from owner of the vehicle. This we hold so, as the liability of the Insurance Company is exclusive and absolute.

45. Thus, looking to the matter from every angle, we are of the considered opinion that Insurance Company cannot escape its liability of payment of compensation to Third Parties or claimants. Admittedly, owner of the vehicle has not violated any of the terms and conditions of the policy or provisions of the Act. The owner had taken the insurance so as to meet such type of liability which may arise on account of use of the vehicle.

46. Apart from the above, learned counsel for Insurance Company could not point out any legal embargo which may give right to it to deny the payment of compensation. Thus, legally or otherwise liability has to be fastened on the Insurance Company only.

47. In the light of the aforesaid discussion, the Appeals of the Corporation are allowed. The impugned judgment and order passed by High Court qua the Corporation are hereby set aside and quashed and we hold that the Insurance Company would be liable to pay the amount of compensation to the claimants.

48. Appeals filed by the Corporation thus stand allowed and the Appeal filed by the Insurance Company stands dismissed with costs. Counsel's fee quantified at Rs. 10,000/- in each Appeal.

¹(1997) 7 SCC 0481

²(1988 ACJ 585), 1988 AIR 1332

³(2009) 1 SCC 0558