

Alias Vs. Paul

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Court : Kerala

Decided On : May-26-2003

Reported in : III(2003)ACC377; 2004ACJ158; AIR2004Ker214; 2003(2)KLT992

Judge : J.B. Koshy and; A. Lekshmikutty, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 2(24) and 147

Appeal No. : M.F.A. Nos. 623 and 641 of 1993

Appellant : Alias

Respondent : Paul

Advocate for Def. : N. Nandakumara Menon and; V.M. Kurian, Adv.

Advocate for Pet/Ap. : Sreelal N. Warriar, Adv.

Judgement :

J.B. Koshy, J.

1. These two appeals are filed against the award of the Motor Accidents Claims Tribunal, Perumbavoor in O.P. (MV) No. 981 of 1990. The above claim petition was filed by the father and mother of one Benny who died in a motor accident. The deceased Benny was an automobile mechanic and he was working in Janahitham Motor Workshop in Kuroor Kara owned by one Sri. K.P. Chinna Swamy. The

owner of the vehicle in question who is the appellant in M.F. A. No. 641 of 1993 entrusted his vehicle to the workshop for building its body. On 2.3.1987 at about 12.30 p.m. while Benny was engaged in doing the work on the rear side of the lorry, another worker in the workshop took the lorry backwards without any warning and the lorry hit on the head of Benny. Thereafter, the lorry went further backwards and hit against the wall of the workshop and caused damages. Even though Benny was taken to the Government Hospital, he succumbed to the injuries. It was the contention that the deceased was 20 years old at the time of death and the accident occurred due to the negligent driving of the lorry by another employee of the workshop. It is stated that first respondent is the owner of the lorry and he is liable to pay compensation. It was also claimed that insurer of the lorry should pay the compensation. Petitioners claimed Rs. 1,50,000/- as compensation. The Tribunal awarded compensation of Rs.78,300/- with interest. The Tribunal found that since the accident occurred in the workshop and not in a public place, the insurance company is not liable to pay compensation. Therefore, the Tribunal directed the owner of the lorry to pay compensation.

2. The contention of the insurance company was that eventhough there is a valid comprehensive insurance for the lorry the insurance company is not liable because the accident occurred not in a public place. It was further contended that the person who was driving the lorry at the time of the accident was not having valid driving licence and, therefore, there is violation of the conditions of the policy. On that ground also the insurance company is not liable to pay compensation. The question whether driver of the lorry had valid driving licence or not was not considered by the Tribunal as it found that since the accident occurred not in a public place, the insurance company is any way not liable to pay compensation. The contention of the owner of the lorry that he had entrusted the lorry to the workshop and if the workshop owner has allowed to use the lorry by a person who has no driving licence, he is not responsible and it is the responsibility of the owner of the workshop to pay compensation in such cases was also not accepted. The owner of the workshop is not made a party either by the claimants or by the owner of the lorry. The contention of the appellant in M.F.A. No. 623 of 1993 is that even if there is no driving licence, the insurance company should be directed to pay compensation as the poor claimants should not suffer. If there is violation of the

policy conditions, it is for the insurer to recover the amount from the owner of the vehicle. It is also contended that the amount awarded is very low.

3. The first question to be considered is whether the accident occurred in a public place or not as liability of the insurance company was excluded by the Tribunal because the accident happened in a private place. The accident happened in the workshop. There is no pleading or evidence to show that the workshop owner restricted access to the public to the workshop or its premises or he was using the workshop only for vehicles owned by certain persons only. It was a general workshop where anybody can take his vehicle for repair. The word 'public place' has been defined in Section 2(24) of the Motor Vehicles Act which reads as follows:

' 'Public place' means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.'

In *United India Insurance Co. Ltd. v. Lakshmi* (1997 (1) KLT 449) = (1997 ACJ 489 (Kerala)), after quoting the observation of Barry, J. in *R. v. Kane* ((1965) 1 All. ER 705), this Court held as follows:

'In substance, a place is a 'public place' though it is private property when it is shown that the public are in the habit of resorting to it and no one is prevented therefrom so resorting to it.....'

In *Stroud's Judicial Dictionary*, 5th Edition, page 2094, 'public place' has been defined as follows:

'A 'public place' is a place to which the public can and do have access; it doesn't matter whether they come at the invitation of the occupier or merely with his permission, or whether some payment or the performance of some formality is required before access can be had.....'

In *Black's Law Dictionary*, 5th Edition, page 1107, 'public place' has been defined as follows:

'Public place: A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighbouring public (e.g. a park or public beach). Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and fro.'

4. Learned counsel for the insurance company cited a Single Bench decision of this Court in *Taxi Drivers' Union v. Kerala State Road Transport Corporation and Ors.* (1982 KLT 468) wherein this Court held that when the accident occurred in the Cochin Airport area the insurance company is not liable as the parking place and link road in Cochin Airport area are not public places. Permit is required for transport vehicles to use the area. Here, no permit was required. In this case, the accident happened in the workshop where there was no restriction to entry to the public. The word 'public place' in the Section does not exclude private properties. In *United India Insurance Co. Ltd. v. Asha Rani* (2001 (2) KLT SN Case No. 85 at page 70) a Single Bench of the Punjab High Court also held that what is used by the Legislature in the Section is access to the public and did not exclude private places. Here there is no dispute that the workshop had access to the public. In this connection we refer to the Division Bench decision of this Court in *United India Insurance Co. Ltd. v. Pierce Leslie India Ltd. and Ors.* (2000 (1) KLT 792) = (2000 ACJ 1227) where the truck was allowed to go inside the factory premises and offload the goods. It was held that the factory can not be treated as a private place so as to exempt the insurance company from its liability. In that case the Court also noticed that being comprehensive policy the insurance company cannot exclude the liability. In *United India Insurance Co. Ltd. v. Roop Kanwar and Ors.* (1991 ACJ 74) the Rajasthan High Court held that even if the accident occurred in the workshop the insurance company is liable as workshop has access to public. Matter was elaborately discussed by the Bombay High Court in *Pandurang Chimaji Agale v. New India Life Insurance Co. Ltd.* (1988 ACJ 674), wherein the Court held as follows:

'..... The Legislature was concerned not so much with the nature of the place where the vehicle causes the accident as where it was likely to do so. Hence all places where the members of public and/or their property are likely to come in contact with the vehicles can legitimately be said to be in its view when the Legislature made the relevant provisions for compulsory insurance. It will have, therefore, to be held that all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of 'public place' in Section 2(24) of the Act. To hold otherwise would frustrate the very object of the said Chapter and the Act.'

5. In *Chacko v. Mariakutty* (1987 (1) KLT 32) = (1987 ACJ 557 (Kerala)) this Court held as follows:

'To us, it appears that the public place is a place to which nobody can deny as a matter of right access to the others, or nobody had, as a matter of fact, at the relevant time, or immediately prior thereto, sought to exercise the right of denial of access to the others. It is significant that the definition of 'public place' in Section 2(24) of the Motor Vehicles Act mentions that, even if the place is not a thoroughfare, it may still be a public place, provided the public have got right of access thereto. Even though the Tribunal stated that access to the place of accident was restricted by licence, no evidence did, as a matter of fact, support this assumption.'

Section 95(1)(b)(i) is the relevant provision, which is as follows:

'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 -

(a) xxx. xxx xxx

(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 or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.'

It is clear that reading of the Section as a whole would show that third party risks are covered if there is an access to the public in the place where the accident occurred. Here we hold that workshop also is a public place within the meaning of Section 2(24) of the Act as public have access to that place and insurance company cannot escape from liability on the ground that accident happened in a private place.

6. In *Amrit Lal Sood v. Kaushalya Devi Thapar* (1998 ACJ 531 (SC)) the Supreme Court held as follows:

' in the present case, the policy is admittedly a 'comprehensive policy'. 'Comprehensive insurance' has been defined in Black's Law Dictionary, 5th Edition, as 'All risk insurance' which in turn is defined as follows: Type of insurance policy which ordinarily covers every loss that may happen, except by fraudulent acts of the insured. *Miller v. Boston Insurance Co.*, 218A 2d 275, 278, 420 pa 566. Type of policy which protects against all risks and perils except those specifically enumerated.'

In this case, policy is a comprehensive policy and not merely an Act Policy covering statutory right alone. On that ground also the insurance company is liable to pay compensation.

7. With regard to the contention that owner of the vehicle is not liable at all as it was entrusted to the workshop, the matter is covered by the decision of the Supreme Court in *Guru Govekar v. Miss Filomena F. Lobo and Ors.* (AIR 1988 SC 1332). The contention taken there was that since the vehicle was entrusted with a repairer or a workshop, the owner is not liable and, therefore, the insurance company is also not liable. The Supreme Court held as follows:

'..... 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 of 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 repairer or his employee, who is engaged in connection with the work of 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.....'

The Court further held that:..... 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 Chap. 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 about the insurance policy under the Act.'

8. In *Motor and General Finance (India) Ltd. v. Mary Mony* (1990 (2) KLT 971) a Division Bench of this Court held that both owner and bailee will be liable in such cases. In this case, the bailee was not made a party either by the claimant or by the owner of the vehicle. Of course, the owner entrusted his lorry to the workshop owner and vehicle was allowed to be driven by a person without having driving licence by the workshop owner. It may be an unauthorised use by the bailee. Therefore, the owner is entitled to recover damages from the bailee. Claimant also

is entitled to get compensation from him. But, bailee is not a party here. In paragraph 27 of the above judgment, it was held as follows:

'27. We have said that the liability to pay compensation is a liability under the general law of torts. We have already determined in paragraph 10 the status of the appellant in this case as that of a bailee. What happened is clear. An employee of the bailee caused the accident by his negligence. Allowing the employee to sit in the driver's seat also is an act of imprudence and negligence on the part of the appellant. If the accident has occurred in the same way as it has occurred in this case, as if the victim is not the owner of the vehicle, but a stranger, it will be difficult for the bailee to say that he is not liable for compensation. Perhaps, that stranger victim may have a cause of action against the owner of the vehicle also. If circumstances are brought out to fasten liability on the owner of the vehicle or in case the owner fails to get himself extricated from the liability on the basis of exceptions that can be claimed when the accident has occurred on account of the negligence of the bailee both the owner and bailee may be liable to pay compensation to the injured or legal representatives of the deceased. Anyhow, in general law it is not difficult to find liability for the negligence of the person who was on the driver's seat. The person who actually caused the accident by his negligence has no defence to escape liability to pay compensation. He is bound to account for his negligence. If the person who is primarily bound to account for the negligence is the employee of the appellant, the appellant is also vicariously liable to account for the negligence of his employee.'

Therefore, as decided by the Supreme Court in Guru Govekar's case, since the owner had entrusted the vehicle to the workshop owner and the accident happened while the vehicle is being repaired, the insurance company is liable to pay compensation. The right of the owner of the vehicle or claimant to recover damages or compensation from the owner of the workshop is a different matter.

9. The third contention raised by the insurance company is that since admittedly a person who was not having driving licence was driving the lorry at the time of accident, there is violation of the policy conditions and, therefore, they are not liable to pay compensation. It is the definite case of the claimants that the second

respondent in the claim petition was driving the lorry. He filed a written statement stating that he had no licence. So admittedly, there was no licence for the person who was driving the vehicle at the time of accident and, therefore there is violation of the policy conditions. In such cases, it was held by the Apex Court that the insurance company is liable to pay the compensation first and then recover the same from the owner. (See *United India Assurance Co. Ltd. v. Kamalam* (JT 2001 (4) 235)). In this connection we also refer to the Division Bench decisions of this Court in *Oriental Insurance Co. Ltd. v. Usha* (1996 (1) KLT 393); *United India Insurance Company Ltd. v. Jaimy* (1998 (1) KLT 90) and in *Oriental Insurance Co. Ltd. v. Narayanan* (2001 (2) KLT 714). However, the insurance company will be entitled to recover the amount from the owner according to law. Here, already Rs. 30,000/- was deposited by the owner as a condition precedent for granting stay. The balance amount should be deposited by the insurance company with interest within three months from today. The insurance company will be free to recover the amount deposited from the owner of the vehicle. It is for the owner of the vehicle to consider whether he can recover the amount from the bailee or not according to law. Since bailee is not a party, we are not expressing any observation regarding the same.

10. With regard to the appeal filed by the father and mother of the deceased for enhancement of compensation, the deceased was an unmarried 20 years' old person. After marriage he may have to maintain wife and children and he will spend only a portion of his income for his parents. His income was not proved before the Tribunal. Considering the total amount now awarded including interest, we are of the opinion that no increase in compensation is needed on the facts and circumstances of the case.

Both the appeals are disposed of accordingly.