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State of Himachal Pradesh and anr. Vs. Deepa Devi and ors.

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Court : Himachal Pradesh

Decided On : May-17-2005

Reported in : IV(2005)ACC194,2006ACJ1677

Judge : Deepak Gupta, J.

Acts : Motor Vehicles Act, 1988 - Sections 2(30), 5, 94(2), 95(4), 110B, 140, 147, 147(3), 147(5), 162, 166 and 168; ;Assam Requisition and Control of Vehicles Act, 1968 - Section 3 and 3(4); ;Workmen's Compensation Act; ;Motor Vehicles Act, 1939 - Sections 94, 95 and 95(5)

Appeal No. : F.A.O. (MVA) No. 208 of 1997

Appellant : State of Himachal Pradesh and anr.

Respondent : Deepa Devi and ors.

Advocate for Def. : S.R. Sharma,; B.N. Sharma,; Ramakant Sharma and;

Advocate for Pet/Ap. : J.S. Guleria, Law Officer

Disposition : Appeal allowed

Judgement :

Deepak Gupta, J.

1. An interesting question has been raised in this appeal- Whether the insurance company is liable to pay compensation when an accident occurs and the insured vehicle is not in the control of the owner but has been requisitioned by the government?

2. The facts necessary for the decision of this case are that a Maruti Gypsy bearing No. HIS 6095 was owned by Nathpa Jhakri Power Corporation (hereinafter referred to as 'NJPC'). It was insured with National Insurance Co. Ltd. The said vehicle was requisitioned by the government for election purposes. During the period when this vehicle was requisitioned and was being used by the SDM, Rampur the vehicle struck against one Satish Kumar who sustained injuries and died. The parents of Satish Kumar filed a claim for compensation. Claims Tribunal granted compensation of Rs. 1,07,880 in favour of L.Rs. Tribunal exonerated the insurance company and held the State Government liable to pay the compensation.

3. Mr. J.S. Guleria, learned Law Officer appearing on behalf of the appellant State has argued that the award of the M.A.C.T. in so far as it exonerates the insurance company and fastens the appellant with the liability to pay compensation is against law. He submits that the insurance company has wrongly been exonerated from its liability to pay compensation. The fact that the vehicle was requisitioned by the government would not make the government the owner of the vehicle. He also urges that in terms of the policy and the provisions of the Motor Vehicles Act the insurance company is liable to settle the claim.

4. On the other hand, Mr. Ashwani Sharma, learned Counsel for the insurance company has argued that the award of the Claims Tribunal is absolutely correct and calls for no interference. He submits that the purpose of an insurance policy is to indemnify the insured. According to him when the vehicle is requisitioned by the State Government the insured loses all control over the vehicle and cannot be deemed to be its owner at the relevant time. Since the insured cannot be held responsible, therefore, the insurance company also will have to be exonerated from paying compensation with regard to the accident arising at the time when the vehicle has been commandeered by the State Government for election duty.

5. Before considering the other aspects of the case it would be fruitful to refer to a few provisions of the Motor Vehicles Act. The Motor Vehicles Act, 1988 makes it compulsory for every vehicle owner to get his vehicle insured as far as third party risks are concerned. The only exemption is for vehicles owned by the government or government owned corporations and companies. The purpose behind this is evident. In case of an accident the insured or the legal representatives of the deceased should be able to recover compensation from a person who is capable of paying it. Section 147 mentions the risks which a policy must cover to be a policy valid under Motor Vehicles Act. Section 147(5) of Motor Vehicles Act reads as follows:

147. Requirements of policies and limits of liability.-

xxx xxx xxx(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes 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.

The relevant portion of Section 168 of the Act reads as follows:

168. Award of the Claims Tribunal- (1) On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

(Emphasis supplied)

6. Various judgments have been cited by both the sides.

7. Orissa High Court in National Insurance Co. Ltd. v. Durdadahya Kumar Samal 1988 ACJ 540 (Orissa), dealing with a similar question where a vehicle had been requisitioned by the Collector for election duty held as follows:

(7) Under Section 110-B of the Act, the Tribunal is to specify the amount which would be paid by the insurer or the owner or the driver of the vehicle involved in the accident. The word 'owner' in this case is to be liberally interpreted. When a vehicle had been requisitioned, the Collector for the purpose of liability becomes the owner of the vehicle. In a vehicle requisitioned, the driver remains under the control of the Collector and by such driving the vehicle, he can be accepted to have been employed by the Collector. Thus, the Collector would be vicariously liable for the act of the driver in the present case.

xxx xxx xxx(9) Insurance under the Motor Vehicles Act is a guarantee to the owner of the vehicle that in case of any claim with respect to the vehicle concerned, the insurer shall discharge the liability of the owner under the terms of the policy. It is a contract between the parties. It is not a universal guarantee for the vehicle whosoever becomes the owner. Therefore, the Collector having not been insured in respect of the requisitioned vehicle, there will be no liability of the insurer in respect of the accident during the period of requisition. Besides, the term of the policy which has been prayed to be accepted as additional evidence by the insurer which is not challenged by any party, clearly proves in the General Exceptions that during the period of requisition by government the insurer will not be liable. It reads as follows:

'General Exceptions:

The company shall not be liable under the policy in respect of-(1) to (6)...

xxx xxx xxx(7) any accident loss, damage or liability caused, sustained or incurred during the period of requisition or commandeering by the government for any purpose'.

8. In Sita Rani Gupta v. State of Assam 1989 ACJ 348 (Gauhati), Division Bench of the High Court of Gauhati held that when the vehicle had been requisitioned

under the Assam Requisition and Control of Vehicles Act, 1968, the driver of the requisitioned vehicle was entitled to daily wages under the provisions of the said Act and, therefore, for the period when the vehicle remained under requisition, driver became an employee of the State. As such the driver in the event of injury or his heirs in case of his death would be entitled to claim compensation under the Workmen's Compensation Act. This judgment in my opinion has no relevance to the facts of the present case. In that case the provisions of the Assam Requisition and Control of Vehicles Act, 1968 provided that it was the requisitioning authority which was to pay the wages of the driver of the vehicle. Therefore, the relationship of employer and employee came into existence between the requisitioning authority and the driver. This judgment does not apply to the facts of the present case.

9. Andhra Pradesh High Court in New India Assurance Co. Ltd. v. S. Ramulamma 1989 ACJ 596 (AP), was dealing with the case in which the District Collector had requisitioned the vehicle for election purposes. The vehicle met with an accident in which one constable died. It was held that government was liable to pay compensation and since the government had not been made a party to the claim petition, the petition was dismissed. It was also held that the insurance company was not liable to pay compensation. In this case the court held that there has been contravention of clause 9 of insurance policy which reads as follows:

The due observance and fulfilment of the terms, conditions and endorsements of this policy insofar as they relate to anything to be done or complied with by the insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the company to make any payment under this policy.

In view of the terms of the policy quoted above the High Court of Andhra Pradesh held as follows:

(5) The liability during the period of requisition, in this case, has been specifically excluded under the terms of policy, Exh. Bl. When a valid requisition is there for a vehicle and the user of the vehicle has been changed from the real owner to the State Government, in the event of an accident that takes place by the requisitioned

vehicle, the claim should be against the government alone. When a specific condition, i.e., clause 9 is envisaged in Exh. B1, the policy, as contemplated under Section 94(2) of the Motor Vehicles Act, it must be deemed that the liability also has been transferred during the period of requisition by the government. Mere payment of bhatta to the driver to whom the vehicle is entrusted does not mean that the effect of requisition has been lost. Once the vehicle is given out by way of requisition, the effect of requisition divests the liability of the insurance company, during the period of requisition. The G.Os., Exhs. B2 and B3 issued by the government, clearly point out that during the period of requisition, the owner has no right over the vehicle. The government is the proper party that has to be impleaded. When the claimant has not chosen to implead the government, he must take the consequences of it. Merely because the owner is there and the vehicle is insured and the third party has been affected by it, no claim against the insurance company can be made, ignoring the conditions that have been laid down in the requisition order issued by the government.

xxx xxx xxx(7) The liability of the vehicle that has been requisitioned by the government stands on a different footing than the vehicle that has been hired to a third party for a limited purpose, i.e., for marriage function or carrying of goods, etc. The reasoning given by the lower court in fixing the liability on the insurance company in spite of the conditions stipulated in Exh. B1, the policy and the provisions contained in Section 94(2) of the Motor Vehicles Act is bad.

10. The High Court of Gauhati in State of Assam v. Pranesh Debnath , held that when a vehicle had been requisitioned the State Government was in absolute control of the vehicle. The owner had no control of the use of the vehicle and the driver was working under the directions and control of the requisitioning authority. Following the judgment of Orissa High Court referred to above it was held as follows:

(36) I have considered the rival submissions and also the decision of Orissa High Court referred to above. I find myself in full agreement with the decision of Orissa High Court. The legal position in regard to the control and the liability of the requisitioning authority in respect of requisitioned vehicle in Assam can be

ascertained from the provisions of Assam Requisition and Control of Vehicles Act, 1968 (Assam Act V of 1969). Section 3 of this Act empowers the State Government to requisition a vehicle for the purposes specified therein. Subsection (4) thereof provides: 'Where the State Government has requisitioned any vehicle, it may use or deal with it in such manner as may appear to it to be expedient'. Section 5 of the Act provides for release from requisition. It empowers the officer or authority requisitioning a vehicle to release the vehicle at any time by issuing a notice contemplated therein. Sub-section (2) of the said section provides: 'With effect from such date no further liability for compensation or payment of any kind shall lie with the officer or authority requisitioning the vehicle...' These two provisions clearly go to show that during the period the vehicle remains under requisition, the liability for compensation or payment of any kind lies with the officer or authority requisitioning the vehicle and not the owner. The reason is obvious. The vehicle is in absolute control of the requisitioning authority. The owner has no control whatsoever over the user of the vehicle during such period. The driver and/or other employees work under the directions and control of the requisitioning authority and not the owner. The vicarious liability, therefore, cannot be fastened to the owner. It has to fall on the requisitioning authority. In that view of the matter, in my opinion, the Claims Tribunal was right in directing the State Government, as the requisitioning authority, to pay the amount determined under Section 140 of the Act. The insurance company was equally not liable to pay the same inasmuch as the same was not covered by the policy of insurance. In fact such claim was excluded from the operation of the policy by incorporating a specific clause in the insurance policy to that effect. Under such circumstances, the insurance company also cannot be made liable to pay the claim. The only person liable to pay the same was the State Government and the Claims Tribunal rightly directed it to pay the amount. There is, therefore, no infirmity in the said order on that count.

11. The Apex Court in Guru Govekar v. Filomena F. Lobo 1988 ACJ 585 (SC), was dealing with the question whether the insurance company is liable to pay compensation to a third party or to his legal representatives when the liability arises and the accident occurs when the motor vehicle is in the custody of repairer. The Apex Court held as follows:

(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.

12. A single Judge of Gujarat High Court in Chief Officer, Bhavnagar Municipality v. Bachubhai Arjanbhai : AIR1996 Guj51 , was dealing with a case where a vehicle of the State Government was entrusted to the municipality. The vehicle at the time of the accident was being driven by the driver of the municipality. The State Government and the municipality along with the insurer of the vehicle were held liable to pay compensation. Tribunal found that the State had entrusted the vehicle to the municipality for distribution of water and it had not retained the control of the vehicle and, therefore, it was the municipality which was liable. The State Government and the insurance company were exonerated. Allowing the appeal it was held that the State Government and the insurance company would also be liable along with the municipality to pay the compensation.

13. In Rikhi Ram v. Sukhrania : [2003]1SCR872 , the question was slightly different. The vehicle which was involved in the accident was initially owned by Bhagwan Rai Amrit Lal who had transferred it in favour of Rikhi Ram. No intimation about the transfer was given to the insurance company. The Tribunal as well as High Court had held that the transferee alone was liable to pay the compensation and the insurance company was not liable. The Apex Court allowed the appeal and held the insurance company liable to pay the compensation. Reference was made to Sections 94 and 95 of the Motor Vehicles Act, 1939. The

pertinent observations of the Apex Court read as follows:

(4) A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle for the owners. Thus, it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover three kinds of risks, i.e., owner of the vehicle; property (vehicle); and third party. The liability of the owner to have compulsory insurance is only in regard to the third party and not to the property. Section 95(5) of the Act runs as follows:

'95 (5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes 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.'

(5) The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject-matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

14. Section 168 of the Act provides that the Tribunal shall after giving notice to the parties including the insurer and after holding inquiry and giving opportunity of being heard make an award for compensation and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or the owner or driver of the vehicle involved in the accident. The Act, therefore, presume that the liability has to be of the insurer or the owner or the driver. The Act does not contemplate the award being made only against a fourth person. Orissa High Court has held that the word 'owner' should be interpreted liberally and has further gone on to hold that the requisitioning authority would be deemed to be the owner. The word 'owner' has been defined in Section 2(30) of Motor Vehicles Act as follows:

2 (30) '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.

15. It is clear that the owner is either the person in whose name the motor vehicle stands registered or in the case of hire-purchase agreement, lease agreement or hypothecation the person in possession of the vehicle under that agreement. The person who is in possession having requisitioned the vehicle has not been included in the definition of the word 'owner'. I am in respectful disagreement with Orissa High Court that the word 'owner' will include the person who has requisitioned the vehicle. In my opinion the word 'owner' has to be read as defined under the Motor Vehicles Act. Even if a wider meaning has to be given then also the requisitioning authority cannot be deemed to be the owner. Supposing the vehicle gets damaged while it has been requisitioned who will get the claim for such damage? Obviously, the registered owner of the vehicle. Conversely, when an accident occurs with the vehicle when it is requisitioned and a third party is entitled to compensation then the owner of the vehicle will be liable to pay the same. If the vehicle is insured then the insurance company will also be liable.

16. It would also not be in the interest of the third parties to permit the insurance company to raise a defence that the vehicle was not at the relevant time under the control of the insured and, therefore, the insurance company is not liable. If such a defence is allowed to be raised then the insurance company can claim that it is not liable to pay compensation in case the vehicle is stolen and during this period an accident had occurred. One can imagine a situation where the vehicle owner is threatened at pistol point and the vehicle is commandeered by dacoits. Thereafter an accident occurs. The vehicle is obviously not under the control of the owner. Can it be said that the insurance company is not liable? Obviously the answer has to be in negative. There is no breach of the policy by the insured. The same logic must apply when the vehicle has been requisitioned. In the present case also the vehicle has been requisitioned by the State Government. The driver of the vehicle was an employee of the insured and continued to receive his salary from the

insured. If any other view is taken it shall cause great hardship to innocent third parties. They may not be able to recover the compensation and the very purpose of making the third party insurance compulsory would be defeated.

17. Furthermore in the present case there is no provision in the policy which excludes the liability of insurance company to pay compensation when the vehicle is requisitioned. The relevant portion of the policy which has been relied upon by the insurance company reads as under:

For private car [X] and motor cycle/ scooter [Y] Use only for social domestic and pleasure purposes and insured's own business.

18. This only provides that the vehicle is to be used for social domestic and pleasure purposes and for the business of the insured. There is nothing in this policy which exonerates the insurance company in case the vehicle is requisitioned by the State Government. In the case before the Orissa High Court in Durdadahya Kumar Samal 1988 ACJ 540 (Orissa), there was a general exception that the company will not be liable under the policy in case any accident, loss, damage or liability is caused when the vehicle is under requisition or commandeered by the government for any purpose. The judgment of the Orissa High Court can, therefore, be distinguished on facts also.

19. As far as the case titled State of Assam v. Pranesh Debnath is concerned, in this case also it appears that there was a clause in the insurance policy like the one in Durdadahya Kumar's case 1988 ACJ 540 (Orissa). However, this clause has not been quoted in the judgment. The judgment in this case also turns upon the terms of the provisions of the Assam Requisition and Control of Vehicles Act, 1968. Section 3(4) of this Act provided that where the State Government had requisitioned any vehicle it could use or deal with it in such a manner as may appear to it expedient. There is nothing on the record of this case to show that the State Government had similar powers.

20. In New India Assurance Co. Ltd. v. S. Ramulamma 1989 ACJ 596 (AP), the clause relied upon by insurance company has been quoted above. This clause was not similar to Orissa case. In fact the clause quoted in the judgment, in my

opinion, did not exonerate the insurance company from the liability. There is nothing in the clause to indicate that insurance company is not liable in case the vehicle is being used by any person other than the insured whether under requisition or otherwise. For the reasons stated above I am in respectful disagreement with the said judgment.

21. The Apex Court in Guru Govekar's case 1988 ACJ 585 (SC), was dealing with the question whether the insurance company is liable when the vehicle is in the custody of the repairer. It is no doubt true that the insured handed over the vehicle to repairer. In that sense requisitioning and handing over the vehicle to repairer may stand on different footing. However, the insured has no control over the vehicle when the vehicle is lying in a garage. Supposing the vehicle is sent for major repairs and kept there for 10-15 days obviously the insured has no effective control over the use of the vehicle. The law as decided by the Apex Court is that once the insurer had issued a certificate of insurance in accordance with Sub-section (4) of Section 95 of the Act corresponding with subsection (3) of Section 147 of the Motor Vehicles Act, 1988 the insurer is bound to satisfy a decree when a person received injuries from the use of the insured vehicle.

22. The Supreme Court in Rikhi Ram's case : [2003]1SCR872 , while dealing with Section 95(5) of Motor Vehicles Act, 1939 which corresponds with Section 147(5) of Motor Vehicles Act, 1988 has clearly held that once the vehicle is insured the owner as well as any other person can use the vehicle with the consent of the owner. In the present case there is nothing on record to show that owner had not consented or had opposed the requisitioning of the vehicle by the government. Therefore, it has to be held that the owner has consented to the vehicle being requisitioned by the government. As such the owner and the insurance company are liable.

23. In view of the above discussion the appeal is allowed and the award of the Tribunal is modified and it is held that the owner of the vehicle, the State Government and the insurance company are all jointly and severally liable to pay the compensation. Since the vehicle was insured with the insurance company it shall deposit the amount payable to the claimants. In view of the peculiar facts of

the case there shall be no order as to costs.

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