Minu B. Mehta And Another vs Balkrishna Ramchandra Nayan And ... on 28 January, 1977

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Author: P.S. Kailasam

Bench: P.S. Kailasam, A.N. Ray, M. Hameedullah Beg

PETITIONER:
MINU B. MEHTA AND ANOTHER

Vs.

RESPONDENT:
BALKRISHNA RAMCHANDRA NAYAN AND ANOTHER

DATE OF JUDGMENT28/01/1977

BENCH:
KAILASAM, P.S.
BENCH:
KAILASAM, P.S.
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH

CITATION:
1977 AIR 1248 1977 SCR (2) 886
1977 SCC (2) 441
CITATOR INFO :
R 1979 SC1862 (17)
E 1987 SC1690 (6)

ACT:
Motor Vehicles Act, 1939--S. 95(v) (b) (i) and (ii)--Scope of--Claim for compensation in motor vehicle accidents Proof of negligence of driver--If necessary.
Torts--Claim for compensation in motor vehicle accidents--Proof of negligence of driver--If necessary.

HEADNOTE:
While the respondent was travelling in his car, the appellant's truck, driven by a driver, hit the car and caused

injuries to the respondent and damaged the car. The Claims Tribunal awarded compensation to the respondent, and the High Court upheld the Tribunal's award. In the course of the judgment the High Court, however, observed that every person has a right to security and safety of his person irrespective of the fault or negligence or carelessness and that every person has a right to claim compensation, irrespective of proof of negligence on the part of the driver. It further observed that the perimeters of liability in cls. (i) and (ii) of s. 95(1)(b) must be held to be the same because in both, the liability of the owner of the driver exists and is made compulsorily insurable and that it could not be said that the legislature intended absolute liability in cases covered by cl. (ii) and not in cases covered by cl. (i).

HELD: Proof of negligence is necessary before the owner or the insurer could be held liable for payment of compensation in motor vehicle accident claims. The High Court's views are opposed to basic principles of the owner's liability for negligence of his servant and are based on a complete misreading of the provisions of Chapter VIII of the Motor Vehicles Act. [900 F]

1. Before a person can be made liable to pay compensation for any injuries and damage caused by his action. it is necessary that the person injured should be able to establish that he has some cause of action against the party responsible. In order to succeed in an action for negligence the plaintiff must prove (1) that the defendant had, in the circumstances, a duty to, take care and that duty was owed by him to the plaintiff and (2) that there .was a breach of that duty and that as a result of the breach damage was suffered by the plaintiff. The master also becomes liable for the conduct of the servant when the servant is proved to have acted negligently in the course of his employment. [895 C-D]

2(a) The purpose of making insurance compulsory is to protect the interests of the successful claimant from being defeated by the owner of the vehicle who has not enough means to meet his liability. The safeguard is provided by imposing certain statutory duties, namely, the duty not to. drive or permit a car to be driven unless the car is covered by third party insurance. 1895 F]

(b) Under s. 95(1)(b)(ii) of the Act, the policy of insurance must be a policy which insures against any liability which may be incurred in respect of death 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. The accident to which the owner or the person insuring is liable is to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. It is, therefore, obvious that if the owner has not incurred any liability in respect of death or bodily injury to any person there is no liability and it

is not intended to be covered by the insurance. The liability contemplated arises under the law of negligence and under the principle of vicarious liability. The provisions of the section do not make the owner or the insurance company liable for any bodily injury caused to a third party arising out of the use of the vehicle unless the liability can be fastened on him. [896 D-F]

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(c) Under sub-cl. (ii) of s. 95(1)(b) of the Act the policy of insurance must insure a person against death 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. So far as the bodily injury caused to a passenger is concerned it need not be due to any act or liability incurred by the person. The expression "liability which may be incurred by him" in sub.-cl. (i) is meant to cover any liability arising out of the use of the vehicle. Therefore, the person must be under a liability and that liability alone is covered by the insurance policy. [896 F-H]

(d) The owner's liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate any one else. The Claims Tribunal is a tribunal constituted by the State Government for expeditious disposal of the motor vehicles claims. The general law applicable is only common law and the law of torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims .Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence, if accepted, would lead to strange results. [897 E-F]

3. The power to constitute one or more Motor Vehicle Claims Tribunals under s. 110(1) is optional and the State Government may not constitute a Claims Tribunal for certain areas. When a claim includes a claim for compensation, the claimant has an option to make his claim before the Civil Court. In claims for compensation, therefore, in certain cases, Civil Courts also have jurisdiction. If the contention put forward is accepted so far as the Civil Court is concerned, it would have to determine the liability of the owner on the basis of common law or torts while the Claims Tribunal can award compensation without reference to common law or torts and without coming to the conclusion that the owner is liable The concept of owner's liability without any negligence is opposed to the principles of law. The mere fact that a party received an injury arising out of

the use of a vehicle in a public place, cannot justify fastening liability on the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. In such cases, the owner cannot be made liable. Proof of negligence remains the lynch pin to recover compensation. [897 H; 898 A-B]

Haji zakariaand others v. Naoshir Cama and others A.I.R. 1976 A.P.171 and New India Assurance Co Ltd. v. Sumitra Devi and others , 1971 A.C.J. 58 not approved.

Kesavan Nair v. State Insurance Officer, 1971 A.C.J. 219 and M/s. Ruby Insurance Co. Ltd. v. V. Govindaraj and others, A.A.O. 607 of 1973 and 296 of 1974 decided by the Madras High Court on December 13, 1976 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1249 of 1976.

Appeal by Special Leave from the Judgment and Order dated the 23-3-1976 of the Bombay High Court in C. No. 449/75 from Original Decree.

F.S. Nariman, I. M. Patel and B.R. Agarwala for the Appel- lants.

R.D. Hattangadi, George Kurien and (Mrs.) Urmila Sirur for. Res. No. 1.

K. Singhvi and V.N. Ganpule for the applicant/Inter- vener.

The Judgment of Court was delivered by This appeal is by special leave under Article 136 of the Constitution by the two appellants against the judgment of the Bombay High Court dismissing their appeal against the judg- ment of the Additional Motor Accidents Claims Tribunal for Greater Bombay and confirming the award passed by the tribu- nal in favour of the respondents and directing the Tribunal to decide the question of the liability of the Insurance Company on its application that its liability is limited to Rs. 20,000 under section 110E of the Motor Vehicles Act, 1939 referred to as the Act after giving opportunity to the parties.

The applicant in Application No. 727 of 1969 before the Motor Accidents Claims Tribunal for Greater Bombay is one Dr. Balkrishna Ramchandra Nayan practising in Bombay and is the respondent in this appeal. On 14th April, 1969 at about 1.00 p.m. the respondent was driving his car No. MRC- 4450 towards Fort side on Dr. Annie Besant Road. With him was sitting on the left side in the front seat Malati M. Deshmukh, his nurse. The road has stone dividers in the middle of the road. When the car approached Lotus cinema the truck owned by the appellants and insured with the Insurance Company who were opposite parties 1 to 3 before the Motor Accidents Claims Tribunal came from the opposite direction at a high speed and dashed against the right side of the car. Due to the impact the car was damaged and the 1st respondent and Malati M. Deshmukh were injucted. Re- spondent 1 had to undergo treatment. He was operated on the day of the accident itself and was

patient in his own Nursing Home for a month till 15th May, 1969. According to him his right arm was operated and kept in plaster and that he had become permanently disabled in discharging his duties as a surgeon and that he had incurred a loss during the closure of the Nursing Home rind loss of income due to permanent injury along with other claims. He claimed a sum of Rs. 3 lakhs by way of general and special damages with interest thereon from the date of his application. The owners of the vehicle fried a written statement refuting the claim of the applicant. According to them while the motor lorry was proceeding from Haji Ali towards Worli, they had taken all precautions to keep the lorry in road worthy condition and that at the material time the axle brake ring of the motor lorry came out and the driver therefore lost control of the vehicle and because of this defect which can develop in a running car the driver lost control of the' steering wheel. According to them the lorry prior to the accident was being driven at a moderate speed with due care and caution. They contended that the accident did not occur on account of rash and negligent driving on the part of the driver. They also denied the claim of various items of compensation made by the applicant.

The Motor Accidents Claims Tribunal framed four issues. The first 2 issues were whether the applicant had proved that the driver of the lorry was driving the vehicle in rash and negligent manner and whether the opposite party had proved that at the time of the accident the axle brake ring of the motor lorry came out and the driver lost control of the motor lorry. The other 2 issues related to the ques- tion as to whether the applicant received the injuries as a result of this accident and whether he was entitled to the compensation claimed by him.

The applicant examined himself and Malati M. Deshmukh who was travelling with him at the time of the accident regarding the incident. He also examined P. Ws 2 and 3, P.W. 2 a nurse to prove his income from his profession and P.W. 3 a doctor who treated him. On behalf of the appellant 6 witnesses were examined in support of their case that the accident was due to a mechanical failure and not due to any rashness or negligence on the part of the driver. The Tribunal after elaborately discussing the oral and documentary evidence adduced before it found that the acci- dent was due to the rash and negligent driving of the driver of the lorry and the defence set up that the accident was due to mechanical failure of the lorry was unacceptable. The Claims Tribunal accepting the evidence of the appli- cant and a Customs Officer, Mr. Jawakar, who was examined as D.W.4 on the side of the appellants, came to the conclusion that when the doctor was in the traffic lane nearer to the road divider the lorry crossed the road divider and hit the car. The defence witness himself stated that the lorry came after crossing the central barricade. The lorry went off the track and went on the wrong side and collided with the oncoming car of the applicant who was in his car. Refer- ring to his notes the witness stated that the right side of the lorry went and hit the right side of the car of the applicant. The portion of the lorry upto the driver's seat collided with the right side of the car. Both the wheels of the front side of the lorry had crossed the central reservation tract and so also the right rear wheel was on the wrong side and only the left rear wheel was just near the edge of the central reservation tract towards Lotus cinema. On the face of the evi-dence of the doctor and their own witness D.W.4 who was travelling in the lorry there could be no denying the fact that the lorry crossed the middle of the road.

Relying on the evidence of the two witnesses as well as the doctrine of res ispa 1oquitur the Claims Tribunal right- ly found that the applicant had established rash and negli- gent driving on the part of

the driver and the lorry. The Accidents Claims Tribunal has also discussed elaborately the defence set up on behalf of the owners of the lorry and rejected it. The plea that was taken in the pleadings was that at the time of the accident "Axle Brake Ring" of the lorry came out. The expert examined on behalf of the owner, Jimmy Dara Engineer, D.W. 6, stated that he had never heard of any such part as axle brake ring and he has never seen such a part. The owners subsequently explained that what they meant by "Axle Brake Ring" was drag link on the rod end. The Claims Tribunal also referred to the evidence of the expert examined on behalf of the owners and remarked that the nut on the pin could not be blown off all of a sudden and that the driver, unless he was negligent, could feel the change if there was anything wrong with the drag link end and can stop the vehicle immediately. Rejecting the evidence of the driver and relying on the evidence of the expert on the side of the defence that even if there was any defect the vehicle could be stopped within 4 or 5 feet and need not cover the distance which it did, the Claim Tribunal also found that the defect which the defence witness, Motor Vehicle Inspector Partapsingh Chavan, D.W.I. saw when he examined the lorry on 22nd April, 1969, could not be accepted as the owners of the lorry could have played mischief and created evidence before inspection on 22nd April, 1969. Criticising the conduct of the owners as unworthy of their status the Claims Tribunal totally rejected the defence. Regarding the compensation the Claims Tribunal fixed the amount at Rs.1,43,400 together with interest at 6 per cent. This sum was apart from a sum of Rs.500 which was found payable to Malati M. Deshmukh who had sustained injuries. The Claims Tribunal directed the owners as well as the insurers jointly to pay the amount, to the respondent Dr. Balkrishna Ramachandra Nayan. It also directed the oppo- site parties and insurers to pay Rs. 1000 as costs and Rs.100 as costs of Malati M. Deshmukh.

The Claims Tribunal fixed a sum of Rs. 73,779 as the loss sustained by the doctor for a period of 4 years from the date of the accident. It also for a subsequent period of 7 years fixed the future loss at Rs. 9,000 a year and a total amount of Rs. 63,000. In addition it awarded a sum of Rs. 5,000 for discomfort and inconvenience suffered by the doctor. Thus the total compensation that was granted amount- ed to Rs. 1,43,400. As already stated the interest was awarded from the filing of the application till payment. The insurance company as well as the owners of the lorry preferred appeal against the award of the Tribunal in Appeal No. 449 of 1975 before the High Court of Bombay. Though the appeal was filed on behalf of the insurance company and the owners of the lorry, during the hearing of the appeal it was contended on .behalf of the insurance company that in any event the liability of the insurance company under the policy could not exceed Rs.20,000. The High Court on the question of whether there was negligence on the part of the driver of the lorry or not found itself in complete agreement with the Claims Tribunal and observed that it was for the lorry driver and owners to establish as to how the lorry crossed the road dividers, went on the wrong side and mounted on the Fiat Car coming 'from the opposite direction. Agreeing with the Tribunal it found that the driver was negligent. The High Court concurred with the reasons. and findings of the Tribunal. It also held in the Circumstances of the case that the principle res ipsa loquitur applied. The High Court also rejected the defence taken by the owners that the injury was due to a mechanical defect and not due to the negligence. After referring to the evidence and the reasoning of the Tribunal. on the defence set up by the owners the High Court came to the conclusion that the plea about the breaking of the tie rod was not proved satisfactorily by the owners. The High Court regarding the defence raised found itself .in complete agreement with the conclusion arrived at by the Tribunal observing that the Tribunal rightly disbelieved the defence plea and came to the

conclusion after careful consideration of the evidence of the driver, Customs Officer and other evidence in the case that it was the driver who was negli- gent.

Regarding the quantum of damages the High Court ex- pressed its opinion that the Tribunal had made best efforts and tried to determine the compensation in a just manner on the facts and circumstances of the case. It confirmed the amount as awarded by the Tribunal and dismissed the appeal. The High Court dismissed the appeal of the owners and the insurance company and confirmed the award passed by the Tribunal. But it gave liberty to the insurance company to apply to the Claims Tribunal on depositing Rs. 20,000 with interest from the date of the application to the date of the deposit for determination of the question that the liability of the insurance company is limited only to Rs. 20,000. The High Court directed the Tribunal to decide the question of the liability of the insurance company on its application under section. 110E by giving opportunity to the parties to put forward their cases.

Insurance company was directed to pay the costs of all the parties. It also provided that the claimant was at liberty to withdraw Rs. 20,000 with interest when deposited by the insurance company. The order also made it clear that the right of the applicant to recover the balance of the awarded amount from the other party or from the insurance company will not in any way be affected.

The appeal to this court is preferred by the owners. The insurance company is impleaded as the second respondent in the appeal before us.

Mr. Nariman, the learned counsel appearing for the owners submitted that the High Court did not hear arguments on the question whether the accident took place due to rash and negligent driving of the lorry and therefore the ques- tion will have to be gone into by this Court or remanded for fresh disposal. We find that the High Court has given a clear finding in paragraph 30 of its judgment that the Tribunal rightly disbelieved the plea and held that it was the. driver who was negligent and that they fully concur with the reasons and findings of the learned Member of the Tribunal. In the face of the clear finding we are unable to accept the plea of the learned counsel that this question was not gone into by the High Court. We find ourselves in complete agreement with the finding of the Tribunal and the High Court that it was due to rash and negligent driving of the lorry that the car in which the applicant and Malati M. Deshmukh were travelling was hit causing injuries to both of them. We accept the testimony of the doctor and D.W. 4 Jawakar that the lorry crossed the road dividers, ran into the wrong side and hit the car which was driven by the applicant. We have no hesitation in accepting the concur- rent findings of the High Court and the Claims Tribunal that the accident was due to the rash and negligent driving of the lorry driver. We have also no hesitation in reject- ing the testimony of the defence that there was some mechan- ical defect which resulted in the tie rod end breaking. We find ourselves in agreement with the reasoning of the Claims Tribunal that the evidence on the side of the owners is contradictory and the testimony of the expert destroys the plea of any mechanical defect set up by them. In this con- nection we may also point out that in order to succeed in a 9--206SCI/77 defence that the accident was due to a mechanical defect the owners will have to prove that they had taken all necessary precautions and kept the lorry in a roadworthy condition. No such attempt was made to establish that all necessary precautions were taken-to keep the lorry in a roadworthy condition and that the defect occurred in spite of the

reasonable care and caution taken by the owners. In order to sustain a plea that the accident was due to the mechanical defect the owners must raise a plea that the defect was latent and not discoverable by the use of reason- able care. The owner is not liable if the accident is due to a latent defect which is not discoverable by reasonable care. The law on this subject has been laid down in Hen- derson v. Henry E. Jenkins & Sons.(1). In that case the lorry driver applied the brakes of the lorry on a steep hill but they failed to operate. As a result the lorry struck and killed a man who was emerging from a parked vehicle. The defence was that brake failure was due to a latent defect not discoverable by reasonable care on driver's part. It was found that the lorry was five years old and had done at least 150,000 miles. The brakes were hydrauli- cally operated. It was also found after the accident that the brake failure was due to a steel pipe bursting from .7mm. to .1mm. The corrosion had occurred where it could not be seen except by removing the pipe completely from the vehicle and this had never been done. Expert evidence showed' that it was not a normal precaution to do this if, as was the case, the visible parts of the pipe were not corroded. The corrosion was unusual and unexplained. An expert witness said it must have been due to chemical action of some kind such as exposure to salt from the roads in winter or on journeys near the sea. The House of Lords held that the burden of proof which lay on the defendants to show that they had taken all reasonable care had been dis- charged. The defect remained undiscovered despite due care As the evidence had shown that something unusual had hap- pened to cause this corrosion it was necessary for the defendants to show that they neither know nor ought to have known of any unusual occurrence to cause the breakdown. (See Bingham's Motor Claims Cases Seventh Ed., p. 219). The burden of proving that the accident was due to a mechanical defect is on the owners and it is their duty to show that they had taken all reasonable care and that de- spite such care the defect remained hidden. In this case in the written statement all that is pleaded is that the axle brake ring of the lorry came out and the driver lost control of the motor lorry and that the defect can develop in a running vehicle resulting in the driver's losing control of the steering wheel. Though it was stated that all precautions were taken-to keep the lorry in a road worthy condition it was not specifically pleaded that the defect i.e. the axle brake ring coming out, is a latent pleaded and could not have been discovered by the use of reasonable care. This lack of plea is in addition to the lack of evidence and the fact that the defence set up has been rightly rejected by the Tribunal.

(1) [1970] A.C.282[1969] 3 All E.R. 756 Mr. Nariman then submitted that the quantum of compensa-

tion awarded was very high. He submitted that even accord- ing to the figures relied on by the High Court it was in error in coming to the conclusion that for a period of 4 years from the date of the accident the claimant has suf- fered a damage of Rs. 73,779. The learned counsel submit- ted that though during the first year there was a loss of Rs. 3,530 in subsequent years he earned various amounts and in one year he earned Rs. 7,981 which would mean that during subsequent years his loss would not have been. more than Rs.10,000 and as admittedly the Nursing Home was kept as a going concern the award of Rs. 10,000 per year for the four years would be very high. We have considered this conten- tion carefully but taking all the circumstances into account we do not feel called upon to interfere with the quantum arrived at by the Tribunal and confirmed by the High Court. The learned Counsel also submitted that the provision for Rs. 63,000 for the 7 years as the likely loss due to the doctor's disability is also very high. In this case also we do not feel called upon

to interfere with the quantum arrived at by the Tribunal as well as the High Court. Last- ly, the learned counsel submitted that in any event the interest awarded from the date of the application is not justified. We do not think we will be justified in interfer- ing with the amount of interest awarded by the High Court from the date of the filing of the application. On the above findings we confirm the award passed by the Claims Tribunal in favour of the applicant/respondent No. 1 for Rs. 1,43,400 with interest at 6% per annum from the date of the filing of the application and also a sum of Rs.500 granted to Malati M. Deshmukh and the costs awarded. The liability of the owners and the insurance company will be joint and several and the respondent would be at liberty to proceed against either or both of them to realise the amount awarded in his favour.

We have now to consider the direction given by the High Court regarding the determination of the liability as be- tween the insurance company and the owners. The owners and the insurance company were represented by the same counsel before the Tribunal and before the High Court the learned counsel on behalf of the insurance company pleaded that its liability is limited to Rs. 20,000 only. The High Court has given liberty to the insurance company to apply on depositing Rs. 20,000 with interest as directed for determi- nation of the question that the liability of the insurance company is limited to Rs. 20,000. The High Court also directed the Tribunal to decide the liability of the insur- ance company on the insurance company filing such an appli- cation after giving notice to all the parties. The insur- ance company has not appealed against the judgment and decree of the High Court and we see no reason for interfer- ing with the order. On the insurance company complying with the directions of the High Court by depositing Rs. 20,000 with interest as specified the matter will be remitted to the Tribunal for determination of the question whether the liability of the insurance company is limited to Rs.20,000 only. It is made clear that so far as the award made in favour of the applicant/respondent is concerned he will be at liberty to proceed against the owners as well as the insurance company jointly and severally. With these direc- tions the appeal is dismissed with the cost of the first respondent.

This should normally conclude the judgment but we feel it desirable that we must deal with the question of law that has been dealt with at considerable length by the High Court as to whether it is incumbent on the claimant to prove negligence before he would become entitled to compensation. The High Court after concurring with the findings of the Tribunal and holding that the driver was negligent proceeded to state that it would not have been necessary for them to say anything more but for the fact that taking into account the importance of matter and in public interest it would be appropriate to express its view that it is not necessary to prove negligence on the part of a driver before claiming compensation.

Both the learned Judges have written lengthy judgments fully discussing the matter and have come to the conclusion that the fact of an injury resulting from the accident involving the use of a car on the public road is the basis of a liability and that it is not necessary to prove any negligence on the part of the driver. We find that a Bench of the Andhra Pradesh High Court has held in Haji Zakaria and Others v. Naoshir Cama and others (1) that the liability of the insured and consequently of the insurer to compensate a third party dying or being injured on account of the use of the insured vehicle is irrespective of whether the death, injury etc. has been caused by rash and negligent driving. Though this question does not arise in this appeal as the two High Courts have expressed an

opinion which in our view has no basis either in the Legislative history or on a construction of the relevent provisions of the Motor Vehi- cles Act we feel it necessary to state the position of law. The liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the law of tort. Regarding the negli- gence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he. was negli- gent. The number of the vehicles on the road increased phenomenally leading to increase in road accidents. To remedy the defect various steps were taken. In England the owners of the vehicle voluntarily insured against the risk of injury to other road users. With ' the increase of traffic and accidents it was found that in a number of cases hardship was caused where the person inflicting the injury was devoid of sufficient means to compensate the person afflicted. In order to meet this contingency the Road Traffic Act, 1930, The Third Parties (Rights against Insur- ers) Act, 1930 and the Road Traffic Act, 1934 were enacted in England. A system of compulsory insurance was enacted by the Road Traffic Act, 1930. Its object was to reduce the number of cases where judgment for personal injuries (1) A.I.R.. 1976 A.P. 171.

obtained against a motorist was not met owing to the lack of means of the defendant in the running-down action and his failure to insure against such a liability. It is suffi- cient to state that compulsory insurance was introduced to cover the liability which the owner of the vehicle may incur.

The Indian law introduced provisions relating to compulsory insurance in respect of third party insurance by introducing Chapter VIII of the Act. These provisions almost wholly adopted the provisions of the English law. The relevant sections found in the three English Acts, Road Traffic Act, 1940, the Third Parties (Right against Insur- ers) Act, 1930 and the Road Traffic Act, 1934 were incorpo- rated in Chapter VIII. Before a person can be made liable to pay compensation for any injuries and damage which have been caused by his action it is necessary that the. person damaged or injured should be able to establish that he has some cause of action against the party responsible. Causes of action may arise out of actions for wrongs under the common law or for breaches of duties laid down by stat- utes. In order to succeed in an action for negligence the plaintiff must prove (1) that the defendant had in the circumstances a duty to take care and that duty was owed by him to the plaintiff, and that (2) there was a breach of that duty and that as a result of the breach damage was suffered by the plaintiff. The master also becomes liable for the conduct of the servant when the servant is proved to have acted negligently in the course of his employment. Apart from it in common law the master is not liable for as it is often said that owner of a motor car does not become liable because of his owning a motor car.

The purpose of enactment of Road Traffic Acts and making insurance compulsory is to protect the interests of the successful claimant from being defeated by the owner of the vehicle who has not enough means to meet his liability. The safeguard is provided by imposing certain statutory duties namely the duty not to drive or permit a car to be driven unless the car is covered by the requisite form of third party insurance. Section 94 of the Act, 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 the Chapter. Section 95 of the Act is very important and that specifies the requirements of policies and limits of liabil- ity. Section 95(1)(a) and (b) of the Act are extracted. They run as follows:

> "95. (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 co-operative socie-

ty allowed under section 108 to transact the business of an insurer, and

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

(i) against any liability which may be incurred by him in respect of the death or of bodily injury to any person or damage to any property of a third party caused by or aris-

ing 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:

* * * * *"

Under section 95(1)(b)(i) of the Act it is required that policy of insurance must be a policy which insures the person, against any liability which may be incurred by him in respect of death 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 may be noted that what is intended by the policy of insurance is insuring a person against any liability which may be incurred by him. The insurance policy is only to cover the liability of a person which he might have incurred in respect of death or bodily injury. The accident to which the owner or the person insuring is liable to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. It is therefore obvious that if the owner has not incurred any liability in respect of death or bodily injury to any person there is no liability and it is not intended to. be covered by the insurance. The li- ability contemplated arises under the law of negligence and under the principle of vicarious liability. The provisions as they stand do not make the owner or the insurance company liable for any bodily injury caused to a third party arising out of use of the vehicle unless the liability can be fas- tened on him. It is significant to note that under sub- clause (ii) of section 95(1)(b) of the Act the policy of insurance must insure a person against the death 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. Under section 95 (1)(b) clause (ii) of the Act the liability of the person arises when bodily injury to any passenger is caused by or use of the vehicle in a public place. So far as the bodily injury caused to a passenger is concerned it need not be due to any act or liability in- curred by the person. It may be noted that the provisions of section 95 are similar to section 36(1) of the English Road Traffic Act. 1930, the relevant portion of which is to the

effect that a policy of insurance must be policy which insures a person in respect of any liability which may be incurred by him in respect of death or bodily injury to any person caused by or arising out of the use of the vehicle on road. The expression "liability" which may be incurred by him" is meant as covering any liability arising out of the use of the vehicle. It will thus be seen that the person must be under a liability and that liability alone is cov- ered by the insurance policy.

Section 96 of the Act also makes the position Clear. It provides that when a judgment in respect of such a liability as is required to be covered by a policy is obtained against any person insured by the policy, then the insurer shall pay to the person entitled the benefit of the decree as if he were a judgment-debtor. The liability is thus limited to the liability as is covered by the policy.

The main contention of Mr. Hattangodi, who supported the view of the High Court that negligence need not be proved is that Chapter VIII of the Act is a consolidating and amending Act relating to motor vehicles and their use on a public place and as such it contains the entire law, procedural as well as substantive, and that the common law or law of torts is no more applicable and if death or bodily injury arises out of the use of motor vehicles in a public place a liabil- ity arises. Strong reliance was placed by him on section 110A of the Act which provides for application for compensa- tion arising out of an accident to the Claims Tribunal. The learned counsel would submit that under section 110B the Claims Tribunal, after holding an inquiry, may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom the compensation shall' be paid. According to counsel when an injury is caused by the use of the vehicle in a public place the Claims Tribunal is at liberty to award an amount of compensation which appears to it to be just. This plea ignores the basic requirements of the owner's liability and the claimant's right to receive compensation. The owner's liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to. compensate any one else. The Claims Tribunal is a tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensa- tion which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to strange results.

Section 110(1) of the Act empowers the State Government to constitute, one or more Motor Accidents Claims Tribunals for such area as may be specified for the purpose of adjudi- cating upon claims for compensation in respect of accidents involving the death or bodily injury to persons. The power is optional and the State Government may not constitute a Claims Tribunal for certain areas. When a claim includes a claim for compensation the claimant has an option to make his claim before the Civil Court. Regarding claims for compensation therefore in certain eases Civil Courts also have jurisdiction. If the contention put forward is accept- ed so far as the Civil Court is concerned it would have to determine the liability of the owner on the basis of common law or torts while the Claims Tribunal can award compensation without reference to common law or torts and

without coming to the conclusion that the owner is liable. The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in a public place, cannot justi- fy fastening liability on the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the lynch pin to recover compensation. The various enactments have attempted to mitigate a possible injury to the claimant by providing for payment of the claims by insurance.

In Halsbury's Laws of England, 3rd Ed., Vol. 32, at paragraph 751 at p. 366 the nature of insurance required is stated as follows :-

> "The conditions to be fulfilled in order to render the use of a motor vehicle lawful are (1) that there must be a policy of insur- ance. in force in relation to the use of the vehicle on a road, and (2) that it must be a policy complying with the relevant statutory requirements."

At paragraph 752 at page 366 the general nature of liabili- ties required to be covered are stated as under:

> "In order to comply with the statutory requirements, a policy must provide insurance cover in respect of any liability which may be incurred by such person, persons or classes of persons as are specified in the policy, in respect of the death of, or bodily injury to, any person (subject to specific exceptions) caused by, or arising out of the use of the vehicle on a road."

The authorised insurers issuing a policy pursuant to the statutory requirements are obliged to indemnify the person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or classes of persons.***" (Paragraph 758 at p. 369). These passages clearly indicate that the nature of the liability required to be covered is the liability which may be in- curred by or arising out of the use of a vehicle on a road by the person.

A person is not liable unless he contravenes any of the duties imposed on him by common law or by the statute. In the case of a motor accident the owner is only liable for negligence and on proof of vicarious liability for the acts of his servant. The necessity to provide effective means for compensating the victims in motor accidents should not blind us in determining the state of law as it exists today. Justice Vaidya in this judgment under appeal after referring various decisions expressed his view as follows :--

> "It is not necessary to discuss all these cases because, in any view, in none of those cases was the question agitated as to what exactly was meant by tort in the context of automobile accidents and injuries resulting. therefrom, for which more often than not human minds, hands or legs are not always accountable, in the later half of the twentieth century. The question has engaged the minds of jurists all over the

common law world .... "

The learned Judge proceeded further to observe that whether we apply the test of torts or not the liability to pay compensation arises when the injuries are caused by the use of the motor vehicle and the Tribunal can adjudicate upon the liability and determine just compensation. The learned Judge further observed: "In my opinion, public good re- quires that everyone injured, viz., by the use of motor vehicle, must immediately get compensation for the injury. Every person has a right to safety and security of his person irrespective of fault or negligence or carelessness or efficient functioning of the motor vehicle. Every person has a right to claim compensation so that is the only way of remedying the injury caused to him in a modern urbanised, industrialised and automobile ridden life." In a separate judgment Justice Mridul has expressed himself in the same tenor. The learned Judge after referring to section 95(1)(b) (i) and (1)(b)(ii) of the Act observed that perimeters of liability in clauses (i) and (ii) must be held to be the same because to both the liability of the owner or the driver exists and is made compulsorily insura- ble. The learned Judge while noting the difference in the wording of the two, clauses observed that it is inconceiva- ble that the legislature would intend absolute liability in cases covered by clause (ii) and not in cases covered by clause (i).

The reasoning of the two learned Judges is unacceptable as it is opposed to basic principles of the owner's liabili- ty for negligence of his servant and is based on a complete misreading of the provisions of Chapter VIII of the Act. The High Court's zeal for what it considered to be protection of public good has misled it into adopting a course which is nothing short of legislation.

Equally unacceptable is the view of the Bench of the Andhra Pradesh High Court in Haji Zakaria and others v. Nashir Cama and others(1), wherein the court concluded without any hesitation that the liability to compensate arises when death or bodily injury to any person or damage to any property of a third party is caused by or arising out of the use of the vehicle in a public place and to infer the qualifications or limitations that such death or bodily injury should have been caused before such liability arises only on account of rash and negligent driving would amount to introducing something which is not there and would be violating and transgressing the Clear provisions of the statute and intention of the legislature.

(1) A.I.R. 1975 A.P. 171.

The Patna High Court in New India Assurance Co. Ltd. v. Sumant Devi and Others(1) held that the liability of the insurance company is absolute but is only limited to the extent provided by the insurance policy. As against this view all the other High Courts have held that the liability to compensate arises only on a finding of negligence. It may not be out of place to mention that those automobile accidents are subject to the law of negligence. Modern proposals consistently favour the Social Insurance model under which benefits are payable directly by the fund with- out any reference at all to the injurer while retaining an option for the victim to claim either limited benefits on a nonfault basis or full damages for negligence.

Consistent with this line of thinking is the judgment of the Kerala High Court in Kesavan Nair v. State Insurance Officer(2), where Justice Krishna Iyer expressed himself thus: "Out of a sense of

humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liabili- ty must be cast on the insurers." Modern legislation has also provided insurance cover for all air and rail passen- gers and recently by amendment of section 95 of the Act against death or bodily injury to passengers of a public service vehicle caused by or arising out of the use of a vehicle in a public place.

In a recent judgment of Madras High Court a Division Bench is A.A.O. Nos. 607 of 1973 and 296 of 1974 M/s. Ruby Insurance Co. Ltd. v. V. Govindaraj and others, delivered on 13th December, 1976, has suggested the necessity of having social insurance to provide cover for the claimants irre- spective of proof of negligence to a limited extent say Rs.250 to Rs. 300 a month. It has also suggested that instead of a lump sum payment which does not often reach the claimants a regular monthly payment to the dependants by the nationalised insurance company or bank would be desira- ble. Unless these ideas are accepted by the legislature and embodied in appropriate enactments Courts are bound to administer and give effect to the law as it exists today. We conclude by stating that the view of the learned Judges of the High Court has no support in law and hold that proof of negligence is necessary before the owner of the insurance company could be held to be liable for the payment compensa- tion in a motor accident claim case.

But as we have found that the vehicle owner was liable for negligence of the driver and have upheld the amount of damages awarded, we dismiss this appeal with cost to the first respondent.

P.B.R. Appeal dismissed.
(1) 1971 A.C.J. 58. (2) 1971 A.C.J. 219.