

## **National Insurance Co. Ltd vs Deepa Devi & Ors on 11 December, 2007**

**Equivalent citations: AIR 2008 SUPREME COURT 735, 2008 (1) SCC 414, 2007 AIR SCW 7882, (2008) 61 ALLINDCAS 1 (SC), (2008) 1 ALLMR 924 (SC), (2008) 1 CLR 457 (SC), 2008 (1) SRJ 289, 2008 (2) MADLW 659, 2008 (1) ALL MR 924, 2008 (1) TAC 214, 2008 (70) ALL LR 180, 2008 (1) ACJ 705, 2008 (1) SCC(CRI) 209, 2008 (1) CLR 457, 2007 (14) SCALE 168, (2007) 8 SUPREME 554, (2007) 14 SCALE 168, (2008) 1 PUN LR 780, (2008) 1 RAJ LW 294, (2008) 2 RECCIVR 375, (2008) 3 CGLJ 383, (2008) 1 ACC 25, (2008) 1 ALL WC 587, (2008) 1 CAL LJ 235, (2008) 3 MAD LJ 932**

**Author: S.B. Sinha**

**Bench: S.B. Sinha, Lokeshwar Singh Panta**

CASE NO.:

Appeal (civil) 5796 of 2007

PETITIONER:

National Insurance Co. Ltd.

RESPONDENT:

Deepa Devi & Ors

DATE OF JUDGMENT: 11/12/2007

BENCH:

S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:

**J U D G M E N T** CIVIL APPEAL NO. 5796 OF 2007 [Arising out of SLP (Civil) No. 22778 of 2005]  
**S.B. SINHA, J :**

1. Leave granted.

2. The short question involved in this appeal arising out of a judgment and order dated 17.05.2005 passed by the High Court of Himachal Pradesh in FAO (MVA) No. 208 of 1997 is as to whether in the event a car is requisitioned by the State for the purpose of deploying the same in the election duty, who would be liable to pay compensation to the victim of the accident in terms of the provisions of the Motor Vehicles Act, 1988 (for short "the 1988 Act").

3. Respondent No. 3 was the owner of a Maruti Gypsy bearing Registration No. HIS 6095. Appellant Company issued a policy of insurance in favour of Respondent No. 4 for the said Maruti Gypsy for the period 10.06.1993 to 9.06.1994. In regard to limitation of its use, the insurance policy provided:

"For private car IXI and Motor Cycle/Scooter IYI.

Use only for social, domestic and pleasures and insured's own purpose"

4. The car in question was requisitioned during the Assembly Elections in the year 1993 by the Sub-Divisional Magistrate Rampur through the Deputy Commissioner, Shimla. The said vehicle was in possession as also under the control of the said officer. On or about 17.11.1993 while the Sub-Divisional Magistrate Rampur was travelling in the said vehicle, an accident occurred as a result whereof a boy named Satish Kumar sustained injuries. He later on expired.

5. Respondent No. 1 Deepa Devi and Joginder being the heirs and legal representatives of the deceased filed an application for compensation in terms of Section 166 of the 1988 Act. The State of Himachal Pradesh as also the Sub-Divisional Magistrate Rampur were impleaded therein. The Motor Accident Claims Tribunal in its judgment dated 28.09.1996 upheld the contention of the Insurance Company that under the terms of the insurance policy, it was not liable to reimburse the owner of the vehicle as regards his liability to pay compensation on account of said accident. A Division Bench of the High Court, however, by reason of the impugned judgment, has set aside the said award of the Tribunal, holding:

"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 "

6. Mr. Parmanand Gaur, learned counsel appearing on behalf of the appellant, submitted that having regard to the definition of 'owner' as contained in Section 2(30) of the 1988 Act and as the vehicle in question was not used for the purpose for which the contract of insurance was entered into, the judgment of the High Court cannot be sustained. Strong reliance in this behalf has been placed on Rajasthan State Road Transport Corporation v. Kailash Nath Kothari and Others [(1997) 7 SCC 481].

7. Mr. J.S. Attri, learned counsel appearing on behalf of Respondent Nos. 5 and 6, on the other hand, would support the judgment contending that this Court in Guru Govekar v. Miss Filomena F. Lobo and Others [(1988) 3 SCC 1] has categorically held that even if the vehicle remains in possession of a third party, the registered owner of the vehicle shall continue to be the owner within the meaning of the provisions of the 1988 Act and, thus, would be liable for payment of damages to the victims of an accident.

8. The 1988 Act was enacted to consolidate and amend the law relating to motor vehicles. It repeals and replaces the Motor Vehicles Act, 1939 (for short "the 1939 Act").

9. "Owner" has been defined in Section 2(19) of the 1939 Act to mean:

"In this Act, unless the context otherwise requires, \*\*\* \*\*\* (19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a higher purchase agreement, the person in possession of the vehicle under that agreement;"

However, the said definition underwent a change by reason of Section 2(30) of the 1988 Act providing:

"In this Act, unless the context otherwise requires, \*\*\* \*\*\* (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;"

10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondent Nos. 3 and 4 continued to be the registered owner of the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of its power conferred upon it under the Representation of People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remains under requisition, the owner does not exercise any control thereover. The driver may still be the employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in-charge thereof. Save and except for legal ownership, for all intent and purport, the registered owner of the vehicle loses entire control thereover. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains under the control of the State and/ or its officers, the owner is only entitled to payment of compensation therefor in terms of the Act but he cannot not exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that the Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view.

11. In *Mukesh K. Tripathi v. Senior Division Manager, LIC and Others* [(2004) 8 SCC 387], this Court observed:

"The interpretation clause contained in a statute although may deserve a broader meaning having employed the word "includes" but therefor also it is necessary to

keep in view the scheme of the object and purport of the statute which takes him out of the said definition. Furthermore, the interpretation section begins with the words "unless the context otherwise requires".

In *Ramesh Mehta v. Sanwal Chand Singhvi*, it was noticed: (SCC p. 426, paras 27-28) "A definition is not to be read in isolation. It must be read in the context of the phrase which would define it. It should not be vague or ambiguous. The definition of words must be given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned.

In *State of Maharashtra v. Indian Medical Assn.* one of us (V.N. Khare, C.J.) stated that the definition given in the interpretation clause having regard to the contents would not be applicable. It was stated: (SCC p. 598, para 8) 'A bare perusal of Section 2 of the Act shows that it starts with the words "in this Act, unless the context otherwise requires ". Let us find out whether in the context of the provisions of Section 64 of the Act the defined meaning of the expression "management" can be assigned to the word "management" in Section 64 of the Act. In para 3 of the Regulation, the Essentiality Certificate is required to be given by the State Government and permission to establish a new medical college is to be given by the State Government under Section 64 of the Act. If we give the defined meaning to the expression "management" occurring in Section 64 of the Act, it would mean the State Government is required to apply to itself for grant of permission to set up a government medical college through the University. Similarly it would also mean the State Government applying to itself for grant of Essentiality Certificate under para 3 of the Regulation. We are afraid the defined meaning of the expression "management" cannot be assigned to the expression "management" occurring in Section 64 of the Act. In the present case, the context does not permit or requires to apply the defined meaning to the word "management"

occurring in Section 64 of the Act."

[See also *Pandey & Co. Builders (P) Ltd. v. State of Bihar and Another* (2007) 1 SCC 467]

12. In *Guru Govekar* (supra), this Court was considering the definition of 'owner' under the 1939 Act. Therein the car was handed over to a mechanic for carrying out certain electrical repairs to the car, when the accident occurred. This Court in the said fact situation held:

"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."

13. It is not a case where the car was handed over to a person with consent of the owner thereof. When a vehicle is requisitioned, the owner of the vehicle has no other alternative but to handover the possession to statutory authority.

14. We are not oblivious of another decision of this Court in *Rikhi Ram and Another v. Sukhrania (Smt) and Others* [(2003) 3 SCC 97] wherein keeping in view the provisions of Sections 94 and 95 of the 1939 Act, a plea taken by the owner of the car that he has transferred the same in favour of another person and, thus, he had no liability for payment of compensation was negated, stating:

"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.

6. On an analysis of Sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and the other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance with the provisions of the Act. However, so far as third-party injured or victim is concerned, he can enforce liability undertaken by the insurer."

We are also not concerned with such a situation.

15. In *Kailash Nath Kothari (supra)*, however, this Court in a case, where a bus was given on lease by the owner of the vehicle *Shri Sanjay Kumar* in favour of the *Rajasthan State Road Transport Corporation*, held that when an accident takes place when the bus was plied under the control of the Corporation, it was the Corporation alone who would be liable for payment of compensation, stating:

" Driver of the bus, even though an employee of the owner, was at the relevant time performing his duties under the order and command of the conductor of *RSRTC* for operation of the bus. So far as the passengers of the ill-fated bus are concerned, their privity of contract was only with the *RSRTC* to whom they had paid the fare for travelling in that bus and their safety therefore became the responsibility of the

RSRTC while travelling in the bus. They had no privity of contract with Shri Sanjay Kumar, the owner of the bus at all. Had it been a case only of transfer of services of the driver and not of transfer of control of the driver from the owner to RSRTC, the matter may have been somewhat different. But on facts in this case and in view of Conditions 4 to 7 of the agreement ( *supra* ), the RSRTC must be held to be vicariously liable for the tort committed by the driver while plying the bus under contract of the RSRTC. The general proposition of law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption. If the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the case may be, must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner. The proposition based on the general principle as noticed above is adequately rebutted in this case not only on the basis of the evidence led by the parties but also on the basis of Conditions 6 and 7 ( *supra* ), which go to show that the owner had not merely transferred the services of the driver to the RSRTC but actual control and the driver was to act under the instructions, control and command of the conductor and other officers of the RSRTC."

We may also notice at this stage certain judgments of some High Courts.

16. In *The National Insurance Co. Ltd. v. Durdadahya Kumar Samal and Others* [1988 (2) T.A.C. 25] where the vehicle was requisitioned by the Collector for election duty, the High Court of Orissa held:

"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."

[See also *New India Assurance Co. Ltd. v. S. Ramulamma and others* 1989 ACJ 596]

17. In *Chief Officer, Bhavnagar Municipality and another v. Bachubhai Arjanbhai and others* [AIR 1996 Gujarat 51], the High Court of Gujarat held:

"7. The facts on record clearly indicate that the vehicle in question which belonged to the State of Gujarat was entrusted to the Municipality for distribution of water to the citizens. It was implicit in allowing the vehicle being used for such purpose that the State of Gujarat which owned the vehicle also caused or allowed any driver of the Municipality who was engaged in the work of distribution of water to the citizens, to use motor vehicle for the purpose. Therefore, when the vehicle was driven by the

driver of the Municipality and the accident resulted due to his negligence, the insurer of the vehicle became liable to pay the compensation under the provisions of the Act. It is, therefore, held that the State, as the owner of the vehicle and the respondent Insurance Company as its insurer were also liable to pay the compensation awarded by the Tribunal "

18. We, therefore, are of the opinion that the State shall be liable to pay the amount of compensation to the claimants and not the registered owner of the vehicle and consequently the appellant herein.

17. For the reasons aforementioned, the impugned judgment cannot be upheld. It is set aside accordingly. The appeal is allowed. No costs.