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Parking at Owners Risk -No More an Exemption Taj Mahal Hotel - Innkeepers Liability Case

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Introduction

The Apex Court held in its judgment in the case of Taj Mahal Hotel V. United India Insurance Company Ltd. & Ors[1]. that hotel owner cannot contract out of their liability for any negligence incurred by themselves or by their staff in respect of the vehicle of a guest. Supreme Court upheld the duty of care and risk of lodgings for the property that visitors, clients, and guests share with them. , the Supreme Court held, inter alia, that a hotel owes an obligation of care to clients entrusting their vehicles with its valet.

Parties in the case:

Appellant - Taj Mahal Hotel
Respondent 1 - United Insurance Company (Respondent 2's car insurer)
Respondent 2/ the guest - individual guest whose car was reported to be lost from the Valet parking of the Appellant's Hotel

Brief Facts of Case

- On the evening of 1st August 1998, Respondent 2 visited the appellant Taj Mahal Hotel at 11 pm.
- He gave his vehicle and the keys to the valet for parking it in the designated Parking area of the hotel.
- The valet gave a parking token which contained a provision stating that: parking is at the owner's risk and may be within or outside the Hotel premises; and The hotel will not be liable for any theft, loss, or damage to the car.
- When Respondent 2 returned at 1 am for his car, the hotel informed him that another guest had taken away his car.
- Further inquiries showed that three young boys who came to the hotel but in a separate car gave it to the Hotel valet for parking. Later that night, the boys asked the valet to bring their car around when they were leaving.
- When the valet was preoccupied, one of the boys took the keys to the Respondent's car from the valet office desk and drove off with it. The security guard tried to stop the thief, but his efforts were in vain, and the thief hurried off in the stolen car.

Initial Proceedings before the State Commission

The guest was fully insured and received the stolen car's entire value from the insurance company. The insurance claim of Respondent No. 2 was settled by respondent 1 in total. After that, Respondent No. 2 executed a Power of Attorney and a letter of subrogation in favour of Respondent No.1. Subsequently, the insurance company filed a consumer complaint against the hotel, as a subrogee, before the State Consumer Disputes Redressal Commission (State Commission), claiming payment of the car's total value and compensation for deficiency in

[1] Civil Appeal No. 8611 Of 2019

service rendered by the hotel.

The State Consumer Disputes Redressal Commission, New Delhi, took the Supreme Court's decision in *Oberoi Forwarding Agency Vs. New India Assurance Company Ltd.*[2], for consideration and dismissed the consumer complaint taking the ground of Insurance Company acting as a subrogee (subrogate) cannot qualify as a 'Consumer'.

Appeal to the National Commission

An appeal was then filed by Respondent No. 1, the National Commission. The National Commission applied the rule of 'infra hospitium' (Latin for 'inside the lodging') based on the fact that since Oberoi Forwarding (supra) was partly overruled in *Economic Transportation Organization v. Charan Spinning Mills (Pvt.) Ltd.*[3] returned the matter to the State Commission after deciding that Respondent No. 1 did have locus standi to file the complaint as a subrogee.The State Consumer Disputes Redressal Commission, New Delhi, relied upon two decisions of the National Commission in the cases- *Bombay Brazzerie Vs. Mulchand Agarwal*[4] , and *B. Dutta, Senior Advocate Vs Management of State,*[5] and concluded that laws of bailment applied in such cases where a customer had paid for parking his car in a parking lot and then it is stolen or damaged.

The State Commission allowed the complaint on merits and proceeded to hold that the laws of bailment applied; hence directed the Appellant-hotel to pay an amount of Rs. 2,80,000 - the value of the car to Respondent No. 1 with the interest of 12% per annum and Rs. 50,000 towards litigation costs. Additionally, a sum of Rs. 1,00,000 to be paid to Respondent No. 2 for inconvenience and harassment caused to him, including deficiency of services rendered towards him.

Appeal on State Commission by the Appellant Hotel

'*Infra hospitium*' (Latin for '*within the hotel*') principle was applied by The National Commission and observed that the common law had predominantly imposed rule of strict liability on a hotel for the loss of a guest's property when the guest and property were inside the hotel premises. It also applied the principle of bailment and held that liability could not be precluded by a printed notice on the parking tag. An appeal against the State Commission's order was filed by Appellant-Hotel with the National Consumer Disputes Redressal Commission but was dismissed a unit modification of the interest claimed to paid reduced from 12% to 9% per annum.

Supreme Court Appeal

Aggrieved by the National Commission Order, a *special leave petition* was filed with the Supreme Court.

Contentions of the Parties

The Counsel for the Appellants made two grounds of contentions:-

1) that Respondent No. 1 is not a 'consumer' and the erroneous decision of the National Commission based on the principle of infra hospitium (Latin for 'within the hotel') is not established under Indian law.
2) since the parking tag waives the Appellant's liability for theft so cannot be held responsible for any such incidents.

[2] (2000) 1 SCR 554
[3](2010) INSC 133; (2010) 4 SCC 114)
[4] 1(2003) CPJ 4 (NC); (2002) NCDRC 42
[5] (2010) 1 CPC 319

The parking tag read as follows[6]*:*
" All vehicles are parked at owner's risk.The management assumes no liability for loss or damage by fire, theft or any other cause to orby the vehicle while in the custody of the management.
The management shall not be held responsible for the same, and the guest shall have no claim whatsoever against the management."

On the other hand, the Counsel for the Respondent No. 1 submitted that it is entitled to file a joint complaint with the original consumer Respondent 2 in its capacity as subrogee as decided in the case of *Economic Transport Organization v Charan Spinning Mills Pvt Ltd*[7]. The duty of care expected by 5-star hotels is considerably higher when compared to other Hotels. Therefore, the Appellant Hotel must be subject to the greatest standard of liability in case of theft of goods from its premises.

Issues to be addressed

On hearing the contentions progressed by the two parties, the Supreme Court formulated the following critical issues in the case:

1) Does the insurer as subrogee have *locus standi* to file the complaint? ;
2) Can the Appellant-*hotel be liable* for the theft of a car taken for valet parking, under the laws of bailment or otherwise?
3) If yes, what *degree of care* should the Appellant Hotel take? ; and
4) Can the Appellant-hotel be *discharged of its liability* if an existing contract absolves it of responsibility?

Judgement

Locus Standi: Concerning the first issue, the Supreme Court had already laid down in Economic Transportation (supra) that a consumer complaint filed by an insurer in its name is not maintainable. But a complaint filed by the insurer is maintainable for an insurer acting as a subrogee to claim if,

(i) the insured files the claim in the name of the insurer, and the insurer acts as the attorney holder of the insured; or
(ii) the insurer and the insured file the claim jointly.

The complaint was determined to be maintainable in the current case because both conditions were satisfied.[8]

Hotel's Liability

Concerning the second issue, the Supreme Court stated that though this issue had come before the Court for the first time, it had received adequate judicial and academic attention in other common law jurisdictions. After that, the Court discussed two principal rules -

(i) the common law rule regarding the liability of the insurers – where the innkeeper is treated as an insurer and held liable for the loss or damage incurred to the vehicle of its guest, irrespective of the notion of negligence present on his part, wherein strict liability is expected to be implied upon;
(ii) the prima facie proof of negligence - the innkeeper is likely to be subject to make good the loss or damage the vehicle of his guest had encountered. However, at times he can be exempted from this on proving that the loss did not accrue due to any act or fault or negligence on his part.

[6] hotels cannot contract out of liability for negligence of .... Https://mmullaassociates.com/publications/hotels-cannot-contract-out-of- liability-for-negligence-of-its-servants-in-respect-of-vehicle-of-its-guest.pdf

[7] ((2010) 4 SCC 114)

[8] Nath Bros. Exim International Ltd. V Best Roadways Ltd 1(2000) CPJ 25 (SC)

The Court held that the laws of bailment would apply in situations where a visitor has given a vehicle to a hotel valet, similar to the case here. The Court opined that if there should be a parking service available at 5-star hotels, such services could be considered to be paid tacitly for through the amount given for hotel dinner bills, drinks or varied services availed in the hotel. In such scenarios, an inferred consideration for the bailment contract is presumed to be made.

The Court considered the socio-economic modifications occurring in the Indian society and stated that imposing a standard of strict liability on the hotel would be improper. If a hotel is made strictly liable for the safety of persons' vehicles without proof of negligence, it may lead to a grave injustice. Uninterrupted surveillance of every vehicle parked in its premises continuously would be an impossible task. Hence the rule of strict liability under common law is ineffective in Indian pretext; however, the prima facie rule should be applied.

The core contention of liability arises when the bailment relationship exists between the parties. When such a relationship exists between the hotel and its guest, the liability rule can be applied to the vehicles so bailed to the hotel. The burden of proof is levied on the bailee to exhibit the degree of care he took to keep the bailed goods safely. The expected care is what he would take of the goods if they belonged to him. Moreover, when the hotel voluntarily undertakes the duty to park the owner's vehicle, keep it in safe custody, and return it to the owner when the parking tag is presented, it shall be understood that the vehicle is beyond its control bailment contract exists. Hence the hotel is liable to return the vehicle in the same condition as it was delivered.[9] The Court held that this was on par with sections 148 and 149 of the Indian Contract Act,1872[10]. The token provided to the bailor is evidence of the contract that the hotel would park the car and return it in a similar condition as was delivered to it when the owner requested it. The belief is that complimentary parking without fee is not accessible, as there exists an underlying consideration as it is an incentive to the guests to come to the hotel. Due to this facility, the hotel has an extra edge or advantage to attract customers with add-on service fees included in the other billed services utilized by the guest or bailor. The hotel cannot escape from the liability by stating that valet services are complimentary by nature, so no consideration is involved.

Hotel's Standard of Care

Concerning the *third issue*, the Supreme Court stated that because a relationship of bailment exists, the burden of proof is on the hotel to show that adequate steps were taken by it to take reasonable care of the vehicle bailed and that the occurrence of theft was not

[9] taj mahal hotel vs. united India insurance co.ltd. https://www.latestlaws.com/latest-caselaw/2019/november/2019-latest-caselaw-1100-sc/

[10] 148. 'Bailment', 'bailor' and 'bailee' defined. - A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

149. **Delivery to bailee how made**. —The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

owing to its negligence or misconduct. The Court noted that the Appellant denied negligence and added further that the guest had knowledge of the risk of valet parking and that it was not for the safe custody of the vehicle. Even it could be taken into consideration how it was stolen from the hotel substantiates negligence. Moreover, the Appellant took no steps to ensure the car keys were out of reach to the outsiders, nor was the car parked in a safe location with barriers to verifying the owners when moving out of the hotel. This act culminates in negligence without any doubt.

Hotel Liability Exclusion

Regarding the fourth issue, the Court considered whether the bailee- in this context, the hotel could contractually absolve liability for its negligence or that of its servants. Bailees often disclaim their liability for loss or damage. However, courts often refuse to honour these disclaimers. The Court relied on *Sheik Mahamad Ravuther v. The British Indian Steam Navigation Co. Ltd.*[11], a case dealing with goods being damaged on account of the negligence of the shipping company.

The Supreme Court alluded to a few cases that recommended that bailee absolve its obligation. Like, *Jellicoe v. The British, India Steam Navigation. Co.*[12] *and Hajee Ismail Sait v. The Company of the Messageries Maritimes of France*[13]*and Zimmer v. Mitchell and Ness*[14].Keeping aside all the conditions, at last, the Supreme Court concluded that it was impractical to accept the exemption clause under Indian rule regulation. The Court depended on sections 151 and 152 of the Contract Act, 1872 (Contract Act)[15], which explicitly laid down the level of care expected from a bailee without any opposite extraordinary authoritative expectation.

In the present case, the Apex Court observed that ascertaining the reputation and standards of 5-star hotels, the guest has a diligent expectation that it would involve reasonable safety of the vehicles entrusted for valet parking. In such conditions, if the hotel is authorized to exclude its liability for negligence, then the standard of care under section 151[16] of the Contract Act would become suppositious and virtually superfluous, making customers susceptible without any remedy. Hence, without any ambiguity, the standard of care owed by the hotel as a bailee under section 151 is sacred or inviolable. Therefore, the standard of care required to be taken by the hotel as a bailee under section 151 and cannot be contracted out.

CONCLUSION:

The Apex Court held that the hotel-owner could not be exempted from the liability by a contract of any form for its negligence or that of its servants in respect of the guest's vehicle under any circumstances. An involuntary or rather implied contractual obligation is imposed

[11] (1908) I.L.R. 32 M. 95
[12] 10 C. 489
[13] *(1905) I.L.R. 28 M. 400*
[14] 1846; the sum of &120

[15] 151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.
Section 152 in The Indian Contract Act, 1872.
152. **Bailee when not liable for loss, etc., of thing bailed**. -The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.
[16] *Ibid :16*

on the hotel until it is returned safely, as soon as the possession is transferred to the hotel. Thus, making it now clear that even though the courts drifted from the strict liability principle for the Innkeepers liability earlier, they have with their novel approaches made it possible to Safeguard the interest of the guests whose claim could otherwise been disregarded based on contracting out of liability method evolved to protect the Innkeepers.

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