HOTELS CANNOT CONTRACT OUT OF LIABILITY FOR NEGLIGENCE OF ITS SERVANTS IN RESPECT OF VEHICLE OF ITS GUEST

INTRODUCTION:

The Apex Court vide its judgment dated 14th November, 2019 in the case of *Taj Mahal Hotel V. United India Insurance Company Ltd. & Ors.*, held that a hotel owner cannot contract out of liability for its negligence or that of its servants in respect of a vehicle of its guest in any circumstance.

FACTS:

The Appellant is a hotel. On 1st August, 1998 at 11 pm the Respondent No. 2 - an individual visited the Appellant-hotel in his Maruti Zen car. The car was insured with the Respondent No. 1-insurer.

The Respondent No. 2 handed his car and its keys to the hotel valet for parking and went inside the hotel. At 1 a.m. the Respondent No. 2 came out of the hotel and was informed that his car was driven away by another person. The person had picked up the keys of the car from the front desk and stolen the car despite the security guard trying to stop him.

The Respondent No.1 settled the insurance claim raised by the Respondent No. 2. Thereafter, the Respondent No. 2 executed a Power of Attorney and a letter of subrogation in favour of the Respondent No.1. They both approached the State Commission by filing a complaint against the Appellant seeking payment of the value of the car and compensation for deficiency in service.

The State Commission relied on the Supreme Court's decision in *Oberoi Forwarding Agency v. New India Assurance Company Limited*[1] and dismissed the complaint on the ground that an insurance company acting as a subrogee cannot qualify as a 'consumer'. The Respondent No. 1 then filed an Appeal before the National Commission. The National Commission noted that since *Oberoi Forwarding* (supra) was partly overruled in *Economic Tranpsortation Organisation v. Charan Spinning Mills (Pvt.) Ltd.*[2], and it remanded back the matter to the State Commission after holding that the Respondent No. 1 did have *locus standi* to file the complaint.

The State Commission then allowed the complaint on merits and directed the Appellant-hotel to pay the Respondent No. 1 a sum of Rs. 2,80,000 being the value of the car with interest of 12% per annum, and Rs. 50,000 towards litigation costs. Additionally, a sum of Rs. 1,00,000 to be paid to the Respondent No. 2 for inconvenience and harassment caused to him.

The Appellant-hotel filed an appeal against the State Commission's order which was dismissed by the National Consumer Disputes Redressal Commission with only a single modification - that the interest awarded to the Respondent No. 1 would be modified from 12% to 9% per annum. Hence this appeal.

CONTENTIONS OF THE PARTIES:

Being aggrieved by the decision of the National Consumer Disputes Redressal Commission, the Appellant filed an SLP before the Apex Court. The Counsel for the Appellants made a twofold submission. First, that the Respondent No. 1 does not qualify as a 'consumer' and that the decision of the National Commission is erroneous as the

[1] (2000)1SCR554

[2] (2002)NCDRC42

principle of *infra hospitium* (Latin for 'within the hotel') is not established under Indian law. Second, since the liability of theft is precluded under the terms of the parking tag, the Appellant cannot be held liable. The parking tag read as follows:

"IMPORTANT CONDITION: This vehicle is being parked at the request of the guest at his own risk and responsibility in or outside the Hotel premises. In the event of any loss, theft or damage, the management shall not be held responsible for the same and the guest shall have no claim whatsoever against the management."

The Counsel for the Respondent No. 1 on the other hand submitted that it is entitled to file a joint complaint with the original consumer in its capacity as subrogee. It was further submitted that the duty of care owed by 5-star hotels is higher and therefore the Appellant must be subject to the highest standard of insurer liability in case of theft of goods from premises.

ISSUES:

The Apex Court determined the following issues:

1) Whether the insurer had *locus standi* to file the complaint as a subrogee?;
2) Whether the Appellant-hotel can be held liable for the theft of a car taken for valet parking, under the laws of bailment or otherwise?;
3) If the second question is answered in the affirmative, what is the degree of care required to be taken by the Appellant-Hotel?; and
4) Whether the Appellant-hotel can be absolved of liability by virtue of a contract?

JUDGMENT:

With respect to the first issue, the Supreme Court had already laid down in *Economic Tranpsortation* (supra) that even though a consumer complaint filed by an insurer in its own name is not maintainable, a complaint filed by the insurer acting as a subrogee is maintainable if - it is filed by (i) the insurer in the name of the assured, wherein the insurer acts as the attorney holder of the assured; or (ii) the insurer and the insured as co-complainants. Since both the conditions were satisfied in the present case, it was held that the complaint was maintainable.

With respect to the second issue, the Supreme Court noted that this issue had come before the Court for the first time, yet it had received ample judicial and academic attention in other common law jurisdictions. Thereafter, the Court discussed two rules viz. (i) the common law rule of insurers liability – where the innkeeper is treated as an insurer and made responsible for any loss or damage to the vehicle of its guest, regardless of the presence or absence of negligence on his part, (ii) the rule of *prima facie* negligence - where the innkeeper is presumed to be liable for loss or damage to the vehicle of his guest, but can exclude his liability by proving that the loss did not occur due to any fault or negligence on his part.

The Court observed that keeping in mind the change in socio-economic conditions in India, it doesn't think it proper to impose a standard of strict liability upon hotel owners. If a hotel is made strictly liable for the safety of vehicles of persons without proof of negligence on its part, it may lead to grave injustice. A hotel cannot be expected to maintain surveillance of each and every vehicle parked on the premises at all times. The strict liability rule under common law should not be given effect in the Indian context but the *prima facie* rule should apply.

It was also observed that the *prima facie* liability rule is premised on the existence of a bailment relationship, in cases where such relationship is found to exist between the hotel and its guest, the rule should be applied in respect of vehicles so bailed to the hotel. The burden of proof will be on the bailee to show that he took a reasonable degree of care in respect of the bailed goods. Further, in a situation where the hotel actively undertakes to park the vehicle for the owner, keep it in safe custody and return it upon presentation of a parking slip in a manner such that the parking of the vehicle is beyond the control of the owner, a contract of

bailment exists. Therefore, the hotel would be liable as a bailee for returning the vehicle in the condition in which it was delivered. The Court held that this was in line with sections 148 and 149 of the Indian Contract Act, 1872. Further, the car token handed over to the bailor is evidence of a contract by which the bailee/ hotel undertakes to park the car and return it in a suitable condition when the vehicle owner so directs. Since valet parking benefits the hotel by providing an incentive to guests and therefore providing an edge over others there exists an implied consideration for the contract of bailment created in valet service. A hotel can therefore not refute the existence of bailment by contending that it was complimentary in nature.

With respect to the third issue, the Supreme Court stated that in light of the fact that a relationship of bailment exists, the burden of proof is on the hotel to show that efforts were undertaken by it to take reasonable care of the vehicle bailed, and that the theft did not occur due to its negligence or misconduct.

The Court noted that the Appellant denied negligence by stating that that the guest was aware of the risk of valet parking which was not a service for safe custody of the vehicle. However, it was observed that the manner in which the car was stolen manifested negligence. No steps were taken by the Appellant to ensure the car keys were kept out of reach of outsiders nor was the car parked in a safe location with barriers to verify the owners. Therefore, there was negligence on part of the Appellant.

With respect to the fourth issue, the Court considered whether the bailee/hotel could contractually exclude liability for its negligence or that of its servants. Here, the Court relied on *Sheik Mahamad Ravuther v. The British Indian Steam Navigation Co. Ltd.*[3], a case dealing with goods being damaged on account of negligence of the shipping company.

In the present case the Apex Court observed that a guest has an implicit expectation that the repute and standards of 5-star hotels would entail adequate safety of the vehicles handed over for valet parking. If the hotel is allowed to exclude its liability for negligence, then the standard of care under section 151 of the Contract Act would become illusory and virtually redundant, rendering customers vulnerable without any remedy. Therefore, the standard of care required to be taken by the hotel as a bailee under section 151 is sacrosanct and cannot be contracted out of.

CONCLUSION:

The Apex Court held that the hotel-owner cannot contract out of liability for its negligence or that of its servants in respect of a vehicle of its guest in any circumstance. Once possession of the vehicle is handed to the hotel staff or valet, there is an implied contractual obligation to return the vehicle in a safe condition upon the discretion of the owner.

[3] (1909)ILR32Mad95

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.