Before K. Kannan, J.

UNITED INDIA INSURANCE COMPANY LIMITED—*Appellant*

versus

PALWINDER KAUR AND OTHERS—*Respondents*

FAO No.174 of 2012

February 04, 2014

Motor Vehicles Act, 1988 - S. 140 - Liability to pay compensation in certain cases on the principle of no fault - Claim was raised against gratuitous lender of vehicle and his insurer on account of death in motor accident - Owner and driver of other vehicle which caused accident were not impleaded - Held, that that gratuitous lender and his insurer could not be held liable unless claimants could show a defect in the vehicle lent, which contributed to the accident.

Held, that there could be no cause of action against the owner of the vehicle from whom the deceased borrowed it unless the vehicle was non-motorable and by any latent defect in the vehicle, there had been an accident. The theory of liability requires proof of duty of care by a person, breach of which will allow for a cause of action to sue the person who owed the duty. In a typical road accident scenario, the straight forward case is what a driver of a motor vehicle to any other road user, be he a pedestrian or on any form of transport. If there was no case by the claimants that the vehicle borrowed by the deceased had any defect which contributed to the accident, then the petition against a charitable owner was incompetent and more so, against the insurer of such vehicle. The petition was misconceived and the award passed by the Tribunal is erroneous. It is set aside and the appeal is allowed.

(Para 2)

Paul S. Saini, Advocate, *for the appellant.*

Sushil Saini, Advocate, for Sanjay Kumar, Advocate, for respondents No. 1 to 4.

K KANNAN, J. (Oral)

(1) The appeal is by the Insurance Company against the award passed in favour of the claimants, who had a case that the deceased had borrowed the vehicle and had involved himself in an accident by a collision with another vehicle. The owner and driver of the other vehicle which caused the accident had not been impleaded but the claim was made against the owner of the vehicle, who had lent the vehicle to the deceased.

(2) I must observe that there could be no cause of action against the owner of the vehicle from whom the deceased borrowed it unless the vehicle was non-motorable and by any latent defect in the vehicle, there had been an accident. The theory of liability requires proof of duty of care by a person, breach of which will allow for a cause of action to sue the person who owed the duty. In a typical road accident scenario, the straight forward case is what a driver of a motor vehicle to any other road user, be he a pedestrian or on any form of transport. The more complex forms could be what a public authority owes to its citizens for maintaining roads or regulating traffic. In every situation, it could be noticed that a plaintiff has a justification to complain that the defendant failed in some safety standard that was expected of the defendant that exposed the plaintiff to danger. If there was no case by the claimants that the vehicle borrowed by the deceased had any defect which contributed to the accident, then the petition against a charitable owner was incompetent and more so, against the insurer of such vehicle. The petition was misconceived and the award passed by the Tribunal is erroneous. It is set aside and the appeal is allowed.

(3) There is however an irreducible compensation which any insurer shall bear on no fault liability under Section 140 of the Motor Vehicles Act in the manner contemplated by the Supreme Court in ***Eshwarappa @ Maheshwarappa and another v. C.S. Gurushanthappa and another(1)***. The Insurance Company's liability will therefore be to the extent of ₹50,000 with interest to the claimants.

P.S.Bajwa

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(1) 2010(8) SCALE 263