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TAJ MAHAL HOTEL VS. UNITED INDIA INSURANCE CO. LTD

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ABSTRACT:

This case elaborates the concept of the bailor & bailee. The concept of the statutory bailor and bailee was first observed in the case of the State of Gujarat vs Haji Memon. In this case, the resolute stand of the court was observed that a premier hotel can't escape from the bailor's liabilities, just by apprising that they were not obligated for the loss of the customer in any of the circumstances. The concept of the bailor exists even when there is no contractual obligation between the parties. The other party in possession of the product must take reasonable care of the product.

Keywords: Bailment, Taj Mahal hotel

The concept of the Bailment.

It refers to the legal relationship that may persist between the two parties by which a property or an asset is transferred from one party to the other. The other person will be the owner of the property but they will not have possession of the property. The bailment concept can persist between two parties by means of an enforceable contract or just by the act of the party. Bailment statutes are governed by the Indian Contract Act of 1872. Pursuant to the Indian Contract Act of 1872 the relationship between two parties can be of Bailor and bailee without any legal binding or even when one of the parties refuses to accept the liabilities of the bailor.

Section 148 of the Indian Contract Act of 1872: defines are concept of the bailment, bailor and bailee. A person delivering the product or goods is called a bailor and the person receiving the goods or product is called bailee. The relationship arising between the parties is called bailment. ¹

Section 149 of the Indian Contract Act 1872 (delivery of the product to the bailee): The delivery to the receiver can be achieved by any action leading to the transfer of the product to the intended receiver or authorized person. ²

¹ Indian Contract Act, 1872, No. 148, Act of Parliament, 1872 (India)

² Indian Contract Act, 1872, No. 149, Act of Parliament, 1872 (India)

Section 151 of the Indian Contract Act of 1872 (reasonable care by the bailee): Bailee is obligated to take care of the property as if they were the owner of the property. ³

Section 152 of the Indian Contract Act of 1872 (liability of the bailee in case of destruction of the property): The bailee won't be held responsible in case of destruction or loss of the property, provided that reasonable care was taken by the bailee as specified in *Section 151* of the Indian Contract act 1872. ⁴

Case Synopsis:

An individual (hereinafter referred to as Customer for the sake of brevity) on 1st August 1998 went to the Taj Hotel (hereinafter referred to as Hotel for the sake of brevity) in his Zen Car at around 11 PM. The Customer availed the Valet parking services at the Hotel and went inside the Hotel. The Customer came out of the Hotel at around 1 PM and was apprised by the security services that the car was driven by some mischievous boys out of the Hotel. ⁵

On further inquiry, the security apprised the Customer that during his stay in the Hotel, 3 boys came to the hotel in separate a car. They went inside the Hotel and returned in some time. The valet service was busy bringing the car, meanwhile, a Boy named Deepak took advantage of the situation and took the car keys and later the Zen Car. The security guards tried their best to stop the Zen Car however, failed to stop it. The complaint was lodged with the police, however, to the dismay of the Customer, the car remained untraceable. ⁶

The valet parking ticket specified at the back that “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.” ⁷

The customer filed the loss and theft claim with the insurance company (hereinafter referred to as the Car Insurer) and settled the claim amicably. Thereafter, the Customer issued a letter of subrogation to the Car Insurer. Both parties approached the State Commission seeking remedy for the loss of the Zen Car and inefficiency in the service.

³ Indian Contract Act, 1872, No. 151, Act of Parliament, 1872 (India)

⁴ Indian Contract Act, 1872, No. 152, Act of Parliament, 1872 (India)

⁵ Taj Mahal Hotel v United India Insurance, 2019 ALL SCR 796

⁶ *Id.* at 2.

⁷ *Id.* at 2.

The State Commission refused to accept the claim citing, that the Car Insurer by way of subrogation cannot become the customer.

Again the Car Insurer filed the case with the National Commission seeking remedy on the aforesaid subject matter, however, observing the Locus Standi of the complainant, the case was directed to the State Commission for the hearing.

The State Commission heard the case and ordered that

1. The Hotel is to pay the settlement amount along with penal interest of 12% per annum and the Litigation cost to the Car Insurer.
2. The Hotel shall pay the inconvenience cost to the Customer on account of inefficiency in their service.
3. The Hotel won't be able to claim for the aforesaid cost with their industrial insurance company. The Hotel failed to apprise the theft information to the industrial insurance company within a specified time.

The hotel, aggrieved by the order of the lower court, challenged it in the National Commission. The National Commission upheld the decision of the lower court. This decision was again challenged by the Hotel in the Supreme Court, wherein the decision of the lower court was upheld.⁸

Arguments by the Hotel:

1. The decision of the National Commission is erroneous as the Car Insurer cannot be a consumer and hence this case is not valid.
2. The concept of 'infra hospitium' doesn't exist in the Indian Law.
3. There is no enforceable contract between the Hotel and the Customer, hence the concept of bailment is not applicable. Moreover, no consideration amount was charged for the valet parking.
4. Finally, the Valet Parking ticket already specified that the Hotel cannot be obligated for any loss or damage whatsoever may be the reason.

Note: Doctrine of Infra hospitium: The hotel holds strict liability for the losses or damages to the guest property unless it is destroyed by natural forces, the hotel is not at fault or by any unstoppable activity.

⁸ *Id.* at 2.

Arguments by the Car Insurer and Consumer:

1. Both the applicant had submitted the join application and the Consumer acted as a subrogee of the application.
2. The Hotel holds a reputation and has a 5-star rating, hence premier service is expected from the Hotel with such a high standard.

Issues in front of the Court:

1. Whether the Car insurer and Consumer can file a joint complaint? Moreover, can Cosumer act as a subrogee?
2. Ambit of the concept of Bailment in this scenario? Can a claim from the Hotel be charged under such a concept?
3. Can the Hotel be absolved from all the liabilities by mentioning the Terms and conditions behind the Valet parking ticket?

Court observation and rulings:

The Hotel raised the question of considering the Car Insurer as a consumer. The Supreme Court observed its decision in Economic Transport Organisation v Charan Spg. Mills (P) Ltd ⁹. Pursuant to this case, the insurer can act as a subrogee if the complaint is filed by the insurer and acting as a co-complainant.

On application of the same logic, the Consumer's complaint against the Hotel is maintainable in the court. Thus, Consumer had locus standi to file the complaint.

The court analysed the case from the contract law perspective and conducted a comparative study to comprehend the concept of the 'innkeepers'. Pursuant to this concept, under the common law, the liability of a hotel owner or an innkeeper had strict obligations, however, it has been restricted to fault-based liability.

Pursuant to fault-based theory (this was referred to by the court as the prima facie theory for the case analysis), 'if the hotel failed to return the property of the guest, then the hotel is obligated to bear the loss or damage. However, if the hotel proves that neither the hotel nor the staff/ security is responsible for the failure, then they bear no liability towards the guest.

In the current scenario, the Hotel failed to prove the same hence they were held liable for the damage or loss. Moreover, the Court observed the case of bailment. Although there exists no

⁹ Economic Transport Organisation v Charan Spg. Mills (P) Ltd (2010) 4 SCC 114

relationship between the parties neither there is no enforceable contract between them, however, pursuant to Section 148 of the Indian Contract Act 1872 bailment concept is applicable in the case ¹⁰. As the Zen car was in the possession of the Hotel it gave birth to the bailee-bailer concept. Hence, it was expected reasonable care from the Hotel as prescribed in Section 151 of the Indian Contract Act of 1872.¹¹ Since the Zen Car was stolen from the Hotel premises, the burden of proof prima facia lies on the Hotel. It observed that the Hotel was negligent and failed to prove that the employee or the staff was not responsible.

Comprehending various aforesaid scenarios, the Court upheld the order of the National Commission and State Commission.

Cases for the reference:

The concept of statutory bailment was first observed in the case of *Ram Gulam v govt of U.P.*

¹²This is the first case wherein the Court identified that a bailment relationship exists between the parties even in the absence of the enforceable contract. In this case, the client's stolen jewellery was in the custody of the police, however, again the jewellery was stolen from the custody of the police. The police failed to track and recover the stolen jewellery. Hence case of compensation was filed against the State. The State argued that the jewellery was not handed over by the client and hence there is no bailee-bailer liability.

The court directed that bailment doesn't require an enforceable contract and reasonable care should have been performed by the police, hence state is obligated to the compensation.

In another case of *State of Gujrat v. Memon Mahomed*,¹³ the court identified the concept of bailment which exists between the parties in the absence of an enforceable contract.

CONCLUSION:

The reference case mentioned herein in the article sheds light on the intricate concept of the bailee and bailor. The resolute stand of the court while imparting the judgment in the mentioned case solidifies the concept of bailment in the absence of an enforceable contract.

In this case, the Customer availed the valet parking in a premier Hotel and thereafter the car was stolen from the Hotel premises. The Hotel argued that valet parking terms and conditions

¹⁰ Indian Contract Act, *supra* note 1, at 2

¹¹ Indian Contract Act, *supra* note 3, at 2

¹² Ram Gulam v. Govt of U.P, AIR 1950 ALL 206.

¹³ State of Gujarat v. Memon Mahomed, 1967 AIR 1885.

stated that under no circumstances the Hotel is liable for the loss or damage to the customer. The Customer and his insurance company filed a case against the Hotel for compensation. The Court observed the concept of the Innkeeper and bailment to impart the decision. The Court clarified that reasonable care was expected from the Hotel in this case. Moreover, the Hotel failed to prove the fault-based liability.

Post this case the concept of bailment in velvet parking was non-existent. The Hotels mentioned the terms and conditions at the back of the valet parking to circumvent such a situation. This judgment established the liability of the Hotel and paved the path for future judgements.

