PETITIONER:
N.R. SRINIVASA IYER

Vs.

RESPONDENT:
NEW INDIA ASSURANCE co., LTD.

DATE OF JUDGMENT22/07/1983

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
REDDY, O. CHINNAPPA (J)

CITATION:
1983 AIR 899 1983 SCR (3) 479
1983 SCC (3) 458 1983 SCALE (2)44

ACT:
Contract Act-S. 148 Contract of insurance-When custody of motor car damaged in accident is entrusted to repairer by insured in accordance with terms of insurance policy does the insurer become bailee and repairer 'sub-bailee' of motor car?

HEADNOTE:
The appellant's motor car, insured with the respondent ('insurer') suffered damage in an accident and was taken to and left in the custody of a repairer. On receipt of intimation of the accident, the insurer entered into correspondence with the repairer, accepted the estimate of repair charges and advised the repairer to proceed with the repairs. The. motor car was, however, destroyed in a fire which occurred hl the repairer's workshop. The appellant filed a suit claiming from the insurer the value of the motor car on the footing that the insurer was the bailee of the motor car while it was in the custody of the repairer.

The trial court upheld the contention of the appellant and decreed the suit but, in appeal, the High Court set aside the decree and dismissed the suit on a ground not related to the contention based on the contract of bailment. In Civil Appeal No, 142 of 1965 decided on October 31,1967 this Court allowed the appeal of the appellant and remitted the same to the High Court requesting it to deal with the following questions: (i) whether the insurer was a bailee of the motor car; (ii) Whether the insurer failed to take as much care of the car as a person of ordinary prudence would in similar circumstances; and (iii) The value of the destroyed car. 1 he High Court held on the basis of the correspondence between the parties that the car was entrusted to the repairer by the appellant's son on behalf of the appellant, that this was done without reference to the insurer, that the insurer had only agreed to pay the repair charges and that therefore the insurer was not a bailee of the motor car.

Allowing the appeal,

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HELD: 1. A bare perusal of some of the conditions contained in the contract of insurance would unmistakably lead to the conclusion that the insurer was a bailee of the

motor car. The custody of the repairer was that of a sub-bailee. The High Court went wrong in not making any reference to the contract of insurance between the parties. In a contract of insurance, there are mutual rights and obligations both of the insurer and the insured. If the motor car is damaged in an accident, a duty is cast on the insured not to leave the damaged car unattended which of necessity would oblige the insured either to keep a watchman or if the car is in a condition to be moved it ought to be
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taken to a repairer, and the insurer undertakes an obligation to reimburse the cost of removal to the insured. This would imply that from the scene of the accident, it is the duty of the insurer to remove the car to the nearest repairer but this duty is to be performed by the insured on behalf of the insurer. Another important condition of the contract is that, once the car is damaged in an accident, the insurer may, at its own option, either repair, reinstate or replace the motor car. When the insurer has the option to replace the motor car, it can take over the damaged car and the insured is bound to submit to the same. If the insure, on the other hand, exercises the option of repairing the car, it is entitled not merely to choose the repairer but also to determine the charges for repairs to be settled between the insurer and the repairer and the insured has hardly anything to do with it. [486A, 487 C-D, 488 C-D]

Moris v. C. W. Martin & Sons, Ltd., [1965] 2 All E.R. 725; and Gilchrist Watt and Sanderson Pty Ltd. v. York Products Ltd., [1970] 3 All E. R, 325; referred to.

In the instant case, when the appellant's son soon after the accident took the damaged car to the nearest repairer, the car virtually came into the custody of the insurer and the repairer took the custody for and on behalf of the insurer. The obligation to get the car repaired was that of the insurer. The insurer formally took the car into its custody when it accepted the repairer to whom the custody was given and entered into negotiations about the repair charges and finally agreed to pay the repair charges to the repairer. [487 E]

As a condition of contract of insurance the insurer has to take custody of the damaged car, reserving the option to repair or replace if. The insured has to remove the car to the nearest repairer on behalf of the insurer and is entitled to be reimbursed the cost of removal. Therefore, from the time of accident, under the contract of insurance, the insurer would be the bailee. If the option to repair is exercised and the repairer is approved and paid, the repairer becomes the sub-bailee. [490 E-G]

2. When the car was in the custody of the sub-bailee, it was destroyed by fire that occurred in the repairer's workshop. The sub-bailee was bound to take the same care as a man of ordinary prudence would take in regard to his own goods of the same quality and value as was expected of the bailee. When the custody is of the bailee or the sub-bailee, the burden is on them to show how they handled the car. In the instant case the High Court did not touch upon this aspect while reversing the decision of the trial court. There is no evidence on behalf of the insurer as to what amount of care had been taken by the repairer. The appellant has led some evidence in this behalf as to the careless manner in which the car was kept in the workshop where inflammable material was kept. The burden being on the bailee and the sub-bailee and the same having not been discharged, the trial judge was justified in accepting the evidence of the appellant and in according the finding that

the bailee and sub-bailee had not taken such care of the car as was expected of a prudent man in respect of his own goods of the same quality and value. Therefore, the bailee is liable for the loss suffered by the appellant, the bailer.
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2202 of 1969.

Appeal by Special leave from the Judgment and order dated the 2nd January, 1969 of the Kerala High Court in A.S. No. 838 of 1958.

G.B. Pai, D.N. Misra, O.C. Mathur and Miss. Meera Mathur for the Appellant.

N. Sudhakaran for Respondent No. 1.

MRK Pillai for the Respondent No. 2.

The Judgment of the Court was delivered by

DESAI, J. Plaintiff whose car was destroyed in fire way back in July 1953 and claimed a paltry sum of Rs. 7,000 from the respondent (Insurance Company for short) is knocking at the doors of Courts of Justice since last three decades and mirage of justice is still eluding him, and in his chase presumably he must have spent double the amount than prayed for in the plaint because this is the second round when the matter has reached the apex court.

Plaintiff, who is the appellant was the owner of Austin 16 H.P. Motor Car, which he had insured with the original' first defendant Vanguard Fire and General Insurance Company Ltd. ('Insurer' for short) in respect of accident, loss or damage. The period covered by the policy of insurance Ext. P-1 dated March 4, 1952 was from March 1, 1952 to February 28, 1953. This car suffered damage in an accident which occurred on December 21, 1952. The car was taken to car repairing workshop of P.S.N. Motors Ltd., Trichur and left there and an intimation of the accident was sent to the Insurer requesting it to discharge its obligation under the policy of insurance. The repairer to whom the car was handed over prepared an estimate of the repair charges in the amount of Rs. 2010 and forwarded the same to the Insurer. After some protracted correspondence, the Insurer accepted the estimate of repair charges in the amount of Rs. 1910 and the Insurer by its letter dated Ext. P-13 dated March 25, 1953 wrote to the plaintiff and the repairer as under:

> We have pleasure to inform you that the revised estimate of M/s P.S.N. Motors Ltd., Trichur has been
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> approved by our head office, and they have been advised to proceed with the repairs and send us their final bill together with the discharge voucher duly filled in and signed by you, for making the payment.
>
> Assuring you of our best services always."

Since the date of the accident the car was in the custody of the repairer for the purpose of repairs. On July 10, 1953, a fire occurred in the workshop of the repairer in which the Motor Car of the plaintiff was destroyed. The plaintiff called upon the Insurer to idemnify him for the loss as per the terms of the policy of insurance alleging that the Motor Car was in the possession and custody of M/s P.S.N. Motors Ltd on behalf of the Insurer and was being repaired at the sole responsibility of the Insurer under its instruction and since the Insurer had entrusted the Motor Car for repairs to

a workshop in which several automobiles with inflammable materials like oil, petrol, tyres etc. were Lying without ascertaining whether the workshop was insured against fire and other risks, the Insurer was liable to make good the loss. The plaintiff claimed the value of the Motor Car on the footing that the respondent-company was a bailee of the Motor Car and had failed to take such care thereof as a person of ordinary prudence would under similar circumstances take of his property of the same quality and value as the Motor Car bailed. This last submission alleging a contract of bailment is seriously disputed by the respondent-insurance company.

The Insurer contested the claim, inter alia, contending. that the suit is not maintainable in view Condition No. 7 of the policy of insurance an aspect of the matter which is concluded against the respondent-company and, therefore, it is not necessary to set out in extenso the contention under this head. The contract of bailment was seriously disputed and it was submitted that the car was handed over to the workshop by the plaintiff's son and the insurance company had only agreed to re-imburse the loss and the workshop owner was not the agent of the Insurer nor was the insurance company a bailee; nor could it be said that the agent of the bailee was in possession of the car.

The trial court held that the Motor Car was entrusted to the repairer for and on behalf of the Insurer and the insurance company
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was liable for the loss of the Motor Car as it was in possession of the agent of the insurance company. The suit was held to be maintainable, despite condition No. 7 of the policy of insurance. Accordingly, the suit was decreed with costs.

An appeal was preferred to the High Court of Kerala at the insurance of the Insurer. The High Court held that condition No. 7 of the policy of insurance precluded the plaintiff from filing the suit before obtaining the award and on the short ground allowed the appeal of the Insurer and dismissed the suit.

The plaintiff preferred Civil Appeal No. 142 of 1965 by special leave to this Court. Shah, J. speaking for the Court in the judgment rendered on October 31, 1967 held that the High Court was in error in coming to the conclusion that condition No. 7 precluded the plaintiff from filing the suit. This Court held that condition No. 7 of the policy of insurance has no operation in the case since the difference between the Insured and Insurer arose not out of the policy; but out of the claim of the plaintiff that the Motor Car was delivered to the respondent-company for repairs. Accordingly, this Court reversed the decision of the High Court and remitted the appeal to the High Court requesting the High Court to deal with the following questions which arise in the appeal:

"1. Whether the respondent-Company was a bailee of the motor car of the plaintiff as alleged by the plaintiff?

2. Whether the respondent-Company failed to take as much care of the motor-car as a person of ordinary prudence would in similar circumstances take of his own motor car of the same quality and value ? and

3. the value of the motor car destroyed."

When the matter went back to the High Court, the appeal was heard by a Division Bench of the Kerala High Court. The Bench hearing the appeal had some doubt whether in view of

the pleading the plaintiff can claim any relief on the basis of a contract of bailment. After expressing this doubt, the High Court proceeded to observe that in view of the scope of remand the High Court has to decide the question whether or not the Insurer was a bailee of the plaintiff ?
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After referring to the correspondence, the High Court reached the conclusion that the Motor Car was entrusted to M/s P.S.N. Motors Ltd. by the plaintiff's son on behalf of the plaintiff for repairs, that it was done without reference to the defendant, that all that the defendant agreed was to pay to the plaintiff or to P.S.N. Motors Ltd., on his behalf, the amount which was settled as the charges for carrying out all the repairs." In this view of the matter, the High Court held that the Insurer was not a bailee of the Motor Car of the plaintiff and the plaintiff's claim as founded on a contract of bailment cannot succeed. The High Court, accordingly, allowed the appeal of the insurance company and dismissed the suit of the plaintiff directing the parties to bear their respective costs. Hence this appeal by the plaintiff by special leave.

By the time the appeal was filed in this Court, the General Insurance Business (Nationalisation) Act, 1972 was enacted and brought into operation. The Central Government in exercise of the powers conferred by sub-sec. (1) of sec. 16 of Nationalisation Act framed the scheme which was published in the Gazette of India Extraordinary Part II-Sec. 3 - Sub-section (ii) . . . dated December 31, 1973. The First Schedule appended to the scheme shows that Vanguard Insurance Company Limited has been merged with the New India Assurance Company Ltd. It may be noticed that the name of the first respondent is shown to be the Vanguard Fire & General Insurance Co. Ltd. It is not made clear whether the Vanguard Insurance Co. Ltd. set out in the First Schedule to the scheme is the same as the respondent in this appeal. That question is kept open to be debated if the obligation to pay the plaintiff under the policy of insurance is decreed in favour of the plaintiff by us.

Since the High Court had to decide the appeal within the scope of order of remand made by this Court, it is necessary to confine attention only to the questions which this Court directed the High Court to determine. We have already extracted the three questions framed by this Court in its judgment rendered on October 31, 1967.

The first question is whether the respondent-insurance Company was a bailee of the Motor Car of the plaintiff as alleged by the plaintiff ?

Section 148 of the Indian Contract Act defines a contract of bailment as under :
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> "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. The person to whom they are delivered is called the "bailee"."

There is an explanation appended to the section which provides that if a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailer of such goods, although they may not have been delivered by way of bailment. Sec. 149 provides that 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 authorised to hold them on his behalf. Sec.

150 prescribes bailer's duty to disclose to the bailee faults in the goods bailed. Sec. 151 provides that 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.

The High Court came to the conclusion that it is clear from the correspondence between the parties ending with Ext. P-13 that the car was entrusted to P.S.N. Motors Ltd. Trichur by the plaintiff's son on behalf of the plaintiff for the repairs and that it was done without reference to the insurance Company and that all that the defendent-insurance Company agreed was to pay to the plaintiff or to P.S.N Motors Ltd. on his behalf, the amount which was settled as the charges for carrying out all the repairs. Approaching the matter from this angle, the High Court held that the Insurer was not a bailee of the Motor Car and the plaintiff cannot succeed in his claim as founded on a contract of bailment. This conclusion is not borne out by the record and is against the weight of evidence.

The High Court did not make any reference to the terms of the contract of insurance between the parties before rejecting the plaintiff's case that the Insurer was the bailee and the repairer was the sub-bailee who had custody of the Motor Car on the entrustment of the custody for the avowed object of repair by the bailee to the sub-bailee. For us, it is a bit surprising that the High Court should have rejected the plaintiff's case out of hand without slightest
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reference to the contract of insurance evidenced by the policy Ext. P-1. A bare perusal of some of its conditions would unmistakably lead to the conclusion that the Insurer was a bailee of the Motor Car in question.

The first condition which is the usual condition in such a contract is that the contract of insurance is a contract of indemnity and the Insurer undertake to indemnify the Insurer against loss of or damage to the Motor Car and/or its accessories whilst thereon by accidental external means. The next important condition is that in the event of the Motor Car being disabled by reason of loss or damage covered under the policy of insurance, the Insurer will bear the reasonable cost of protection and removal to the nearest repairers and of redelivery to the insured but not exceeding in all Rs. 150 in respect of any one accident. One other condition worth noting reads as under:

> "The insured may authorise the repair of the Motor Car necessitated by damage for which the Company may be liable under this Policy provided that:
>
> (a) the estimated cost of such repair does not exceed Rs. 300
>
> (b) the Company is furnished forthwith with a detailed estimate of the cost and
>
> (c) the Insured shall give the Company every assistance to see that such repair is necessary and the charge reasonable."

The next condition to which reference may be made is condition No. 4 which reads as under:

> "Notice shall be given in writing to the company immediately upon the occurrence of any accident or loss or damage and in the event of any claim and thereafter the Insured shall give all such information and assistance as the Company shall require."

A further condition is that 'the Company may at its own option repair, reinstate or replace the Motor Car or part thereof and/or its accessories or may pay in cash the amount

of the loss or damage
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and the liability of the Company shall not exceed the actual value....' There is the further condition which may be noticed. 'In the event of any accident or breakdown the Motor Car shall not be left unattended without proper precautions being taken to prevent further damage or loss and if the Motor Car be driven before the necessary repairs are effected any extension of the damage or any further damage to the Motor Car shall be entirely at the Insured's own risk.'

We are constrained to reproduce all these very relevant conditions which have a tell tale effect on the question whether the Insurer was the bailee of the Motor Car because the High Court wholly ignored them.

In a contract of insurance, there are mutual rights and obligations both of the Insurer and the Insured. If the Motor Car is damaged in an accident, a duty is cast on the Insured not to leave the damaged car unattended which of necessity would oblige the Insured either to keep a watchman or if the car is in a condition to be moved it ought to be taken to a repairer. From the scene of accident when the car is taken to the nearest repairer, the Insurer undertakes an obligation to reimburse the cost of removal to the Insured. This would imply that from the scene of accident, it is the duty of the Insurer to remove the car to the nearest repairer but this duty is to be performed by the Insured on behalf of the Insurer and the Insured is entitled to be reimbursed for the expenses incurred by him. Therefore, it was obligatory upon the Insured to remove the car to the nearest repairer. This obligation arose under the contract of insurance. The High Court rejected the contention of the plaintiff that the Insurer was a bailee on the short ground that the car was entrusted to the repairer by the plaintiff's son on behalf of the plaintiff for repair and that it was done without reference to the Insurer and that all that the defendant agreed was to pay the plaintiff or to P.S.N. Motors Ltd. On his behalf the amount which was settled as the charges for carrying out all the repairs. When the plaintiff's son soon after the accident took the damaged car to the nearest repairer, the plaintiff was discharging an obligation under the contract of insurance, for and on behalf of the Insured because he could have legitimately claimed the cost of removal not exceeding Rs. 150 from the Insurer. This would imply that the Insurer took charge of the damaged car from the scene of accident and got it moved to the nearest repairer. The car virtually came into the custody of the Insurer and the repairer took the custody for and on
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behalf of the Insurer. The material aspect has been wholly overlooked by the High Court.

Secondly, the High Court observed that the Insurer merely agreed to pay to the plaintiff-Insurered or to the repairer on his behalf the amount which was settled as the charges for carrying out all the repairers. At this stage High Court overlooked another important condition of the contract of insurance which has been extracted hereinabove. The Insurer may at its own option either can repair, reinstate or replace the Motor Car, once the car was damaged in accident. The obligation to repair the damaged car arose under the contract of insurance. The Insurer had an absolute discretion either to repair, reinstate or replace the Motor Car. When the Insurer has the option to replace the Motor Car, it can take over the damaged car and the Insured is

bound to submit to the same. If the Insurer on the other hand, exercised the option of repairing the car, it is entitled not merely to choose the repairer but also to determine the charges for repairs to be negotiated and settled between the Insurer and the repairer and the Insured has hardly anything to do with it. When these three conditions are read together and the evidence is appreciated the inescapable outcome is that the plaintiff through his son sent the Motor Car soon after the accident to the nearest repairer in discharge of an obligation under the contract of insurance and that too for and on behalf of the Insurer. In this state of unimpeachable evidence emanates from the binding contract between the parties, the High Court was clearly in error in holding that the plaintiff's son took the car to workshop on his own without reference to Insurer. The Insurer decided to get the car repaired and not to reinstate or replace the car. Having exercised this option, the Insurer entered into negotiations with the repairer and between them by Ext. P-13 worked out the rights and obligations. The obligation to pay repair charges arose out of contract of insurance. The Insurer wanted the repairer to repair the car and recover the charges from the Insurer. The custody of the repairer would be that of a sub-bailee because the Insurer was the bailee as pointed out earlier from the time of accident. Since the accident, the Insured dealt with vehicle strictly as provided under the contract of insurance and that necessitated taking the car to the nearest repairer for and on behalf of the Insurer. The Insurer became the bailee and the repairer may have been initially pointed out by the bailer but with whom the Insurer entered negotiation arrived at a contract and agreed to get the car repaired in discharge of an obli-
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gation under the contract of insurance. Therefore, for this additional reason the custody of the repairer is that of a sub-bailee.

A reference to some decisions in this context would bear out the conclusion. In Morris v. C.W. Martin & Sons Ltd.(1) plaintiff sent her mink stole to a furrier for cleaning. The furrier, contracting as principal not agent, arranged with the defendants for them to clean the plaintiff's fur on the current trade conditions, of which the furrier knew. The defendants knew that the fur belonged to a customer of the furrier, but did not know to whom it belonged. M, an employee of the defendants, was given the task of cleaning the fur. While the fur was in M's custody, he stole it. The plaintiff sued the defendants for damages. The suit was dismissed. In an appeal by the plaintiff, the Court of Appeal reversed the decision and decreed the plaintiff's suit. Lord Denning quoted with approval the following passage from Pollock and Wright on Possession:

> "If the bailee of a thing sub-bails it by authority .... and there is no direct privity of contract between the third person and the owner it would seem that both the owner and the first bailee have concurrently the rights of a bailer against the third person according to the nature of the sub-bailment."

It was accordingly held that if the sub-bailment is for reward, the sub-bailee owes to the owner all the duties of a bailee for reward, and the owner can sue the sub-bailee direct for loss of or damages to the goods; and the sub-bailee is liable unless he can prove that the loss or damage occurred without his fault or that by his servant.

In Gilchrist Watt & Sanderson Pty Ltd. v. York Products

Pty Ltd.(1); the Shipowners carried two cases of clocks, belonging to the plaintiffs in their vessel from Hamburg to Sydeny, where the defendants carried on the business of stevedores and ship's agents. The bill of lading provided, inter alia,: "When the goods are discharged from the vessel, they shall be at their own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the shipowners shall be freed from any further responsibility". The defendants unloaded the two cases from
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the vessel. When the plaintiff sought to take delivery of the two cases, one of them was missing and was not recovered. The plaintiffs sued the defendants on the ground that they were sub-bailee and are answerable to the plaintiffs to the same extent as the bailee. The Privy Council affirming the decision in Morris's case held that the bailment to the shipowners continued till the goods were delivered to the plaintiff, but in the meantime there was a sub-bailment from the shipowners to the defendants. The defendants as sub-bailee were given and took possession of the goods for the purpose of looking after them and delivering them to the holders of the bill of lading who were the plaintiffs, thereby the defendants took on this obligation from the plaintiff to exercise due care for the safety of the goods, although there was no contractual relations between the plaintiffs and the defendants. For this proposition Morris's case was held to be the principal authority and it was virtually followed.

It is not necessary to multiply the decisions further.

Turning to the facts of this case as pointed out earlier, the contract of insurance as evidenced by the insurance policy clearly spelt-out a duty and an obligation to remove the damaged car covered by the policy to the nearest repairer as soon as the accident occurred. This was an obligation cast on the Insured to be carried out on behalf of the Insurer, and this was to be done for the benefit of the Insurer because the Insurer had the option to repair or to replace the car. In the background of these facts, the handing over of the car by son of the plaintiff to the repairer would constitute a delivery on behalf of the Insurer who would be the bailee and the repairer would be the sub-bailee. This inference is further strengthened by the correspondence that ensued between the Insurer and the repairer. The obligation to get the car repaired was of the Insurer. It had a right to take the car into its custody. It did formally take the car into the custody when it expected the repairer to whom the custody was given as the one acceptable to them and entered into negotiations about the repair charges and finally agreed to pay the repair charges to the repairer. Unquestionably, the Insurer would be the bailee and the repairer would be the sub bailee.

The second point which this Court directed the High Court to decide was whether the respondent-company failed to take as much care of the Motor Car as a person of ordinary prudence would
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in similar circumstances take of his own Motor Car of the same quality and value? When the car was in the custody of the sub-bailee, it was destroyed by fire that occurred in the repairer's workshop. The sub-bailee was bound to take the same care as a man of ordinary prudence would take in regard to his own goods of the same quality and value as was expected of the bailee. Now no evidence has been led by the defendants to explain what amount of care the bailee or the

sub-bailee took in respect of the car. When the custody is of the bailee or the sub-bailee, the burden is on them to show how they handled the car. This is well-established and need no authority. In Morris's case, the question of burden of proof was examined by the Court of Appeal and the law was stated as under:

> "Once a man has taken charge of goods as a bailee for reward, it is his duty to take reasonable care to keep them safe; and he cannot escape that duty by delegating it to his servant. If the goods are lost or damaged, whilst they are in his possession, he is liable unless he can show-and the burden is on him to show-that the loss or damage occurred without any neglect or default or misconduct of himself or of any of the servants to whom he delegated his duty."

In the present case, the trial Court held that the repairer the sub-bailee failed to take that much care as a prudent man would take of his own thing in respect of the car. The High Court has not touched this aspect while reversing the decision of the trial Court. There is no evidence on behalf of the Insurer on the question as to what amount of care has been taken by the repairer the sub-bailee. One R. Rajaram D.W. 1 was examined on behalf of the Insurer, and there is not one word in his examination-in-chief as to what degree of care was taken to keep the car in safe custody by the sub-bailee. No one was examined on behalf of the sub-bailee. The burden was on them to establish to the satisfaction of the Court as to what degree of care was taken in respect of the damaged car. Plaintiff has led some evidence in this behalf as to the careless manner in which the car was kept in the workshop where inflammable material was kept. Without doubt the burden being on the bailee and the sub-bailee and the same having not been discharged, the learned trial Judge was perfectly justified in accepting the evidence of the plaintiff and in recording the finding that bailee and the

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sub-bailee had not taken such care of the car as was expected of the prudent man in respect of his own goods of the same quality and value. Therefore, the bailee is liable for the loss suffered by the plaintiff the bailer.

The last point which this Court directed the High Court to determine was about the value of the destroyed car. The plaintiff has given the value of the Motor Car at the time of its loss at Rs. 7,000, and that is the measure of the loss suffered by the plaintiff on account of the loss of the car. The trial Court had decreed plaintiff's suit to the extent of Rs. 7,000. The finding is confirmed.

For the reasons herein mentioned, this appeal must succeed and it is accordingly allowed. The Judgment and decree of the High Court are set aside and the one passed by the trial Court is restored with costs throughout.

H.L.C. Appeal allowed.

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