

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th November, 2012

+ **MAC. APP. 884/2012**

UNITED INDIA INSURANCE COMPANY LTD. Appellant
Through: Ms. Suman Bagga, Adv.

versus

JYOTI & ORS. Respondents
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM APPL.14028/2012 (Delay)

1. For the reasons as stated in the Application, the delay of 349 days in filing the Appeal is condoned.
2. The Application is allowed.

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3. The Appellant United India Insurance Company Limited takes exception to a judgment dated 11.04.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹10,60,000/- was awarded in favour of the Respondents No.1 to 3 for the death of Hari Shanker who died in a motor vehicle accident which occurred on 20.04.2011.
4. The only ground of challenge urges by the learned counsel for the Appellant Insurance Company is that the insurance policy issued in

respect of the vehicle involved in the accident, the risk was covered only when the accident occurred at public place. In this case, the accident took place inside Millennium Bus Depot-III, inner workshop No.4 of DTC which was not a public place. Thus, the Appellant Insurance Company was not under obligation to indemnify the insured.

5. I have before me the Trial Court record. PW-1 Mrs. Jyoti, the deceased's widow deposed about the death of Hari Shanker in an accident on the night of 19.04.2011. It was not suggested to her that the accident did not occur at a public place.
6. It is true that under Section 147 of the Motor Vehicles Act, 1988 (the Act) the insurer is required to issue a policy against any liability which may be incurred by the insured in respect of death or bodily injury or damage to the property of a third party caused by or arising out of use of the vehicle in a public place. The term 'public place' has been defined under Section 2 (34) of the Act as under:-

"2 (34) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage."

7. A Full Bench of Bombay High Court in *Pandurang Chimaji Agale v. New India Life Insurance Company Limited* AIR 1988 Bom. 248; had the occasion to interpret public place as defined under Section 2 (24) of the Motor Vehicles Act, 1939, which definition is pari materia with Section 2 (34) of the Act of 1988. The Full Bench held that even if public does not have access to any place as of right but has "a right of access" it would be a public place within the definition as given under the Act. It was observed that the right of access may be permissible, limited, restricted or

regulated by oral or written permission, by tickets, passes or badges or on payment of fee. Relevant portion of the report in *Pandurang Chimaji Agale* is extracted hereunder:-

“8. The first thing to remember with regard to the definition is that it is an inclusive one. Secondly, it in terms makes it clear that any road, street, way or other place, whether a thoroughfare or not, is a public place for the purposes of the Act, the only condition being that the public should have a right of access to it. Thirdly, the expression used in the definition is “a right of access” and not “access as of right”. Lastly, when it states that any place or stand at which passengers are picked up or set down by a stage carriage, is a public place, it shows that it is not so much concerned with the ownership of the place as with its user. Stage carriage is defined in sub-cl. (29) of S. 2 and it means a motor vehicle which is used to carry or adapted to carry more than six persons excluding the driver and which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. In short, it means a public passenger-carrier. In other words, by virtue of the last part of the definition, the expression would include any place, including private, where public passenger-carrier picks up or sets down passengers.

The definition of “public place” under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation other purpose.

9. It is also necessary to bear in mind the distinction between the expression “right of access” and “access as of right”. The latter expression denotes a place where the members of public have a right of its use as members of public and as a matter of right,

whether regulated, restricted or not. They cannot, however, be denied the said right except on legal grounds. On the other hand, where there is only a right of access, the owner of the place, if he happens to be a private owner, may deny the access to any member of the public on any ground which he chooses. In other words in the former case the right of the members of the public to use the place is restricted compared to their right to use in the latter case. The definition under the Act uses the expression “right of access” as pointed out earlier. What is, therefore, significant to note is that under the present definition even a place the right to use of which is restricted is a public place. Once this is borne in mind much of the controversy raised before us around the correct meaning of the expression “public place” loses its edge.

10. If we further bear in mind the overall object of the provisions of Chapter VIII which deals with compulsory insurance of the vehicle to cover risks to third parties and their property, with claims to be filed for recovering compensation, no fault liabilities and liabilities arising out of hit and run accidents, etc. the intention of the legislature is clear. It is to secure compensation to the persons and property which are exposed to the accidents caused by the vehicles. The very nature of the motor vehicle and its use, mandate these provisions. The motor vehicle in this respect can be likened to a wild animal. Whoever keeps it does so at his risk. As pointed out earlier, some of the restrictions on the use of the vehicle contained in the Act are irrespective of the nature of the place where it is used and irrespective of whether it is plied or kept stationary. The legislature was concerned not so much with the nature of the place where the vehicle causes the accident as where it was likely to do so. Hence all places where the members of public and/or their property are likely to come in contact with the vehicles can legitimately be said to be in its view when the legislature made the relevant provisions for compulsory insurance. It will have, therefore, to be held that all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever would be

covered by the definition of “public place” in S. 2(24) of the Act. To hold otherwise would frustrate the very object of the said Chapter and the Act.”

8. The Appellant Insurance Company did not lead any evidence to show that person of the public had no right to access within the boundary of Millennium Bus Depot-III where the accident occurred. Thus, the Appellant cannot avoid its liability to indemnify the insured.
9. The Appeal is devoid of any merit; the same is dismissed in limine.
10. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
11. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 29, 2012
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