

\$~47

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

% *Decided on: 05.09.2019*

+ **MAC.APP. 614/2018**

RISHI RANJAN MISHRA

..... Appellant

Through: Mr. R.K. Kohli, Advocate.

versus

**SHUBH CHANDER YADAV & ORS (NEW INDIA ASSURANCE
CO LTD)** Respondents

Through: Mr. Rishi Awasthi and Mr. Sumeet
Raj, Advocates for R-2 (CONCOR).
Mr. Anshul and Mr. Abhishek
Kumar, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 20284/2019 (for early hearing)

1. This application seeks early hearing of the appeal.
2. For the reasons mentioned in the application, it is allowed.
3. The application stands disposed-off.

MAC.APP. 614/2018

4. At joint request, the appeal is taken up for disposal.
5. This appeal impugns the order of the learned MACT in Suit No. 4791/16 decided on 09.01.2018, on the ground that the impugned order has erred in not considering the offending vehicle to be a motor vehicle under section 2(28) of the Motor Vehicles Act, 1998.

6. The accident occurred on the premises of respondent no. 2-Container Corporation of India Ltd. at Tughlakabad, New Delhi, when a machine called “Reach Stacker” reversed at a fast speed, in a rash and negligent manner into the claimant, causing him extensive injuries. The facts of the case are that on 05.09.2013, when the appellant/claimant had gone for “import custom clearance” in the course of his normal work i.e. assisting in clearance of consignments to a custom house agency; while standing on the premises of R-2, the said accident happened. The Inland Container Depot at Tughlakabad, New Delhi, is a place where container loads of goods are either brought in for export from Delhi to sea ports or otherwise the imported goods are brought in for further onward journey to the consignee warehouses. The containers are also re-stuffed for their optimal use.
7. The vehicle “Reach Stacker” is basically a contraption mounted on wheels and used for the sake of shifting containers from one place to the other. The container is lifted and carried from one part of the container depot to another part. For such shifting, roads have been laid in the Inland Container Depot which is stated to be approximately 10 sq km and has peripheral and other interconnecting roads to facilitate the movements of goods. Movement of goods cannot happen except by the use of the Reach Stacker and other vehicles. The entire area is Government-owned and is visited only by persons who are authorized to enter it. What is to be examined is whether a Reach Stacker is a motor vehicle or not. The photograph of the said

machine mounted on wheels has been supplied by the learned counsel for Inland Container Depot and the same is reproduced:



8. The respondent no. 2 contends that what is to be seen is: whether the roads on which the said “contraption mounted on wheels” moves about on public or private roads? The Court is of the view that this is hardly the issue, because the movement was on roads on which other people also move about, including the claimant who was an ordinary citizen and had entered the said premises with due permission. Although the said contraption was not issued a registration no. by the

Regional Transport Authority and it was being used in an enclosed place i.e. within the boundary wall of the Inland Container Depot, that by itself would not negate the fact that it is a motor vehicle mechanically propelled and adapted for use upon roads. It has a chassis and is mounted on four wheels and has the engine capacity of more than the specification in section 2(28) of the Act.

9. The learned counsel for the appellant, relies upon the dicta of the Supreme Court in the following judgments which have held as under:

“1. Chairman, Rajasthan State Road Transport Corporation & Ors. Vs Smt Santosh & Ors., 2013 SCC Online SC 466.

Para 28. As to whether a particular vehicle can be defined as motor vehicle in terms of Section 2(28) of the Act, is to be determined on the facts of each case taking into consideration the use of the vehicle and its suitability for being used upon the road. Once it is found to be suitable for being used on the road, it is immaterial whether it runs on the public road or private road, for the reason, that actual user for a particular purpose, is no criteria to decide the name. Definition of motor vehicle takes within its ambit, a dumper and tractor. Tractor which is used basically for agricultural purpose and a dumper is used in the factory premises, can suitable (sic) be adapted for being used on the road, therefore, they will meet the requirement of definition of motor vehicle under Section 2(28) of the Act. The word ‘only’ used in Section 2(28) of the Act clearly shows that the exemption is confined only to those kinds of vehicles which are exclusively being used in a factory or in any closed premises. Thus, a vehicle which is not adapted for use upon the road, is only to be excluded.

(emphasis supplied)

2. Government of A.P. and Another vs. Road Rollers Owners Welfare Association and Others,(2004) 6 SCC 210

5. Even otherwise, we cannot understand the reasoning of the High Court. Undoubtedly, a roadroller is meant for repairing roads. This itself shows that it is adapted for use on roads. A roadroller is not capable of being used off the road. Merely because its purpose is to repair roads does not mean that it is not suitable or not adapted for use on roads. We fail to understand from where the High Court concludes that the connotation of vehicle must mean a conveyance for carrying people or goods. The definition of motor vehicle does not so provide. Merely because a vehicle does not carry passengers or goods does not mean that it ceases to be a motor vehicle. So long as it is a vehicle, which is mechanically propelled, and is adapted for use on roads, it is a motor vehicle within the meaning of the Motor Vehicles Act, 1988.

(emphasis supplied)

3. Chief General Manager, Jagannath Area vs. State of Orissa, (1996) 10 SCC 676.

Para 4.

(1) The dumpers which have been taxed under the Taxation Act are used only within the mining areas and are not capable of being used on the public roads and, therefore, cannot be held to be motor vehicles and consequently are not taxable under the Taxation Act...

Para 6.....

The crux of the question is whether the dumper is a motor vehicle and whether the vehicle attracts the liability of tax under Section 3 of the Taxation Act? The very question came up for consideration before this Court in the case of Central Coal Fields Ltd. v. State of Orissa [1992 Supp (3) SCC 133] wherein the various provisions of the Orissa Motor Vehicles Taxation Act was under consideration and the vehicles which had been taxed

under the Taxation Act in the said case were dumpers and rockers. This Court after tracing the legislative history and the decisions of this Court commencing from Bolani Ores Ltd. v. State of Orissa [(1974) 2 SCC 777] repelled argument of the mineowners who used dumpers within their mining premises to the effect that the dumpers are vehicles not adapted for use upon roads and, therefore, are outside the scope of the Taxation Act and held that these dumpers run on tyres, in marked contrast to chain plates like caterpillars or military tanks. It was also held that by the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads and on the mere fact that they are required at places to run at a particular speed is not to detract from the position otherwise clear that they are adapted for use on roads. The very nature of these vehicles make it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the dumpers or rockers as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word 'adapted' in the provision was read as 'suitable' in Bolani Ores case [(1974) 2 SCC 777] by interpretation on the strength of the language in Entry 57 List II of the Constitution. On the fact-situation, therefore, it must be held that dumpers and rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se, were liable to taxation on the footing of their use or kept for use on public roads.

Para 7....

This Court reversed the decision of the Judicial Commissioner of Goa, Daman and Diu and relying upon the earlier decision of this Court in Central Coal Fields Ltd. v. State of Orissa [1992 Supp (3) SCC 133] held the mere fact that dumpers were used solely on the premises of the owner, or that they were in closed premises, or permission of the authorities was needed to move them

from one place to another, or that they are not intended to be used or are incapable of being used for general purposes, or that they have an unladen and laden capacity depending on their weight and size, is of no consequence for, dumpers are vehicles used for transport of goods and thus liable to pay a compensatory tax for the availability of roads for them to run upon commission.

Para 8.....

It appears that the reasons which impelled the manufacturer to give the certificate that the vehicles are not meant for plying on highways are—

- (i) Culverts and bridges on highways are generally not designed to take care of such axle loads continuously;*
- (ii) The vehicles cannot run at reasonable speed on highway and hence obstruct the flow of normal traffic;*
- (iii) Width and height of the equipment will adversely affect the traffic and minimum preferable width of the road required for plying these vehicles is 50 ft.*
- (iv) The vehicles are fitted with specially designed heavy duty tyres and the heat generation is much more and generally cannot be run for more than about 5 kms at one stretch which is not so in case of normal conventional hauling units which ply on highways.*

Para 9. On these facts it is difficult for us to hold that the vehicles are not adapted or suitable or capable of being used on public roads, even though for most of the time they might actually be used within the mining areas on the roads prepared by the mining owners. Following the two earlier judgments of this Court in Central Coal Fields Ltd. [1992 Supp (3) SCC 133] and Union of India v. Chowgule & Co. [1992 Supp (3) SCC 141] we hold that the dumpers in question are motor vehicles and are taxable within the ambit of the Taxation Act.

(emphasis supplied)

4. Bose Abraham vs. State of Kerala and Another, (2001) 3 SCC 157:

Para 7. We hold that the excavators and roadrollers are motor vehicles for the purpose of the Motor Vehicles Act and they are registered under that Act. The High Court has noticed the admission of the appellants that the excavators and roadrollers are suitable for use on roads. However, the contention put forth now is that they are intended for use in the enclosed premises. Merely because a motor vehicle is put to a specific use such as being confined to enclosed premises, will not render the same to be a different kind of vehicle. Hence, in our view, the High Court has correctly decided the matter and the impugned order does not call for any interference by us....

(emphasis supplied)

10. What is to be gleaned from the aforesaid judgments is that even when a dumper or a road roller excavator is used, they are not necessarily vehicles which would be running on a highway for transporting goods or people from one place to another. The test applied was to check whether the contraption mounted on wheels could be moved on road. In the present case, the closest example would be the excavator, which too is identically mounted on wheels. It looks as under:¹

¹<https://www.jcbcea.com.au/2018/09/jcb-hydradig-wheeled-excavator-improves-efficiency-and-safety/>



11. The court would note that in *Western Coalfields Limited v/s State of Maharashtra and Another* (2016) 11 SCC 613, the Supreme Court has applied the following test and has held that an excavator is a motor vehicle. The present contraption known as ‘Reach Stacker’ meets the test and is also mounted on a chassis with four wheels and moves around from one end of the container depot to the other end of carrying huge container loads on road. The crane which lifts the container cannot do so by itself and would be of no use unless it is fitted to the chassis which is mounted on wheels, to move the container from one place to the other. The contraption to be prepared has been adapted and made suitable to be run and used on roads. Therefore, it meets the basic requirement and definition of motor vehicle under section 2(28) of the Act. The fact that it was being used in an enclosed area- i.e. the restricted area of the Inland Container Depot, would not make any difference to its identity and classification

as a motor vehicle. In any case it was running on its wheels on a road inside the ICD when it caused the injury. It could very well have been run on a road outside the ICD as well. The place of its usage will not alter its identify as a motor vehicle. Its use caused injury to the appellant and he, therefore, has a case for assessment of damages.

12. In view of the above, the impugned order is set aside. The case is remanded to the MACT for assessment of damages as may be.
13. It is purely serendipitous that the accident happened exactly on the same date six years ago i.e. on 05.09.2013. In the circumstances, the Trial Court is requested to expedite the case and complete the adjudication, if possible, within six months. The learned counsel for the parties submit that they shall assist the learned Tribunal on each date whenever the case is listed and shall not seek any adjournment whatsoever.
14. List before the learned MACT on 15.10.2019.
15. The appeal is disposed-off in the above terms.
16. A copy of this order be given *dasti* to learned counsel for both the parties under the signature of the Court Master.

नात्यमेव जयते

NAJMI WAZIRI, J

SEPTEMBER 05, 2019

AB