

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. NO.10 of 2009

The United India Insurance Company Limited,
Represented by its Branch Manager,
Agartala Branch, Ganaraj Chowmuhani,
PS - East Agartala, Agartala, West Tripura Dist.

..... *Appellant.*

- Vs -

1. **Sri Rashmani Deb Barma,**
S/o Shri Khirode Deb Barma,
Resident of Vill. & P.O. Rngamala,
PS - Bishalgarh, Dist. West Tripura.

2. **Shri Samarjit Datta,**
S/o Shri Abinash Ch, Datta,
Resident of Vill. Amtali, Bishalgarh,
P.S. Bishalgarh, Dist. West Tripura,
[Owner of offending vehicle NO.TRT-2504 (Jeep)].

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. P Gautam, Advocate.

For the respondents : Mr. I Chakraborty, Advocate.

Date of hearing and judgment : 13.01.2015.

Whether fit for reporting : No.

JUDGMENT & ORDER(ORAL)

The only ground raised in this petition is that the occurrence in question cannot be called an accident falling within the purview of the Motor Vehicles Act, 1988.

2. The undisputed facts are that on 04.6.2001 the petitioner was travelling in Jeep bearing registration No.TRT-2504 along with other passengers. It is alleged that the passengers requested the driver not to proceed further without escort as the area was prone to extremist violence. However, according to the claimants the driver did not listen to them and proceeded to travel further. When the vehicle reached near Kanak Chowmuhani some extremists fired upon the vehicle and during that firing three passengers in the vehicle died and some including the petitioner suffered injuries. The learned Tribunal held that it had jurisdiction to decide the matter and awarded compensation of Rs.23,000/- to the claimant.

3. The sole question which arises is whether the accident can said to have arisen out of the use of a motor vehicle. The phrase arising out of the use of a motor vehicle has been the subject matter of a number of decisions. The Apex Court in ***Shivaji Dayanu Patil and another v Smt. Vatchala Uttam More (AIR 1991 SC 1769)*** was dealing with a matter in which a collision had taken place between a petrol tanker and truck. The petrol tanker turned turtle and was lying on its side at some distance from the road. It was not moving. But

some inflammable liquid leaked out of the motor vehicle. The inflammable liquid caught fire due to the negligence of some other party and the Apex Court in these circumstances held that the word used has a vital connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of brake down or mechanical defect or accident. It held that even in such circumstances, the accident had arisen out of the use of the motor vehicle.

4. The Himachal Pradesh High Court in the case of a bomb blast in *Himachal Road Trans. Corpn. and ors. V. Om Prakash and others (1992 ACJ 40)* held that the accident arose out of the use of a motor vehicle since the duty lay upon the driver and the conductor to ensure the safety of the passengers.

5. A Division Bench of the Kerala High Court in *Babu Vs. Remesan and others (AIR 1996 KERALA 95)* dealing with the word 'use' held as follows :

“Such use need not necessarily be so intimate and closely direct as to make it ‘a motor accident’ in the sense in which that expression is used in common parlance. The expression employed by the Legislature is employed by the legislature is ‘accident arising out of the use of a motor vehicle’ in the place of ‘accident caused by the use of a motor vehicle’. Evidently the Legislature wanted to enlarge the scope of the word ‘use’ and not to restrict it for denying compensation in deserving cases. The test should be whether the accident was reasonably proximate to the use of a motor vehicle,

whether or not the motor vehicle was in motion then. After all the provisions for dealing with the compensation case are intended for a sublime social objective. We are, therefore, not inclined to adopt a restrictive interpretation for the word 'use' in the present context."

6. The Andhra Pradesh High Court in *Medikonda Narasamma and others v Shaik Basheer Ahmed and others (AIR 2001 AP 114)* dealing with the word 'use' held as follows :

"The word 'use' should be given a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or an accident such 'use' need not necessarily be so intimate and closely direct as to make it a motor accident in the sense in which that expression is used in common parlance. The expression employed by the Legislature is 'accident arising out of a motor vehicle' in the place of 'accident caused by the use of a motor vehicle'. So, the Legislature intended to enlarge the scope of the word 'use' and it should not be given a restrictive meaning. As such, the expression use of the vehicle should reasonably mean proximate to use of the motor vehicle whether or not the vehicle was in motion..[Para.10]."

7. A learned single Judge of the Agartala Bench of the Gauhati High Court by a judgment in *Smt. Basu Mati Debbarma and ors. Vs Smt. Anita Debbarma and ors. (MAC APP. No26 of 2001)* etc. held that in the cases where vehicles are taken into extremist ridden areas third parties cannot be denied compensation on the ground that the accident had not arisen out of the use of the motor vehicle.

I am in respectful agreement with the judgment delivered by the learned single Judge of the Gauhati High Court, Agartala Bench following the law laid down by the High Court of Himachal Pradesh

and the Apex Court and hold that even in a case arising out of extremist violence where the person is travelling in a vehicle the accident arises out of the use of a motor vehicle.

8. In view of the aforesaid discussion, I find no merit in the appeal which is accordingly dismissed. Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu