

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.25 OF 2011

The National Insurance Company Ltd.,
Represented by its Sr. Divisional Manager,
Divisional Office, 42, Akhaura Road,
Agartala, P.S. West Agartala,
West Tripura District. (Insurer of
Vehicle No. TRT-1987 Jeep).

..... **Appellant.**

- V e r s u s -

1. Smt. Budhaswari Debbarma,
W/O. Late Pradip Debbarma;
2. Kumari Anupama Debbarma (Minor),
D/O. Late Pradip Debbarma,
3. Sri Pallab Debbarma (Minor),
D/O. Late Pradip Debbarma;
(Sl. Nos. 2 and 3 are represented by
their mother and natural guardian,
Smt. Budhaswari Debbarma).
4. Smt. Swarnamayee Debbarma,
W/O. Sri Binoy Debbarma,

All are residents of Vill. Krishnamohan
Kabra Para, P.O. Lembucherra,
P.S. East Agartala, Dist. West Tripura.
PIN-799210.

At present Sl. Nos. 1, 2 and 3 are
residents of-

Vill. Krishnanagar, Natun Palli,
P.O. Agartala, PS-West Agartala,
Dist. West Tripura, PIN-799001.

..... **Claimant-Respondents.**

5. Sri Kajal Kanti Roy,
S/O. Late P.K. Roy,
Resident of Vill. Rajnagar,
P.O. Teliamura, P.S. Teliamura,
District-West Tripura.
(Both are owners of Vehicle
No. TRT-1987 Jeep).

..... **Respondent.**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the appellant : Mr. P. Gautam, Advocate.

For the respondent Nos.
1 to 4 : Mr. A.K. Bhowmik,
Sr. Advocate,
Mr. S.C. Das, Advocate.

Date of hearing and
delivery of judgment
and order. : 14.08.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This appeal by the Insurance Company is directed against the award dated 30.9.2010 passed by the learned Motor Accident Claims Tribunal, Court No.1, West Tripura, Agartala in case No.T.S.(MAC) 644 of 2002 whereby the learned Tribunal awarded compensation of Rs.28,21,669/- in favour of the claimants.

2. The deceased was a Manager of the Tripura Gramin Bank. He along with many other persons was travelling in a jeep bearing registration No.TRT-1987. When the jeep reached Pathar Kuari, some terrorists stopped the jeep. Some of the terrorists were wearing uniform similar to that of Army Personnel. The driver did not stop the vehicle but drove on and the terrorists fired. The deceased was hit by bullet and died as a result of the injuries sustained.

3. The main argument raised on behalf of the Insurance Company is that this is not an accident but a murder and this does not arise out of the use of the motor vehicle.

4. 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.

5. 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.

6. 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.”

7. 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].”

8. 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. No. 26 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.

9. In the present case, the dominant intention of the extremists was not to kill the deceased particularly. Their intention was to create havoc. Their intention was to spread terror and they did not intend to murder any particular person travelling in the jeep but their intention was to cause damage to the passengers travelling in the jeep and, therefore, the accident had direct connection with the motor vehicle and as such, the learned Tribunal rightly held that the claim petition was maintainable.

10. As far as the compensation is concerned, that has been calculated strictly in accordance with the law laid down in ***Sarla Verma's*** case. Mr. P. Gautam, learned counsel for the Insurance Company, also raised another plea that the Insurance Company could not be held liable in the case of a terrorist activity. I am not

permitting the Insurance Company to raise this plea because before the learned Tribunal no such plea was raised.

11. Therefore, I find no merit in the appeal which is accordingly dismissed.

12. Send down the lower court records forthwith.

CHIEF JUSTICE