

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1022 of 2015

National Insurance Company Limited Through Its Divisional Manager, Divisional Office, Mobin Mahal, G.E. Road Raipur, District- Raipur, Chhattisgarh (Non-Applicant No.3)

---- Appellant

Versus

1. Ashok Kumar Dhruv S/o Late Jhaduram Dhruv Aged About 37 Years R/o Village Jhipan, P.O.- Rawan, P.S.-Suhela, District- Raipur, Chhattisgarh (Applicant No.1)
2. Smt. Hiraundi Dhruv W/o Ashok Kumar Dhruv Aged About 35 Years R/o Village Jhipan, P.O.- Rawan, P.S.-Suhela, District- Raipur, Chhattisgarh (Applicant No.2)
3. Dudheshwar Singh Rajput S/o Ramadhar Singh Rajput Aged About 45 Years R/o Vill. & P.S.- Daud Nagar, Distt.- Aurangabad (Bihar) Halmukam- Dubey Borewells Dealers, Fafadih Raipur, P.S.- Ganj, Distt.- Raipur, Chhattisgarh (Driver) (Non-Applicant No.1)
4. Dubey Dealers (Borewells) Through Proprietor Station Road, Fafadih Raipur, P.S. Ganj, Distt.- Raipur, Chhattisgarh (Owner) (Non-Applicant No.2)

---- Respondents

And

MAC No. 1025 Of 2015

National Insurance Company Limited Through : Its Divisional Manager, Divisional Office, Mobin Mahal, G.E. Road Raipur, Distt.- Raipur, Chhattisgarh (Non-Applicant No. 3)

---- Appellant

Vs

1. Raju Dhruv S/o Manharan Dhruv Aged About 11 Years Minor Through Guardian-Father-Manharan Dhruv, S/o Late Jhaduram, Aged 32 Years, R/o Village Jhipan, P.O. Rawan, P.S.- Suhela, District-Raipur, Chhattisgarh (Applicant)
2. Dudheshwar Singh Rajput S/o Ramadhar Singh Rajput Aged About 45 Years R/o Village & P.S.Daud Nagar, District- Aurangabad, (Bihar), Halmukam-Dubey Borewells Dealers, Fafadih Raipur, P.S.-Ganj, Distt.-Raipur, Chhattisgarh (Driver) (Non - Applicant No. 01)
3. Dubey Dealers (Borewells) Through Proprietor Station Road, Fafadih Raipur, P.S. Ganj, Distt.- Raipur, Chhattisgarh (Owner) (Non Applicant No. 2)

---- Respondents

Shri Dashrath Gupta, counsel for the appellant/s.
Shri Amiyakant Tiwari and Shri Sudeep Johri, counsel for respective respondents.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28/03/2016

Both the aforesaid appeals are being disposed off by this common order as they arise out of the same accident.

These appeals are preferred by the Insurance Company seeking exoneration from its liability as Insurer on the sole legal submission that the manner in which the incident happened, resulting in catching of fire by the pipe used for transfer of oil from the tanker, cannot be said to be a case of accident arising out of use of the insured vehicle. Learned counsel for the appellants submits that the statement of Manharan Lal (PW1) clearly shows that when the oil was being transferred from the tanker, pipe attached to the tanker caught fire. The burning pipe was thrown away which fell upon Rajaram and Raju Dhruv resulting in death of Rajaram and Raju Dhruv got injured. It is submitted that in this entire episode, the offending vehicle was not involved and merely because the bore well machine which was insured was standing nearby, it was declared as accident arising out of the use of motor vehicles within the meaning assigned to it under the provisions of Section 165 of the Motor Vehicle Act, 1988.

2. On the other hand, learned counsel for the respondents / claimants supports the order passed by the Claims Tribunal and finding recorded therein in para 13 to 17.

3. In order to deal with the controversy, it is necessary to examine the import and scope of provisions contained in Section 165 of Motor Vehicle Act, which is extracted hereinbelow -

“165. Claims Tribunal – (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for

compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation – For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under Section 140

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he -

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been a District Judge, or

(c) is qualified for appointment as a High Court Judge [or as a District Judge].

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.”

4. The wide meaning and import of the provisions of Section 165 was considered by the Supreme Court in the case of **Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC)**. The Supreme Court held that the expression 'use of a motor vehicle' covers accidents which occur both when the vehicle is in motion and when it is stationary. The word 'use' has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident. It was held as under :

“(26) These decisions indicate that the word 'use', in the context of motor vehicle, has been construed in a wider sense to include the period when the vehicle is not moving and is

stationary, being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. Relying on the above-mentioned decisions, the Appellate Bench of the High Court had held that the expression 'use of a motor vehicle' in section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway 4 (i.e., while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word 'use' has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in use at the time when it was lying on its side after the collision with the truck.

(37) Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle? In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances, the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely because there was interval of about four to four and a half

hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between the collision and explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle, viz., the petrol tanker No.MKL 7461.”

5. In **Samir Chanda v. Managing Director, Assam State Transport Corporation, 1998 ACJ 1351 (SC)**, it was held -

“15. After going through the judgment of the High Court, we are of the view that the High Court was not right on facts that there was no negligence on the part of the owner or the driver of the bus especially when the appellant has specifically pleaded about the negligence which was accepted by the Tribunal in the light of the pleadings and of the evidence produced before it. The explosion took place inside the bus is an admitted fact and the usual police escort was not there. The High Court, except observing that there was no negligence, has not upset the finding of the Tribunal that the atmosphere during the period of accident was so polluted requiring care on the part of the conductor and driver of the bus. There cannot be any doubt that the accident arose out of the use of the motor vehicle justifying the claim of the appellant. We are satisfied with the assessment of the Tribunal in quantifying the compensation in a sum of Rs.1,20,000/- with interest at the rate of 12 per cent.”

6. Giving the aforesaid wide meaning and import and applying the principle to the proven facts of the present case, it is clear that the fire broke out during transfer of oil from the tanker (insured vehicle) which led to an accident in which, Rajaram died and Raju Dhruv sustained injury. Applying the aforesaid principle, this Court has no hesitation to hold that the accident arose out of the use of motor vehicle. Except this, no other ground has been raised in this appeal. Therefore, the impugned award warrants no interference by this Court. The appeal is accordingly dismissed.

7. Learned counsel for the insurance company submits that the entire amount of compensation has already been deposited though, under protest to the Tribunal. The compensation shall be disbursed as per the award.

Sd/-

(Manindra Mohan Shrivastava)
Judge