

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 1378 of 2005**

1. T.N. Philip, S/o. Shri T.P. Mathews, Aged about 38 years, R/o. Thail Matsan Billa Ellamp Quailon, Kerala Punalore, Presently residing at Lafarge Cement Plant Sonadih, Tehsil Baloda Bazar, District Raipur, Chhattisgarh
2. General Manager, Lafarge Cement Plant, Sonadih, Tehsil Baloda Bazar, District Raipur, Chhattisgarh
3. B. Prasad Rao, S/o. B. Appal Swami, Security Officer, Lafarge Cement Plant, Sonadih, Tehsil Baloda Bazar, District Raipur, Chhattisgarh

---- Appellants**Versus**

Maniram, S/o. Shri Mahasingh Dhruv, Aged about 37 years, R/o. Village Raseda, Tehsil Baloda Bazar, District Raipur, Chhattisgarh

---- Respondent

For Appellants	:	Shri Somya Roy, Advocate.
For respondent	:	Shri Vikram Dixit, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****13/07/2017**

1. The present is an appeal under Section 173 of the Motor Vehicles Act (in short MV Act) against the award dated 21.07.2005 passed by the Ist Additional Motor Accident Claims Tribunal, Baloda Bazar (in short, the Tribunal) in Claim Case No.56 of 2005. Vide the said award, the Tribunal has in a proceeding under Section 166 of the MV Act has awarded compensation of Rs.2,95,477/-to the respondent-claimant along with interest @ 9 percent per annum from the date of application.
2. Brief facts of the case is that, the respondent-claimant was a Driver. On 29.04.2001 he had taken a Dumper to Lafarge Cement Factory,

Sonadih for loading clinker and after parking the vehicle for loading purpose he was sitting beside the road and suddenly the appellant No.1, who was a driver of pay loader, drove the pay loader in a rash and negligent manner and in the process the respondent-claimant got crushed beneath the pay loader from the waist suffering from grievous injuries. Subsequently, a claim case was filed and after considering the evidence which have come on record and framing the issues particularly in respect of objections raised by the appellants, the Tribunal vide impugned award deciding all the issues in favour of the respondent-claimant, awarded a compensation of Rs.2,95,477/- along with interest @ 9 percent per annum from the date of application. While passing the impugned award, the Tribunal has fastened the liability of payment of compensation upon the appellants jointly and severally.

3. The two contentions which have been raised by the appellants while assailing the award is first; that the accident occurred because of negligence of respondent-claimant himself. According to appellants, the claimant after parking the Dumper which he was driving should not have got down and sat beside the road. He should have remained in the vehicle itself. Since it was a restricted mining area, he was not permitted to sit or move around in the mining area. Therefore, the accident as such has occurred because of his negligence as the appellant No.1 who was driving the pay loader was not in a position to see anybody sitting beside the road and it was the respondent-claimant who ought to have been more vigilant. The

second ground raised by the appellants is that, the pay loader as such cannot be termed to be a vehicle under the MV Act as it is not used on the public road, and therefore, it would not fall within the definition of either a motor vehicle or a vehicle. It was further contended that infact the pay loader would be a vehicle which otherwise falls within the exclusion category under the definition of motor vehicles which excludes a vehicle of a special type adopted for a use only in a factory or in any other enclosed premises.

4. According to counsel for the appellants, the area of operation of a pay loader is exclusively within the restricted mining area where there is a total prohibition of entry of general public. The respondent-claimant in the said case was granted permission entry in the mining area only in the capacity of being a driver of Dumper which was used for transportation of clinker from the mines to the factory and being the driver of Dumper, he was not supposed to leave the vehicle and move freely in the restricted rather prohibited mining area or sit beside the road. Thus, for the aforesaid two reasons counsel for the appellants submitted that firstly since the pay loader is not a motor vehicle and secondly the accident arose because of negligence of the claimant himself, the appellants could not have been saddled with the responsibility of payment of compensation.
5. Per contra, the counsel appearing for the respondent/claimant opposing the appeal submits that the date of accident in the instant case was occurred on 29.04.2001 and the impugned award was passed on 21.07.2005 and inspite of more than 16 years from the

date of accident and more than 12 years from the date of award, the claimant has not been able to receive the benefits of the award inspite of the claimant getting 100% disabled as a result of the accident and also having lost 100% of his earning capacity.

6. Having heard the contentions of counsels for either side and on perusal of record, so far as the merits of the case is concerned, a pay loader is a motor vehicle as it has got all the mechanical components required for assembling a motor vehicle and it is also not a case where this pay loader is used exclusively by the appellant alone, but is used by many persons for many purposes. It is a vehicle which is also motorable on a public road. It is a heavy wheeled vehicle used for various purposes like, for loading materials, demolitions of debris, darts, snow, gravels, raw minerals, rock, sand, wood-chips, etc.
7. The moot question which is required to be considered in the instant case is whether the pay loader used by the appellant, which was being used in the mining area would fall within the definition of Motor Vehicles Act or not. A similar issue cropped up before the Karnataka High Court in the case of ***“R. Pampapathi v. Senior Inspector of Motor Vehicles, RTO” reported in ILR 1996 KARNATAKA 3480***. In the said judgment, the Karnataka High Court in paragraph No.18 has held as under:-

“18. In view of the said pronouncements of the Supreme Court, it has to be held that the word 'roads' used in Entry 57 of the State List has to be understood as 'public roads', meaning thereby that the State Legislatures can enact laws for levy of tax on vehicles which are suitable for use on

public roads; and , further that such vehicles have in fact been put to use on such public roads. Consequently it has to be held that it will be beyond the competence of the State Legislature to provide for levy of tax on vehicles which are dominantly adapted for use in places other than on public roads, and if the same are not in fact used on public roads.”

8. The Karnataka High Court went on in deciding that the pay loader was a motor vehicle as per the provisions of the Motor Vehicles Act and it was liable for registration under the provisions of the Motor Vehicles Act.
9. The Bombay High Court in one of its judgment decided on 24.09.2003 in the case of “Vikram Ispat v. State of Maharashtra” reported in AIR 2003 (BOM) 498, in paragraph No.3 has held as under:

“3. xxxxxxxx. The question is whether pay loader is a motor vehicles adapted for use on roads. Section 3(28) of the Motor Vehicles Act defines the 'Motor Vehicle' or 'Vehicle' to mean any mechanically propelled and adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of special type adapted for use only in a factory or in any other enclosed premises or vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimetres. The definition of motor vehicle has been considered by the Supreme Court in M/s. Central Coal Fields Ltd. v. State of Orissa, where the Court after tracing the legislative history and the decisions commencing from M/s. Bolani Ores Ltd. v. State of Orissa and Ors repelled argument of the mine owners 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

Taxation Act and held that these dumpers run on types in marked contrast to chain plates like caterpillars or military tanks. It was also held that by the use of tyres, it is evident that they have been adapted for being used on roads, which means that 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 makes 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 are heavy and cannot move on the roads without damaging them does not mean that they are not suitable for use on roads. The word 'adapted' in the provision was read as 'suitable' in Bolani Ores case by interpretation on of the strength in language in Entry 57 List II of the Constitution."

10. The pay loader is seemingly similar to a dumper with a difference that a dumper has a bucket on the backside whereas the pay loader has a bucket in the front side and which is hydraulically operated and can pickup a fixed amount of material depending upon its capacity.
11. Major deployment of the pay loaders is stated to be in mines and mines related activities, where the materials are picked up by pay loaders and dumped in the dumpers/trucks/tippers for onwards transportation. The pay loaders also are deployed in many other industrial areas like cement, steel, etc. but the use of the vehicle is same. In the case of Vikram Ispat (Supra), in paragraph No.5, the Bombay High Court has held as under:-

The test in all these cases would be that if the vehicle is reasonably suitable for being used along with the public roads, the fact that manufacturers have made or intended a particular vehicle for one purpose or the other or the dealer has sold it for a particular purpose or

that a particular vehicle is described by a particular name or description, is no criterion to decide whether the vehicle is adapted for use upon the roads within the meaning of the definition given in section 5(28) of the Motor Vehicles Act. If the vehicle is fit and suitable for being used on the road, it is immaterial whether it runs on a private road or on a public road unless it is shown that it is of a special type adapted for use only in factories or enclosed premises and incapable of running on any type of roads or public roads. The pay loader must, therefore, held to be 'motor vehicle' within the meaning of the Motor Vehicles Act.

12. Keeping in view of the aforesaid discussions and the factual matrix of the present case, this Court is of the opinion that as regards the issue whether the pay loader is a motor vehicle under the Motor Vehicles Act, the answer would be in the affirmative holding it to be a motor vehicle under the provisions of the Motor Vehicles Act. Likewise, as regards the question whether the pay loader is made only for use in an enclosed restricted area. The answer again is in the negative holding that it may be used in an enclosed or restricted area, but it has gotten all the features and capacities to be operated on a public road as well.
13. Under the given circumstances, this Court is of the opinion that the grounds raised by the appellant, that the vehicle is not a motor vehicle under the Motor Vehicles Act is not sustainable and the said ground thus stands negated.
14. So far as the ground of the negligence of the injured is concerned, this Court is of the opinion that the said ground of the appellant is has not been sufficiently proved, established or substantiated before the

Court below by leading appropriate evidence, except for making a plea for drawing an adverse inference of negligence and the said ground being pure factual matter, the same cannot be a strong ground for interfering with the impugned award and the said ground also thus stands negated.

15. The appeal of the appellant deserves to be and is accordingly rejected.

**Sd/-
(P. Sam Koshy)
Judge**

inder