

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1333 of 2014**

- The National Insurance Co. Ltd. through its Sr. Divisional Manager, D.O. B1 Taha Complex, Ring Road I, Priyadarshini Nagar, Bilaspur C.G.

-----Appellant**VERSUS**

1. Ramnath S/o Shri Jageshwar, aged about 40 years
2. Janendra S/o Shri Ramnath aged about 18 years
3. Sivendra S/o Shri Ramnath, aged about 13 years

Respondent 3 minor and represented through Father and natural guardina Respondent 1 Ramnath

All are R/o Buddha Singha Dafai Khogapani, P.S. Jhagrakhan, Tahsil Manendragarh Dist. Korla C.G.

-----Claimants

4. Dinesh Singh Chauhan S/o Mohan Singh R/o village Khirkhori, P.O. Badhvasb Dist. Sidhi M.P.
5. Ashok Singh S/o Moorat Singh, aged about 42 years, R/o Village Gajri, P.S. Majholi, Dist. Sidhi M.P.

----Respondents

For Appellant	:	Mr. R.N. Pusty, Advocate.
For Respondents	:	None.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****22/09/2020**

1. Appellant-Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 18-07-2014 passed in claim case no. 94/2014 by First Additional Motor Accident Claims Tribunal, Manendragarh, Dist. Korla C.G. whereby learned Claims Tribunal allowed the claim application in part and awarded Rs. 4,34,000/- as compensation in a death case.
2. Facts pleaded in the claim application are that a bus bearing

registration no. MP 53F 0138 (henceforth "offending bus") was going from Jogibahri to Khogapani via Manendragarh and stopped at Kelhari bus stand. Smt. Chandravati, one of the passengers, got off from the bus for nature's call and while getting in again on bus, Respondent 5/ Non-applicant 2-driver of the offending bus suddenly started the bus driving. Due to sudden driving of bus Chandravati fell down and suffered injuries over her head and back. The incident took place on 29-10-2008 at about 3:00 noon. During the course of treatment at Community Health Centre, Manendragarh, Chandravati died on 03-03-2008.

3. Claimants who are husband and children of the deceased Chandravati filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 31,80,000/- pleading therein, that on the date of accident, deceased was aged about 30 years and doing the business of sale of Cosmetics and earning Rs. 9,000/- per month.
4. Non-applicant 1 and 2/ Respondent 4 and 5 who are owner and driver of the offending bus submitted reply to the claim application denying the entire pleadings therein. It was pleaded that the claim application has been filed only on the basis of presumption. Claimants are not entitled for any amount of compensation. There was no accident from the offending bus as pleaded and no crime was registered against driver. Deceased was not traveling on the bus and death of Smt. Chandravati, on account of motor accidental injuries, was denied. The amount claimed is highly exaggerated. On the date of accident, offending bus was insured with Non-applicant 3-Insurance Company. In the F.I.R. lodged by deceased Chandravati at Kelhari Police Station on 03-03-2008, it is mentioned that the offending bus was standing at bus stand and at that relevant time, Dayaram Jaiswal had thrown a bundle of brooms from the roof of the bus which fell down on her and on account

of it she suffered injuries. Deceased was roaming at bus stand and suffered injuries which does not come into a motor accidental injury.

5. Non-applicant 3/ Appellant-Insurance Company submitted reply to the claim application denying the facts pleaded in the claim application, the occupation and income of the deceased was also denied. Deceased did not suffer injuries on account of negligence on the part of the driver and owner of the bus and the claim application is not maintainable. Deceased has not suffered any motor accidental injury, she herself was negligent. There was breach of conditions of insurance policy as on the date of accident Respondent 5/ Non-applicant 2 driver was not possessing valid and effective driving licence.
6. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties has held that deceased Chandravati suffered injuries on account of sudden driving of the bus by Respondent 5/ Non-applicant 2 driver at the time when she was trying to get on the bus and suffered grievous injuries. Death of Chandravati was on account of motor accidental injuries suffered by her. On the date of accident, deceased was traveling on the bus. Breach of conditions of insurance policy was not found to be proved. Upon assessing the income of Rs. 3,000/- per month, Tribunal awarded Rs. 4,34,000/- as compensation.
7. Mr. Ratan Pusty, learned counsel for the appellant-Insurance Company submits that the finding recorded by the Claims Tribunal is contrary to the pleadings and evidence available on record. Claimants failed to prove rash and negligent act on the part of the driver of the bus. Bus was not in a running position but it was parked at bus stand and as per F.I.R. Ext. A-1, deceased suffered injuries on account of falling of broom bundle which was thrown by one Dayaram Jaiswal during unloading luggage of passenger from the roof of the bus. There was no

involvement of bus in the accident, even there was no rash and negligent act of the driver of the bus. He submits that the F.I.R. has been placed on record but the Tribunal has not considered the contents of the F.I.R. It is further argued that the crime was not registered against Respondent 5/ Non-applicant 2 but was registered against Dayaram Jaiswal cleaner of the bus which itself shows that the bus was not involved in the accident and there is no rash and negligent act on the part of the driver of the bus. Unless and until, rash and negligent act is proved by cogent evidence, the application under Section 166 of the Act of 1988 is not maintainable. Claim application has been filed on false and fabricated ground.

8. We have heard learned counsel for the appellant and also perused the record of the claim case.
9. To appreciate the submission made by the learned counsel for the appellant, we have perused the contents of the claim application wherein the claimants have pleaded that the accident took place on account of sudden movement of the bus by its driver at Kelhari bus stand when deceased Chandravati was trying to get on the bus due to which deceased fell down and suffered grievous injuries. Claimants have placed on record copy of F.I.R. Ext. A-1 in which it is mentioned that the deceased for answering nature's call got off the bus and when she was mounting the bus, cleaner Dayaram Jaiswal thrown a bundle of broom during unloading luggage of passenger from the roof of the bus which fell over her.
10. Claimants have examined one Ramnath as AW-1 who in his evidence has specifically stated that his wife (deceased) was traveling on bus on 29-02-2008; at Kelhari bus stand, she got off from the bus to answer nature's call, at that time, driver of the bus suddenly started driving the bus due to which she fell down and suffered injuries. With regard to

F.I.R., in cross-examination, he stated that he was not aware about the contents of F.I.R. lodged by Chandravati. He has denied the suggestion given by the learned counsel for the appellant/ Non-applicant 3 that the deceased has not narrated the incident to him. Rampal was examined as AW-2 who was also traveling on the bus as passenger. In his statement, he stated that when deceased was trying to get on the bus again at Kelhari bus stand, Respondent 5/ Non-applicant 2 driver suddenly and negligently started the bus on account of which deceased Chandravati fell down and suffered injuries. He denied the suggestion that deceased Chandravati suffered injuries on account of falling of bundle of broom upon her. He also denied the suggestion that he has not seen the accident. He admits that he went to admit deceased Chandravati. Jhulla s/o Jageshwar was examined as AW-3 who was traveling on the offending bus. This witness is father-in-law of deceased and traveling along with her. In his evidence, stated that the deceased was trying to get on the bus at Kelhari bus stand, the driver of the bus suddenly started driving the bus and on account of which she fell down and suffered injuries. He admitted that Chandravati was out of the bus and he was sitting inside the bus but denied the suggestion that he has not seen the accident.

11. Owner/ Respondent 4/ Non-applicant 1 was examined as NAW-1-1. In his evidence, he stated that no accident was caused with the bus but deceased suffered injuries on account of falling of broom bundle upon her. He admits that the accident was informed by the driver. No criminal case was registered against the driver nor the bus was seized. He admits that he was not aware that deceased Chandravati was trying to get on the bus after answering nature's call and while so the driver of the bus suddenly started driving the bus and accident occurred. Engagement of Dayaram Jaiswal as cleaner (Khalasi) was denied.

Insurance Company has not laid any evidence before the Claims Tribunal.

12. From the aforementioned oral evidence available on record, the claimants have specifically pleaded that the accident took place at the time when the deceased was trying to board on the bus again at Kelhari bus stand after answering nature's call. Even after cross-examining the witnesses of the claimants at length, there evidence remained unshaken which they made in support of the claim application. The submission made by the learned counsel for the appellant that the Claims Tribunal has not taken into consideration the contents of the F.I.R. is concerned. Firstly, the complaint herself died. Merely filing of copy of F.I.R. itself could not be treated as evidence. Fact of accident at bus stand near the offending bus was not denied but the manner of accident has been denied.
13. The documents placed on record by the claimants or any of the parties of any criminal case is required to be proved by placing cogent and reliable piece of evidence. The appellant or owner or even the driver of the offending bus have not examined as any witness of the F.I.R. like the police officials who registered the F.I.R. to controvert the contents of the claim application.
14. For maintaining the claim application what is required to be proved is that the injuries were cause to person "arising out of the use of motor vehicle" as envisaged under Section 165 of the Act of 1988. In view of the facts considered by the Claims Tribunal and the submission made by the learned counsel for the appellant before this Court, the only question arises for consideration of this Court that whether the deceased suffered injuries arising out of use of motor vehicle or not. There is a clear pleading that the deceased was a passenger of the bus, proved by examining co-passengers of the bus as witness. The

evidence and pleadings raised by Respondent 4/ Non-applicant 1 cannot be accepted that the deceased was not a passenger of the bus. Even if the deceased is to be a pedestrian moving from the side of the bus then also if the accident occurs arising out of use of motor vehicle then the claim is maintainable before the Claims Tribunal. In this case, as per the pleadings made in reply by the Non-applicants and submission of the learned counsel for the appellant that the cleaner of the bus by name Dayaram Jaiswal who while unloading the bundle of broom from the bus thrown it down which hit the deceased Chandravati. Anything while unloading from the motor vehicle if falls upon any person and suffers injuries then in the considered opinion of this Court, will come within the purview of "arising out of use of motor vehicle" as envisaged under Section 165 of the Act of 1988. The use of motor vehicle cannot be said to be restricted if the vehicle is found to be stationary.

15. For any reason(s), if the motor vehicle is instrumental in any manner in the accident for the injuries suffered to any person then it will be deemed that the accident arose out of use of motor vehicle. Division Bench of Kerala High Court in **Babu v. Remesan and others** reported in **AIR 1996 Ker. 95** while considering the word use of motor vehicle has held as under.

"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 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 cases 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”

16. The expression 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" itself shows the intent of legislature to enlarge the scope and it should not be given restrictive meaning. The expression “use of vehilce” should reasonably mean proxima to use of the motor vehicle whether or not the vehicle was in motion, moving or stationary. The Hon'ble Supreme Court has considered this issue in the case of **Shivaji Dayanu Patil v. Vatschala Uttam More** reported in **(1991) 3 SCC 530** and held thus.

“31. The words “arising out of” have been used in various statutes in different contexts and have been construed by courts widely as well as narrowly, keeping in view the context in which they have been used in a particular legislation.

32. x x x x x

33. x x x x x

34. In the context of motor accidents the expressions "caused by" and "arising out of" are often used in statutes. Although both these expressions imply a causal relationship between the accident resulting in injury and the use of the motor vehicle but they differ in the degree of proximity of such relationship. This distinction has been lucidly brought out in the decision of the High Court of Australia in *Government Insurance Office of N.S.W. v. R. J. Green's case* (1965) 114 CLR 437, wherein Lord Barwick, C.J. has stated : (CLR p.433)

"Bearing in mind the general purpose of the Act I think the expression 'arising out of' must be taken to require a less proximate relationship of the injury to the relevant use of the vehicle than is required to satisfy the words caused by'. It may be that an association of the injury with the use of the vehicle while it cannot be said that that use was causally related to the injury may yet be enough to satisfy the expression 'arise out of' as used in the Act and in the policy."

35. In the same case, Windeyer, J. has observed as under :(CLR p.447)

"The words 'injury by or arising out of the use of the vehicle' postulate a causal relationship between the use of the vehicle and the injury. 'Caused by' connotes a 'direct' or 'Proximate' relationship of cause and effect. 'Arising out of' extends this to a result that is less immediate; but it still carries a sense of consequence."

36. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections. 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In S. 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation u/ S. 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be, connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in S. 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

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 slopping 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 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 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."

17. In view of the aforementioned facts and evidence available on record and the judgment passed by the Kerala High Court as well as by the Supreme Court, the submission made by the learned counsel for the appellant that in the facts and circumstances of the case and considering the contents of F.I.R., the submission of appellant that accidental injuries suffered by the deceased cannot be said to be a motor accidental injuries is not sustainable and it is hereby repelled.
18. No other ground is raised by the learned counsel for the appellant.
19. We do not find any tenable ground to interfere with the impugned award passed by the Claims Tribunal. The appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge