

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 1272 of 2015**

Narendra Kumar Tiwari S/o Shri Roshanlal Tiwari, R/o In from of Azad Hostel, Shop No. 51, Malviya Road, G.E. Road, Bhilai, Tahsil & District Durg (C.G.), presently residing at Tiwari Teerthyatra Company, Besides House of MLA Korsewada, Aditya Nagar Road, Jawahar Nagar, P.O. Mohan Nagar, Tahsil & District Durg (C.G.).

---- Appellant**Versus**

1. Beni Madhav Singh S/o Late Raghunath Singh, Aged about 55 years.
2. Smt. Sushila Singh W/o Beni Maghav, Aged about 51 years.
3. Shri Ravindra Singh S/o Beni Maghav Singh, Aged about 34 years. All R/o Village Chitpur, Post Kalyanpur, Tahsil & District Allahabad (U.P)... *(Claimants)*
4. Chintaram Nirmalkar S/o Bhagwani Nirmalkar, Aged about 45 years, R/o Damdha Naka, Kailash Nagar, Near House of Dr. Keju, Post & P.S. Mohan Nagar, Tahsil & District Durg (C.G.).....*(Driver)*.
5. Divisional Manager, National Insurance Company Ltd., Divisional Office, Akash Ganaga, Supela, Bhilai, Tahsil & District Durg (C.G.)..... *(Insurer)*.

---- Respondents

For Appellant	: Shri P. R. Patankar, Advocate
For Respondents No.1 to 4	: None
For Respondent No.5	: Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****04/11/2020**

1. Appellant/non-applicant No.2/owner of offending vehicle has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 10/08/2015 passed by the 7th Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh

(hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.59 of 2014 whereby learned Claims Tribunal allowed the application filed by the claimants/respondents No. 1 to 3 under Section 163A of M.V. Act in part and awarded Rs.4,12,500/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, on 09/02/2012 at about 9.15 PM, Dharmendra Singh was travelling on motorcycle bearing No.CG-07/LH/7924 and going to his house, when he reached near house of MLA Korsewada on Aditya Nagar Road, he met with an accident with a bus bearing No.CG-07/AA/2261 (hereinafter referred to as 'offending vehicle'), which was parked on road without there being any signal or indicator. In the said accident, Dharmendra Singh suffered grievous injuries over his head and succumbed to the injuries on spot. The accident was reported to concerned Police Station, based upon which, Crime No.54/2012 was registered against non-applicant No.1 for offence under Sections 283 and 304A of IPC.
3. Respondents No.1 to 3/claimants filed an application under Section 163A of the M.V. Act pleading therein that deceased was undergoing PSC Coaching and working in Punjab National Bank, Durg. He was earning Rs.3,300/- per month and claimed Rs.15,40,000/- as total compensation.
4. Non-applicants No.1 and 2, who are driver and owner of

offending vehicle filed reply to claim application and denied the contents of claim application. It was pleaded that at the time of accident; offending vehicle was parked, it was not running, driver was not in the bus. It was further pleaded that offending vehicle owned by non-applicant No.2 was being used as special carriage for taking passengers to pilgrimage. After returning from pilgrimage, offending vehicle was standing since last 10-11 days; offending vehicle was parked down the road i.e. about 30-40 feet away from the road and accident took place on account of negligence on the part of deceased himself. It was also pleaded that offending vehicle was insured with non-applicant No.3.

5. Non-applicant No.3/Insurance Company submitted reply to claim application while denying the pleadings made therein, pleaded that application under Section 163A of the M.V. Act is not maintainable. It was further pleaded that owner of the offending vehicle has purchased policy for a period from 18/02/2011 to 17/02/2012 on the basis of chassis and engine number; insurance policy was issued as passenger carrying package policy and the deceased met with an accident on account of his own negligence. It was also pleaded that there was no valid permit and fitness of offending vehicle and thereby there was breach of policy conditions, as such Insurance Company is not liable to pay any amount of compensation.

6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that on fateful day, offending vehicle was parked negligently on road in dark night without their being any sign or signal, with which, deceased dashed and suffered injuries on his head leading to his death; contributory negligence on the part of deceased was not found to be proved; insurance of offending vehicle has been found to be proved and further it is held that there was breach of policy conditions. Allowed the application under Section 163A of the M.V. Act in part, awarded Rs.4,12,500/- as compensation and fastened liability upon the appellant/owner of offending vehicle to satisfy the amount of compensation.
7. Shri P. R. Patankar, learned counsel for the appellant made three folds submission that offending vehicle was in stationary condition, it was not being plied and used but after returning from pilgrimage on the basis of temporary permit, it was parked down the road/much away from road. Vehicle which was parked on the side of road, cannot be said the vehicle was being used in breach of policy conditions. He further argued that when offending vehicle though is a transport vehicle but not in a running condition and it was parked in front of house of owner of the offending vehicle, there is no necessity of having permit of offending vehicle. It is contended that even if the indicator was not on

as driver of offending vehicle was not inside the offending vehicle and it is standing stationary for couple of days, but it was having reflector and radium on its back glowing in the night. The deceased without taking proper precaution has dashed his vehicle with offending vehicle. Accident was a result of sole negligence of deceased. It is further contended that in the postmortem report, doctor found alcoholic smell, which clearly shows that deceased was in an intoxicating condition and is self negligent. Claimants are not entitled for any amount of compensation against the death of the deceased Darmendra Singh who himself was negligent and met with an accident. He referred to the evidence of Narendra Kumar Tiwari (AW-2), provisions of Section 87 of the M.V. Act and further observation made by learned Claims Tribunal showing temporary permit and route of offending vehicle in support of his arguments. He also referred to the evidence of Sanjay Gupta (NAW-3) officer of Insurance Company to support his statement that on the date of accident, offending vehicle was insured with Insurance Company under the package policy. He pointed out that liability to pay the amount of compensation in a case where the insurance of the offending vehicle is not in dispute would be upon Insurance Company. He lastly points out that learned Claims Tribunal erred in applying the deduction of 1/3rd, whereas undisputedly deceased was a

bachelor, hence, as per case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, there will be deduction of 1/2 (50%) and not 1/3rd.

8. Per contra, Shri Dashrath Gupta, learned counsel for respondent No.5/Insurance Company submits that under Section 66 of the M.V. Act, there is specific mention with regard to necessity of permit for the use of vehicle in public place. He contended that if the appellant did not want to use the offending vehicle after obtaining permit from competent authority, then appellant could have parked his bus in a safe place or at private place of his own and not in a public place. Once a vehicle is found to be in public place, there will be a requirement of permit in terms of language used under Section 66 of the M.V. Act. It is contended that the application is filed under Section 163A of the M.V. Act, in which, negligence on the part of deceased is not to be seen/looked into the wrongful act or neglect or default of owner of vehicle, but only whether the vehicle against which claim is made is involved or not. There is no dispute with regard to involvement of offending vehicle in the accident and death of late Dharmendra Singh while dashing his motorcycle with offending vehicle. It is further contended that submission of learned counsel for the appellant that deduction towards personal and living expenses should be

50% as on the date of accident, deceased was bachelor is not sustainable. The application filed under Section 163A of the M.V. Act is to be decided strictly in accordance with structured formula as envisaged under Second Schedule of the M.V. Act. He lastly submits that impugned award passed by learned Claims Tribunal is just and proper, which does not call for any interference.

9. I have heard learned counsel for the respective parties and perused the record of case.
10. So far as the ground raised by learned counsel for the appellant with regard to erroneous exoneration of Insurance Company from its liability, Section 66 of the M.V. Act envisages requirement/necessity of permit, which is reproduced below for ready reference :

“66. Necessity for permits.—(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit

shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.”

11. The language used in Section 66 of the M.V. Act in very specific term mentions that no owner of motor vehicle shall use or permit the use of motor vehicle as a transport vehicle in any public place. Undisputedly, offending vehicle is a transport vehicle i.e. passenger carrying vehicle and further it was parked on a public place and not on a private place of appellant/owner of offending vehicle. The submission made by learned counsel for the appellant that temporary permit under Section 87 of the M.V. Act is required to be obtained only when the vehicle is to be used for carrying passengers. There is no dispute that permit under Section 87 of the M.V. Act is to be obtained when the vehicle is used for specific purpose or some special tour, but when offending vehicle is

registered as transport vehicle and insured as transport vehicle, then even if, vehicle is being not used for commercial purpose for carrying passengers, then also it cannot be placed on public road or public place.

12. In view of language used in Section 66 of the M.V. Act, if the appellant is not intended to use the vehicle for carrying passengers, then he could have taken precaution for parking of his vehicle in a safe place i.e. place of parking or in a private place of his own.
13. The word 'use of motor vehicle' as appearing in Sections 66 and 166 of the M.V. Act has been considered by Hon'ble Supreme Court. The Hon'ble Supreme Court while considering the accident on account of bursting of oil tanker lying on side of the road and persons were taking out oil from the tanker, has held that accident arose on account of 'use of motor vehicle'. In case of **Shivaji Dayanu Patil and Another v. Vatschala Uttam More (Smt.)** reported in **(1991) 3 SCC 530** Hon'ble Supreme Court has held thus :

“34. In the context of motor accidents the expressions "caused by" and "arising out of" are often used in statutes. Although both these expression's 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, CJ 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 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 caused 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 section 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under section 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 section 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."

14. In the aforementioned facts and circumstances of the case, submission made by learned counsel for the appellant is not appealing to this Court that as the offending vehicle is being standing stationary at the time of accident, it is not in use as such there is no necessity of having permit of the vehicle, more so, when it is not being used on regular permit, but it is being plied on special permit/temporary permit, is not sustainable in the eyes of law and the same is hereby

repelled.

15. So far as next ground raised by learned counsel for the appellant that in the postmortem report, doctor found alcoholic smell, hence, deceased is not entitled for any amount of compensation is also not sustainable. Learned Claims Tribunal in paragraph-10 of impugned award has considered this issue and held that merely on the basis of smell found by the doctor in postmortem will itself not lead to inference that deceased was under the influence of liquor or drug. Under Section 185 of the M.V. Act, it is envisaged that for holding the person to be under influence of drug, the person should have in his blood alcohol exceeding 30 mg, per 100 ml, of blood detected in a test by a breath analyzer. The Hon'ble Supreme Court while considering negligence of deceased driver on account of been found alcohol in stomach in case of **Jiju Kuruvila and Others v. Kunjujamma Mohan and Others** reported in **(2013) 9 SCC 166** and held thus :

“20.6 The post-mortem report, Ext. A-5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half-full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit. The aforesaid evidence. Ext. A-5 clearly suggests that the deceased had taken

liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident. The mere suspicion based on Ext. B-2 “scene mahazar” and Ext. A-5 post-mortem report cannot take the place of evidence, particularly, when the direct evidence like PW 3 (independent eyewitness), Ext. A-1 (FIR), Ext. A-4 (charge-sheet) and ext. B-1 (FI statement) are on record.”

16. So far as other ground raised by learned counsel for the appellant with regard to negligence on the part of deceased himself is concerned, application for grant of compensation is filed under Section 163A of the M.V. Act. Provisions of Section 163A of the M.V. Act is extracted below for ready reference :

“[163A. Special provisions as to payment of compensation on structured formula basis.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

17. Section 163A of the M.V. Act has been incorporated vide amendment dated 14.11.1994 and it is mentioned as 'special provision' as to payment of compensation on structured formula basis. Sub-section (2) of Section 163A very specifically mentions that claimant shall not required to plead or establish death on account of any wrongful act or neglect or default of owner of the vehicle or vehicles concerned or of any other person; meaning thereby that, once the motor accidental death, with involvement of other vehicle is established, then it is the liability upon owner of

the offending vehicle to satisfy the amount of compensation to be calculated on structured formula basis under Second Schedule of M.V. Act.

18. In view of specific provisions of Section 163A of the M.V. Act, submission of the learned counsel for the appellant that deceased himself was negligent is not required to be considered, hence, this submission is also not sustainable and is hereby repelled.
19. Under Second Schedule, deduction towards personal and living expenses is mentioned as only $\frac{1}{3}^{\text{rd}}$. There is no mention that the deduction to be varied in case of bachelor, married persons or considering the number of dependents. As the application for compensation is filed under Section 163A of the M.V. Act, learned Claims Tribunal justified in applying the deduction of $\frac{1}{3}^{\text{rd}}$.
20. For the foregoing reasons, I do not find any tenable ground to interfere with the finding recorded by learned Claims Tribunal while passing the impugned award. The appeal is devoid of any substance, which is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge