

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 503 OF 2007

1. Smt. Vimalabai Shantaram Udaykar,
aged about ____ years, Occ.Cultivator,
2. Ramesh Rajaram Udaykar,
aged about ____ years, Occu.: Service
(Tractor Driver)
R/o. Bhandara, Tq. and Dist. Bhandara
441902.

Both residents of Rajur,
Tah.: Motala, Distt. : Buldhana.

.... **APPELLANTS.**

// VERSUS //

1. Gajanan Bhika Rothe,
Aged about 35 yrs., Occ.:Agriculturist,
2. Smt. Pratibha W/o. Gajanan Rothe (Dead)

2(a) Prashant S/o. Gajanan Rothe,
Aged about 21 years, Occupation:
Student, R/o. Rajur, Tq. Motala,
Dist. Buldhana.

Both residents of Rajur,
Tah.: Motala, Distt. : Buldhana.

.... **RESPONDENTS.**

Shri Palash K. Mohta, Advocate for Appellants.
None for Respondents.

CORAM : ANIL S. KILOR, J.

DATED : OCTOBER 26, 2021

ORAL JUDGMENT :

1. In this appeal the challenge is raised to the judgment and order passed by the Chairman, Motor Accident Claims Tribunal, Buldana dated 24/01/2007 in MACP No. 35 of 2001.

2. The case of the claimants in MACP No. 35 of 2001 is that Apeksha was 6 years old. On 02/11/1999 at about 05:00 p.m. Apeksha with her mother was returning from field. They were on foot and passing from Malkapur-Buldhana Road, they reached near Rajur bus stop and turned to go into the village. At that time, Ramesh Udaykar, opponent No.2 was driving the tractor and trolley bearing registration No.MH-28-D-651 and trolley No.MH-28-D-3863. He was negligent in driving the tractor. He also swerved the tractor for going into the village Rajur and at that time knocked the deceased. She came under the wheel of tractor and sustained serious injury and died.

3. The claimants have claimed compensation of Rs.1,00,000/- as they were unable to pay more court fee and they also urged that if the

Tribunal find them entitled for more compensation, they were ready to pay additional court fee.

4. It is further averred by the claimants that notice of the Claim Petition was received by both the appellants (opponents therein), who are owner and driver of the tractor. The present appellant No.2 had filed written statement at Exh.18 and the same was adopted by appellant No.1. It was the contention of the appellant No.2 that the tractor was purchased from loan of Buldana District Central Co-operative Bank and the Bank was under obligation to obtain the insurance. The Bank is necessary party to the claim petition.

5. The learned Tribunal was pleased to allow the claim petition and thereby directed the appellant to pay an amount of Rs.1,50,000/-, jointly and severally, as compensation deducting no fault claim along with interest @ 7.5% per annum from the date of application till the date of realization vide judgment and order dated 24/01/2007. The said judgment and order is under challenge in the present appeal.

6. I have heard Shri Palash Mohta, learned counsel for the appellant Nos.1 and 2, who are owner and driver, respectively, of the

tractor involved in the accident. He has submitted that at the relevant time the tractor was stationary and static and was not moving and therefore, it cannot be held that the tractor was involved in the alleged accident. It is submitted that in that view of the matter, the appellants are not liable to pay any amount of compensation as claimed and directed to be paid by the learned Tribunal.

7. He further points out that the Tribunal has not considered the point raised by the appellants as regards the contributory negligence.

8. To consider the contentions raised by the appellants, I have carefully perused the record and gone through the relevant judgments.

9. As regards contention of the appellants that the vehicle was stationary and therefore, it cannot be held that the accident was caused due to the tractor, is no more *res integra* in view of the judgment of the Hon'ble Supreme Court of India in the case of *Kalim Khan ..vs.. Femidabee*, reported in **(2018) 7 SCC 687**. The Hon'ble Apex Court in the said judgment in paragraph Nos. 25 and 27 has held thus:

“25. From the aforesaid authorities, it is limpid that the expression ‘use of the vehicle’ under certain circumstances can be attracted when the vehicle is stationary or static. A Single Judge of the High

Court of Orissa in Kanhei Rana v. Gangadhar Swain while dealing with a situation where the deceased labourer after loading the truck with logs lost his life. The tribunal had categorically found that death was on the account of fall of a log, when the truck was being loaded with logs. The learned Single Judge, in appeal, had concurred with the view of the tribunal by opining that the fall of the log had no nexus with the use of the vehicle not even remotely, and there was no material to show that the fall of the log was occasioned due to use of the vehicle. He had further held that the careless handling of goods being loaded on or unloaded from a vehicle had no connection to the vehicle itself. Reversing the conclusion of the learned single Judge, the Division Bench opined that the concept of movement being not intrinsically or inherently connected with the use and the term “use” having been connotatively expanded, there can be no doubt that the same can also be extended to the arena/sphere of a claim advanced under Section 110 of the 1939 Act. Heavy onus is cast on the driver to avoid negligence while the vehicle is in use. If the term “use” in its conceptual sweep engulfs no motion or no movement or stationariness, then by logical corollary it is made essential that the driver or for that matter any agent of the owner should be careful and non-negligent. Negligence in driving is regarded as a fact that the vehicle is in motion. But the definition of “use” having been expanded in its broader canvas, it has to clothe in its sweep other categories of negligence. To elaborate, when a vehicle remains static, it cannot constitute that the driver is negligent because of his rash and negligent driving. On the contrary, it has to embody some other different types of negligence. Of course that would depend upon the facts and circumstances of each case. The Division Bench of the High Court went on to say that the apex Court in Patil was dealing with the negligence so far as it was concerned with Section 92 of the Act, but as the language of Section 92-A

and Section 110 of the old Act used the same phraseology and there is absence of any etymological distinction, the same meaning should be given to the expression under Section 110 of the old Act. The appellate Bench held that there was causal relationship with the accident which had resulted in the death of the claimant.

27. It may be reiterated here that the causal relationship should exist between violation and the accident caused. There has to be some act done by the person concerned in causing the accident. The commission or omission must have some nexus with the accident. The word ‘use’ as has been explained by the authorities of this Court need not have an intimate and direct nexus with the accident. The Court has to bear in mind that the phraseology used by the legislature is “accident arising out of use of the motor vehicle”. The scope has been enlarged by such use of the phraseology and this Court taking note of the beneficial provision has placed a wider meaning on the same. There has to be some causal relation or the incident must relate to it. It should not be totally unconnected. Therefore, in each case what is required to be seen is whether there has been some causal relation or the event is related to the act.”

10. This Court at Principal Seat, recently on 4th October 2021, in First Appeal No.843 of 2010 (*United India Insurance Co. Ltd. .vs.. Laxman Hirman Shewale & anr.*), relying on the ratio laid down in *Kalim Khan* (supra) has held that in certain circumstances, the expression “use of the vehicle” can be attracted even where the vehicle is stationary, dismissed the appeal filed by the appellant therein.

In this case the Tribunal has recorded the casual relation and how the event is related to the act, in paragraph 13, which reads thus:

“In a more recent case in Kalim Khan and others (supra), a blasting machine was carried on a tractor for digging a well in an agricultural field. During the said operation, a splinter stone flew and hit on the head of a person resulting into his death. The Tribunal found on the basis of the panchanama that the tractor was standing in the field and the blasting machine was mounted on the tractor and therefore held that the tractor was used for digging of the well, during which the accident occurred resulting into death of the deceased. The Tribunal therefore awarded compensation which was set aside by the High Court holding that the battery was detached from the tractor when it was used to trigger the explosives. In short, the High Court held that the battery not being the part of the vehicle at the time of the explosion, the accident could not be said to be arising out of the use of the vehicle. The Supreme Court found that the vehicle was stationary and the battery was installed on the tractor which was used for triggering the explosives. The Supreme Court therefore held that the accident occurred on account of the use of the vehicle.”

10. In the teeth of the well settled law, as discussed by the Apex Court in the judgment of *Kalim Khan* (supra) the contention of the appellants as regards “stationary vehicle” needs to be rejected and it is rejected accordingly.

11. Moving to second contention of the appellants that the learned Tribunal did not consider the case of the appellants as regards contributory negligence. The only pleading which I could find in the reply of the appellants is in paragraph No.7, which reads thus:

“7. That the allegations leveled even assuming to be true indicate that the alleged victim is equally responsible to the alleged incident as she contributed it due to her negligence.”

12. Against the said pleadings, findings recorded by the learned Tribunal, in its judgment and order in paragraph Nos. 14 to 16, which are relevant, reads thus:

*“14. The definition involves the following constitutnus.
1] A legal duty to exercise due care;
2] Breach of the duty, and
3] Consequential damages.*

15. The breach of duty may be occasioned either by not doing something which a reasonable man, under a given set of circumstances would do, or by doing some act which a reasonable prudent man would not do.

16. The opponent No.1 was driving the tractor. The tractor is not designed to carry passengers. It is designed as per the definition under section 2 sub-section 44 of Motor Vehicles Act to carry equipment used for the purpose propulsion. It is a non-transport vehicle. Therefore, the passengers are not allowed to be traveled in a tractor by virtue of the fact that it is not so designed. Therefore, only the driver is allowed to sit in a tractor for the purpose of driving it. The driver of tractor is under obligation not to carry any passengers. This duty is on the opponent No.2, who was driving the vehicle. According to his version the

claimant Pratibha and their daughter deceased Apeksha got in his tractor without his consent. But, this fact is not supported by the pre-ponderance of probabilities as nobody can sit in his tractor unless he stops the vehicle and allow them to board in it. Therefore, it is not the case that deceased and her mother got in tractor without his consent. He has, therefore, failed in his duty not to carry the passengers in his tractor. He is, therefore, negligent in carrying passengers in tractor and deceased sustained injury while she was alighting the tractor. The deceased has, therefore, sustained injury because of his negligence. I, therefore, answer issue Nos. 1 and 2 in affirmative.”

13. The learned counsel for the appellants could not point out any error committed by the learned Tribunal while recording the said findings. Moreover, the pleadings as regards contributory negligence which is referred herein above is of formal nature and vague. Hence, it is clear that no sufficient pleadings are made to point out how the deceased had contributed negligence in the present case. In that view of the matter, it can be said that no error has been pointed out by the learned counsel for the appellant in the findings of the Tribunal as regards ‘contributory negligence’. Accordingly, I do not find any merit in any of the contentions of the appellants.

14. Having held that no merit is involved in the present appeal, I pass the following order:

The appeal is **dismissed**. No order as to costs.

JUDGE.

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