

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.90 OF 2015

Cholamandalam MS General Insurance
Co. Ltd.,

Having its registered & H.O. at Dare
House, Second Floor, No.2, N. S. C. Bose
Road, Chennai – 600001,
and having its branch office
at 203, Dempo Trade Centre,
E.D.C. Complex, Patto,
Panaji Goa.

... Appellant

Versus

1 Mr. Priyanka K. Mayekar,
wife of late Kundan Mayekar,
Aged 40 years, Indian National,
R/o House No.165, Kelbaiwada,
Mayem, Bicholim Goa.

2 Mr. Ketan K. Mayekar,
Son of late Kundan Mayekar,
Aged 21 years, Indian National,
R/o House No.165, Kelbaiwada,
Mayem, Bicholim Goa.

3 Ms. Priti K. Mayekar,
daughter of late Kundan Mayekar,
Aged 10 years, Indian National,
Represented by Claimant No.1.

4 Ms. Sania K. Mayekar,
Daughter of late Kundan Mayekar,
Aged 8 years, Indian National,
Represented by Claimant No.1.

5 Shri Dada Saheb Rane,

Of major age, Indian National,
Resident of House No.19,
Opposite R.T.O. Check Post,
Dada Marg-Goa.

6 Shri Mohammad Haroon Memon,
of major age, Indian National,
Resident of House No.265,
Ekta Nagar, Mapusa, Bardez Goa.

... Respondents

Mr James Lopes, Advocate *for the Appellant.*

Mr. Pranav Vaze, Advocate *for Respondent Nos. 1 and 5.*

Mr Matlock D'Souza, Advocate *for Respondent Nos. 2 to 4.*

Ms Barbara Andrade, Advocate *for Respondent No.6.*

WITH
FIRST APPEAL NO.813 OF 2022 (Filing No.)

Cholamandalam MS General Insurance
Company Limited
Having its registered & H.O. at Dare
House, Second Floor, No.2, N. S. C. Bose
Road, Chennai – 600 001,
Through the legal manager
Shri Hemant B Gaonkar.

...Appellant

Versus

1 Mrs. Priyanka K. Mayekar
Wife of late Kundan Mayekar
Age 47 years, Indian National

2 Mr. Ketan K. Mayekar
Son of late Kundan Mayekar
Age 28 years, Indian National

3 Ms. Priti K. Mayekar
Daughter of late Kundan Mayekar

Age 17 years, Indian National

4 Ms. Sania K. Mayekar,
Son of late Kundan Mayekar
Age 15 years, Indian National
All residents of H.No.165,
Kelbaiwada, Mayem,
Bicholim Goa.

5 Shri Dada Saheb Rane,
Major of age, Indian National,
Resident of H.No.19,
Opposite R.T.O. Check Post,
Dada Marg Goa.

6 Shri Mohammad Haroon Memon,
Major of age, Indian National,
Resident of H.No.265,
Ekta Nagar, Mapusa,
Bardez Goa.

...Respondents

Mr. James Lopes, Advocate for the Appellant.

Mr. Pranav Vaze, Advocate for Respondent Nos. 1 and 5.

Mr Matlock D'Souza, Advocate for Respondent Nos. 2 to 4.

Ms Barbara Andrade, Advocate for Respondent No.6.

**WITH
CROSS OBJECTION NO.1669 OF 2022 (Filing No.)
IN
FIRST APPEAL NO. 813 OF 2022 (Filing No.)**

1 Mrs. Priyanka K. Mayekar
w/o late Kundan Mayekar
aged 46 years, Indian National,

2 Mr. Ketan Mayekar,

s/o late Kundan Mayekar
aged 28 years, Indian national,

3 Ms. Priti K. Mayekar,
d/o late Kundan Mayenkar
aged 16 years, Indian National,

4 Ms. Sania K. Mayekar
d/o late Kundan Mayenkar
aged 12 years,
All residents of House No.165,
Kelbaiwada, Mayem, Bicholim Goa
(Party No.3 and 4 are represented by the
party No.1 as their natural guardian or
mother)

...Appellants (Original
Claimants

Versus

1 Mr. Dada Saheb Rane
Son of Rane, major in age,
Indian National,
Resident of House No.19,
Opposite R.T.O. Check Post,
Doda Marg – Goa.

2 Shri Mohammad Haroon Memon,
Son of Memon, major in age,
Indian National,
Resident of House No.265,
Ekta Nagar, Mapusa, Bardez Goa.

3 Cholamandolam MS General
Insurance Company Limited,
having its registered & H.O.
at Dare House, Second Floor,
No.2, N.S.C. Bose Road,
Chennai – 600 001

....Respondents

Mr Matlock D'Souza, Advocate *for the Appellants.*
Mr. Pranav Vaze, Advocate *for Respondent No. 1.*
Ms Barbara Andrade, Advocate *for Respondent No.2.*
Mr James Lopes, Advocate *for Respondent No.3.*

WITH
CIVIL APPLICATION NO.822 OF 2022 (Filing No.)
IN
FIRST APPEAL NO.813 OF 2022 (Filing No.)

Cholamandalam MS General Insurance
Company Limited
Having its registered & H.O. at Dare
House, Second Floor, No.2, N. S. C. Bose
Road, Chennai – 600 001,
Through the legal manager
Shri Hemant B Gaonkar.

...Applicant

Versus

- 1 Mrs. Priyanka K. Mayekar
Wife of late Kundan Mayekar
Age 47 years, Indian National
- 2 Mr. Ketan K. Mayekar
Son of late Kundan Mayekar
Age 28 years, Indian National
- 3 Ms. Priti K. Mayekar
Daughter of late Kundan Mayekar
Age 17 years, Indian National
- 4 Ms. Sania K. Mayekar,
Son of late Kundan Mayekar
Age 15 years, Indian National
All residents of H.No.165,
Kelbaiwada, Mayem,
Bicholim Goa.

5 Shri Dada Saheb Rane,
Major of age, Indian National,
Resident of H.No.19,
Opposite R.T.O. Check Post,
Dada Marg Goa.

6 Shri Mohammad Haroon Memon,
Major of age, Indian National,
Resident of H.No.265,
Ekta Nagar, Mapusa,
Bardez Goa.

...Respondents

Mr James Lopes, Advocate *for the Applicant.*

Mr. Pranav Vaze, Advocate *for Respondent Nos. 1 and 5.*

Mr Matlock D'Souza, Advocate *for Respondent Nos. 2 to 4.*

Ms Barbara Andrade, Advocate *for Respondent No.6*

CORAM: M. S. SONAK, J.

**RESERVED ON : 14th OCTOBER 2022
PRONOUNCED**

ON : 15th OCTOBER 2022

JUDGMENT :

1. Heard the learned Counsel for the parties.

2. First Appeal No.90/2015 challenges the judgment and award dated March 11, 2015, made under Section 140 of the Motor Vehicles Act, 1988, and First Appeal No.813/2022(f) challenges the impugned judgment and award dated 16/11/2021 made under Section 166 of the M.V. Act, 1988 (M.V. Act). In

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addition, the Claimants have filed a cross objection in First Appeal No.813/2022(f), claiming higher compensation. Accordingly, it is only appropriate that a common judgment and order dispose of both these appeals and the cross objection.

3. Both appeals arise out of Claim Petition No.120/2013, instituted by the widow and three minor children of the late Kundan Mayekar, who died in a vehicular accident on 8/4/2011. In the award under Section 140 of the M.V. Act, the Motor Accident Claims Tribunal (Tribunal) awarded compensation of ₹50,000/- to the Claimants. On the other hand, in the award under Section 166 of the M.V. Act, the Tribunal awarded compensation of ₹33,70,000/-, with interest at the rate of 9% per annum from the date of the claim petition, till full and final payment, after adjusting the award under Section 140 of the M.V. Act. Hence, the appeals by the Appellant-Insurance Company.

4. Mr James Lopes, the learned Counsel for the Appellant-insurance Company, submitted that the accident, in this case, did not arise out of the use of a motor vehicle. Therefore, the Claims Tribunal had no jurisdiction to entertain the claim petition, given the provisions of Section 165 of the M.V. Act.

5. Mr Lopes further submitted that the accident, in this case, was not caused by or arising out of the use of the vehicle in a public place. Therefore, he submitted that in terms of Section 147(1)(b)(i) of the M.V. Act, the Appellant-Insurance Company was not liable to indemnify the owner or the driver of the insured vehicle. He submits that since the Tribunal did not properly consider this aspect, the Appellant-Insurance Company be exonerated from the liability of making any payments.

6. Mr Lopes further submitted that the deceased Kundan Mayenkar was not a "third party", and consequently, no claim petition was maintainable against the Appellant-Insurance Company. He submits that the Tribunal has not correctly appreciated even this aspect and, therefore, the Appellant-Insurance Company was required to be exonerated from any compensation liability to the Claimants.

7. Mr Lopes finally submitted that the evidence on record establishes a breach of the insurance policy's terms. He elaborates that the permission, in this case, was to use the vehicle as a goods vehicle fitted with a cargo cabin. Instead, the insured unauthorisedly altered the vehicle by installing a tank, thereby converting the vehicle into a tanker. He submits that there was no permission to use the vehicle as a tanker. He presents that the

alteration was also unauthorized. He relies on Sections 66, 77, 78, and 79 of the M.V. Act, read with Section 147 of the M.V. Act.

8. Mr Lopes relies on *Ashok Yadav and ors. vs. Shakur Mohammad and ors.*,¹; *Dhanraj vs. New India Assurance Co. Ltd. And ors.*²; *National Insurance Co. Ltd. vs. Challa Bharathaamma and ors.*³ and *Amrit Paul Singh and ors. vs. TATA AIG General Insurance Co. Ltd. And ors.*⁴ in support of the above contentions.

9. Mr Lopes, without prejudice to the above contentions, also submitted that there was no evidence, in this case, to sustain the finding that the deceased earned ₹20,000/- per month from his welding workshop/garage. He submitted that though the Appellant-Insurance Company has not obtained any leave under Section 170 of the M.V. Act, since it was a duty of the Court to determine just compensation, the Appellant-Insurance company must be allowed to question the compensation awarded by the Tribunal because such compensation was not just compensation. He relied on Minimum Wage Rates in 2011 and submitted that in terms of such rules, an unskilled worker like Kundan Mayekar

1. MANU/CG/0732/2020

2. MANU/SC/0823/2004

3. MANU/SC/0779/2004

4. MANU/SC/0582/2018

could have earned ₹150/- per day. However, without prejudice, he submitted that the evidence on record sustains the finding of up to ₹8,000/- per month, but not ₹20,000/- per month as determined by the Tribunal. On this ground, Mr Lopes submitted that the compensation amount must also be substantially scaled down so that the same qualifies as "just compensation".

10. Mr Matlock D'Souza, the learned Counsel for the Claimants, defends the impugned awards but submits that the compensation amount must be enhanced by taking Kundan Mayekar's income at ₹40,000/- per month. He relies on *Shivaji Dayanu Patil and anr. vs. Smt. Vatschala Uttam More*⁵; *United India Insurance Co. Ltd., vs. Amir Basha and ors.*⁶ ; *Rajan P., s/o. Pullan vs. K.J. John, s/o. Idicheriyan*⁷; *New India Assurance Co. Ltd. vs. Urmila Devi*⁸; *National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and ors.*⁹; *Narchinva V. Kamat and anr. etc. vs. Alfredo Antonio Deo Martins and ors.*¹⁰; *Sharlet Augustine vs. Raveendran*¹¹;

5. AIR 1991 SC 1769

6. AIR 2003 Madras 237

7. 2009 1 ILR (Ker) 448

8. 1998 0 ACJ 300

9. (2002) 7 SCC 456

10. 1985 3 SCR 951

11. 1992 2 ILR (Ker) 833

*K.V. Thimmegowda vs. Kamalamma (deceased) by L.R.s.*¹²
*and The Motor and General Finance (India) Ltd. vs. Mary Mony*¹³ in support of his contentions.

11. Ms Barbara Andrade, the learned Counsel for the owner of the vehicle (insured), submitted that the vehicle was fully insured and, therefore, if the award is to be sustained, then the Insurance Company must indemnify the insured owner.

12. Mr Pranav Vaze, the learned Counsel for the driver, pointed out that the accident occurred when the vehicle was in the garage. There is evidence that the driver was nowhere near the vehicle when the tank busted, and Kundan died in the explosion. He, therefore, submits that there was no negligence on the part of the driver whom he represents. In such circumstances, the driver, along with the Appellant-Insurance Company, could not be held to be jointly and severally liable. He submits that the relief should be moulded by resorting to the provisions of Order 41, Rule 33 of the C.P.C., and the driver he represents is wholly exonerated. He relies on National *Insurance Co. Ltd. vs. Faqir Chand and*

12. 1991 3 KarLJ 602

13. 1990 2 KLT 971

*ors.*¹⁴ and *Kanhei Rana and ors. vs. Gangadhar Swain and ors.*¹⁵ on the merits of the matter.

13. The rival contentions now fall for my determination.

14. The evidence on record gives the genesis of the accident in which Kundan Mayekar died on 8/4/2011. There was no serious challenge to this evidence from any quarters.

15. The deceased Kundan Mayekar was a welder/mechanic who had his own garage under the name and style of "M/s. Mayekar Auto World". On 8/4/2011, he was working/repairing a TATA Mobile vehicle (insured vehicle) bearing registration No. GA-01-Z-1278 in his own garage. At that time, there was a loud explosion due to the explosion of the tank fitted on this vehicle. As a result of this explosion, Kundan suffered injuries to his vital organs, which resulted in his death.

16. In the above circumstances, and considering the rival contentions, the following points arise for determination in this appeal.

(A) Whether the Claim Petition was maintainable before the Tribunal given the provisions of Section 165 of the M.V. Act?

14. AIR 1995 J & K 91

15. 1996 OLR 2 494

(B) Whether the Insurance Company was liable to be exonerated because, according to the Insurance Company, the accident was not caused by or arising out of the use of the motor vehicle in a public place, as defined under Section 2(34) of the M.V. Act.

(C) Whether Kundan Mayekar was a "third party" and, therefore, covered under the subject insurance policy?

(D) Whether, in terms of Section 149(2)(a)(i)(c) of the M.V. Act, the transport vehicle was used for the purpose not allowed by the permit under which the vehicle was supposed to be used and, therefore, the Insurance Company was liable to be exonerated?

(E) Whether the compensation awarded by the Tribunal represent "just compensation"?

17. Regards the first point, reference is necessary to the provisions of Section 165 of the M.V. Act, which provides for the constitution of one or more Motor Accidents Claims Tribunals to adjudicate 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*". The Explanation to Section 165(1) provides that 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 Sections 140 and Section 163-A.

18. Thus, the crucial expression is "*arising out of the use of motor vehicles*". The issue of interpretation of this expression is no longer *res integra*.

19. In *Amir Basha* (supra), the Division Bench of the Madras High Court considered several decisions and made the following observations in paragraph 12 while turning down the insurance company's contentions :

"12. It is clear from the above decisions and in view of the object of the enactments both under the [Motor Vehicles Act, 1939](#) and [1988](#) the expression "caused by" and "arising out of" have a wider connotation. Though the accident should be connected with the use of motor vehicle, but the said connection need not be direct and immediate. The expression "arising out of use of motor vehicle" as mentioned in [Section 92-A](#) of the 1939 Act and [Section 165](#) of 1988 Act enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment. From the expression employed namely "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of motor vehicle", it is clear that the Legislature wanted to enlarge the scope of the word "use" and not to restrict it for denying compensation in deserving cases; accordingly we are of the view that 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. We should not forget that these provisions are made in order to help the victims. We are of the view that restrictive interpretation should not be given for the word "use". We are also of the view that the expression "arising out of the use of motor vehicle" has to be given a wider meaning. We are also of the view that "use of motor vehicle" 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. Accordingly, we hold that the death of Absar arose out of the use of motor vehicle, and the claimants/respondents 1 and 2 herein are entitled to compensation for the death of their son Absar.

20. *Amir Basha* (supra) was a case where the claimant's son died in a garage where a lorry was being repaired. One of the witnesses deposed that when the deceased Absar was vulcanizing a tube which got punctured, another person was in the process of welding certain parts near a diesel tank. Due to the process of welding by another person, the diesel tank caught fire, thereby the deceased, who was doing work of vulcanizing the tube got involved in the fire accident and sustained fatal injuries. The insurance company had contended that the lorry was stationary and parked in the roadside workshop for doing certain welding work, and the deceased had nothing to do with the vehicle. Therefore, neither the owner nor the insurance company of the

lorry was responsible for the accident. Such an accident, the insurance company contended, did not arise out of the use of the motor vehicle.

21. In *Shivaji Dayanu Patil* (supra), the Hon'ble Supreme Court was concerned with an accident involving a collision between a petrol tanker and a truck. As a result of the collision, the petrol tanker went off the road and fell on its left side at a distance of about 20 feet from the highway. As a result of turning the petrol tanker, the petrol contained in it leaked out and collected nearby. This happened at about 3 a.m. on October 29, 1987. At about 7.15 a.m., an explosion occurred in the petrol tanker, resulting in a fire. A number of persons who had assembled near had sustained burn injuries, and a few succumbed to them. One of them was Deepak Uttam More. His mother filed a claim petition. The question was whether Deepak More had died in the accident from using the motor vehicle.

22. The Hon'ble Supreme Court 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. The petrol tanker in question, while proceeding along National Highway No. 4 (i.e. while in use) after colliding with a motor lorry, was lying on the side, and it cannot be claimed that after

the collision, the use of the tanker had ceased only because it was disabled. The word "use" has a broader connotation to cover the period when the vehicle is not moving and is stationary. The use of a vehicle does not cease because the vehicle has 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 when it was lying on its side after the collision with the truck.

23. The Hon'ble Supreme Court further held that as compared to the expression "caused by", the expression "arising out of" has a broader 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 to award 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 an 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. It aligns with the beneficial object underlying the enactment.

24. In the above case, the tanker carried petrol, a highly combustible and volatile material. After the collision with the other motor vehicle, the tanker had fallen on one of its sides on sloping ground, resulting in the escape of highly inflammable petrol and the grave risk of explosion and fire from the petrol coming out of the tanker. In these circumstances, it could be said 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, was not unconnected but related events and merely because there was an 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. Therefore, the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More were due to an accident arising out of the use of the motor vehicle, viz., the petrol tanker.

25. Applying the ratio in the above two decisions to the facts of the present case, it is apparent that Kundan Mayekar died in an accident arising out of the use of a TATA Mobile vehicle bearing

registration No.GA-01-Z-1278. As proved by the evidence on record, the facts in the present case are more or less similar to the facts in *Amir Basha* (supra). Therefore, the nexus between the TATA mobile vehicle in the present case and the accident resulting in Kundan Mayekar's death is much more proximate than the nexus between Deepak More's death and the petrol tanker that had fallen on its left side at a substantial distance from the highway.

26. However, as observed by the Hon'ble Supreme Court, the causal relationship between the use of the motor vehicle and the accident resulting in death is not required to be direct and proximate and can be less immediate. This would imply that the accident should be connected with the use of the motor vehicle, but the said connection need not be direct and immediate. Therefore, in the context of the proven facts in the present case and the law on the subject, it will have to be held that the claim petition was properly instituted before the Claims Tribunal and the Claims Tribunal had jurisdiction to entertain the same. Accordingly, the first point for determination will have to be answered against the Insurance Company.

27. For adjudication on the second point for determination, reference is necessary to the relevant portions of Section 147 of the M.V. Act, which reads as follows :

' 147. Requirements of policies and limits of liability. -

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a); and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as

conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. – For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the Act or omission which led to the accident occurred in a public place.

(2) ...

(3) ...

(4)

(5) "

28. In this case, the Appellant-Insurance Company has not produced sufficient evidence that could serve as a factual foundation for entertaining its plea for exoneration because the accident, in this case, was not caused by or arising out of the use of the vehicle in a *public place*. The fact that the accident arose out of the use of the vehicle is clear from the discussion on the first point. Therefore, the only question is whether the garage/workshop where the accident took place can be regarded as a "*public place*" as defined in Section 2(34) of the M.V. Act.

29. Section 2(34) of the M.V. Act, at the relevant time, read as follows :

"(34) "public place" means a road, street, way or other places, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;

30. The evidence on record establishes that the accident, in this case, occurred in Kundan Mayekar's garage, functioning under the name and style of "M/s. Mayekar Auto World". This garage/workshop was situated at Kelbai wada, Mayem, Bicholim, Goa. There is evidence about how several trucks and vehicles in the mining trade used to come to this garage/workshop for maintenance and repairs. Furthermore, there is evidence about how the public had a right of access to this garage/workshop.

31. In the cross-examination, no questions were posed about this garage/workshop not being a public place as defined under Section 2(34) of the M.V. Act. Furthermore, even in the written statement filed by the Insurance Company, there is no plea about the accident not occurring at a place, as defined under Section 2(34) of the M.V. Act.

32. Be that as it may, even the issue of the interpretation of the expression "public place" under Section 2(34) is no longer *res integra*.

33. In *Pandurang Chimaji Agale vs New India Life Insurance Company*¹⁶ a Full Bench of our High Court, in the context of the definition of "public place" under Section 2(24) of the M.V. Act, 1939, which definition was identical under Section 2(34) of the M.V. Act, 1988, has held that all places where the members of the public have access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of "public place" under Section 2(24) of the M.V. Act, 1939.

34. Therefore, even a place, the right of use of which is restricted, would be a "public place". Therefore, the observations in paragraphs 8, 9, and 10 from the Full Bench decision are relevant, and the same read as follows :

"8. It is in the light of the object of the statute, its aforesaid relevant provisions, and the scheme, that we have to appreciate the true import of the expression "public place" for the purposes of Chapter VIII of the Act. It has further to be remembered that the expression "public place" is a term of art, the same having been

16. 1988 Mh.L.J. 344

defined specifically by Sub-clause (24) of [Section 2](#) of the Act. That definition reads as follows:

'24. 'Public place' means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.'

The first thing to remember with regard to the definition is that it is an inclusive one. Secondly, it in terms makes it clear that any road, street, way or other place, whether a thoroughfare or not, is a public place for the purposes of the Act, the only condition being that the public should have a right of access to it. Thirdly, the expression used in the definition is "a right of access" and not "access as of right". Lastly, when it states that any place or stand at which passengers are picked up or sat down by a stage - carriage, is a public place, it shows that it is not so much concerned with the "ownership of the place as with its user. Stage carriage is defined in Sub-clause (29) of Section 2 and it means a motor vehicle which is used to carry or adapted to carry more than six persons excluding the driver and which carries passengers: for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. In short, it means a public passenger-carrier. In other words, by virtue of the last part of the definition, the expression would include any place, including private, where public passenger-carrier picks up or sets down passengers.

The definition of "public place" under the Act is, therefore, wide enough to include any place which

members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation or other purposes.

9. It is also necessary to bear in mind the distinction between the expression "right of access" and "access as of right". The latter expression denotes a place-where the members of public have a right of, its use as members of public and as a matter of right, whether regulated, restricted or not. They cannot, however, be denied the said right except on legal grounds. On the other hand, where there is only a right of access, the owner of the place, if he happens to be a private owner, may deny the access to any member of the public on any ground which he chooses. In other words, in the former case, the right of the public to use the place is restricted compared to their right to use in the latter case. The definition under the Act uses the expression "right of access" as pointed out earlier. What is, therefore, significant to note is that under the present definition even a place the right to use of which is restricted is a public place. Once this is borne in mind, much of the controversy raised before us around the correct meaning of the expression "public place" loses its edge.

10. If we further bear in mind the overall object of the provisions of Chapter VIII which deals with

compulsory insurance of the vehicle to cover risks to third parties and their property, with claims to be filed for recovering compensation, no fault liabilities and liabilities arising out of hit and run accidents, etc. the intention of the legislature is clear. It is to secure compensation to the persons and property which are exposed to' the accidents caused by the vehicles. The very nature of the motor vehicle and its use, mandate these provisions. The motor vehicle in this respect can be likened to a wild animal. Whoever keeps it does so at his risk. As pointed out earlier, some of the restrictions on the use of the vehicle contained in the Act are irrespective of the nature of the place where it is used and irrespective of whether it is plied or kept stationery. The legislature was concerned not so much with the nature of the place where the vehicle causes the accident as where it was likely to do so. Hence all places where the members of public and/or their property are likely to come in contact with the vehicles can legitimately be said to be in its view when the legislature made the relevant provisions for compulsory insurance. It will have, therefore, to be held that all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of "public place" in Section 2(24) of the Act. To hold otherwise would frustrate the very object of the said Chapter and the Act."

35. Following the Full Bench decision in *Pandurang Chimaji Agale* (supra), the learned Single Judge of Andhra Pradesh High Court in *Chinna Gangappa vs. B. Sanjeeva Reddy and anr.*¹⁷

17. 1997 SCC OnLine AP 62

held that an auto garage, even though privately owned, or a workshop for loading and unloading goods, even though privately owned, would be a place as defined under Section 2(24) of the M.V. Act, 1939. As pointed out earlier, Section 2(24) of the M.V. Act, 1939, is *pari materia* to the definition in Section 2(34) of the M.V. Act, 1988.

36. The learned Single Judge of Madras High Court in *National Insurance Co. Ltd. thr. its Manager vs. K. Ammaiyappan and arn.*,¹⁸ following the Full Bench decision of the Bombay High Court in *Pandurang Chimaji Agale* (supra), held that a repair workshop is a public place.

37. The learned Single Judge of the Delhi High Court in *Ramesh Kumar Maini vs. United Insurance Co. Ltd. & ors.*¹⁹, following the decision of the Full Bench of the Bombay High Court in *Pandurang Chimaji Agale* (supra), held that the expression "public place" will cover all places, including those of private ownership where the public has access, whether free or controlled in any manner whatsoever. Accordingly, the Delhi High Court held that a godown where the accident occurred was

18. 2021 SCC OnLine Mad 9980

19. ILR (2009) VI Delhi 761

a public place because the public members had the right to access the same.

38. A Division Bench of Madhya Pradesh High Court in *Rajendra Singh vs. Tulsabai and ors.*²⁰ has held that the compound of the Diamond Cement Factory to which the public had access and the vehicles were going there for business purposes and where the accident occurred, was definitely a 'public place' and, therefore the two insurance companies could not escape their liability and were bound to indemnify the insured persons and pay the compensation directly to the applicants. The Division Bench also followed the decision of the Full Bench of the Bombay High Court in *Pandurang Chimaji Agale* (supra).

39. The Division Bench of the Madhya Pradesh High Court, upon a detailed analysis of several provisions on the subject, observed that almost all the High Courts, including those who held a contrary view earlier, are veering around to the illuminating dictum of Swant, J. (as His Lordship then was) in the Full bench case of the Bombay High Court.

40. Even the Full Bench of the Madras High Court in *United India Insurance Co. Ltd. vs. Parvathi Devi and ors.*²¹,

20. (2002) ILR 926 (MP)

21. 1999 SCC OnLine Mad 260

following the Full Bench decision of the Bombay High Court in *Pandurang Chimaji Agale* (supra), held that the expression "public place" will cover all places, including those of private ownership where members of the public have access, whether free or controlled in any manner whatsoever.

41. Another Full bench of the Bombay High Court in **Forbes Forbes Campbel And Co. Ltd. vs Vilasrao Deshmukh**²² held that the decision of the Full Bench in *Pandurang Agale* (supra) clearly applied to the Bombay Dock Area, which has to be held to be a public place within the meaning of Section 2(24) of the 1939 Act.

42. Thus, applying the weight of the precedents to the proven facts, the contentions that the accident in the present case did not occur in a public place, as defined under Section 2(34) of the M.V. Act, will have to be rejected. There is ample evidence on record, which was not even challenged by cross-examination or otherwise that the accident occurred in the garage "M/s. Mayekar Auto World". This was a place that the public had a right to access. Therefore, even the second point for determination will have to be held against the Appellant-insurance Company.

22. AIR 1994 Bombay 346

43. The third point for determination also will have to be answered against the Appellant-Insurance Company. The deceased, Kundan Mayekar, was neither the owner of the insured vehicle nor was he the insurer. Therefore, it is not understood why the Appellant-Insurance Company contends that Kundan Mayekar was not a third party.

44. In *Faqir Chand* (supra), relied upon by Mr Vaze, the learned Single Judge of the Jammu and Kashmir High Court has held that other than contracting parties to the insurance policy, the expression "third party" would include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject-matter of the insurance policy.

45. Every insured takes out an insurance policy against a third-party risk and enters into a contract with an insurer only with the motive, intention and purpose of covering the risks which may arise from claims lodged against him by a third party. By agreeing to issue the insurance policy, the insurer undertakes to insure the insured and indemnify him against all risks and concerning all claims lodged against him by third parties. Narrowing the concept, scope and ambit of a third party, and therefore, excluding the passengers in the vehicle from its operation and

purview, would not only defeat the very purpose of taking out the insurance policy but the very object of the Motor Vehicles Act which makes it a mandatory requirement of law that all vehicles/owners of vehicles must be compulsorily insured against third party risks.

46. Besides, the plea that the deceased Kundan Mayekar was not a third party was neither pleaded nor adequately raised by the Appellant-Insurance Company. In any case, the plea, in the facts of the present case, lacks merit and is required to be rejected. Therefore, the third point for determination will have to be answered against the Appellant Insurance Company.

47. To consider the fourth point for determination, a reference can be briefly made to Section 149 of the M.V. Act, which deals with insurers' duty to satisfy judgments and awards against persons insured regarding third-party risks. Section 149(2), however, provides that no sum shall be payable by an insurer, and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on the ground that there has been a breach of the specified condition of the insurance policy being one of the following conditions, namely

(i) a condition excluding the use of the vehicle –

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b).....

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) ...

48. Mr Lopes submits that there is evidence about the TATA mobile vehicle being fitted with a cargo cabin. He offers that the latter evidence establishes that the owner fitted this vehicle with a tank where some inflammable substances were stored. He submitted that permit for the insured vehicle that contemplated only a cargo cabin, not a tanker. He offered that the permit allowed the insured vehicle to transport goods through the cargo cabin and not flammable liquids through the tanker, which was unauthorisedly fitted. He submits that there was a breach of the conditions of the policy because the insured vehicle was used for transportation not allowed by the permit under which the vehicle was supposed to be used. He submits that there is no dispute about the vehicle being a transport vehicle.

49. If the written statement of the Insurance Company is perused, it is apparent that the Insurance Company ever raised no such a plea in its pleadings. Based upon *Dhanjraj* (supra) and *Challa Bharathamma* (supra), Mr Lopes contended that no pleadings were necessary because the defence now raised was statutorily permitted. At least, these two decisions do not say that no pleadings are necessary. However, *Challa Bharathamma* (supra) suggests that the insurance company has to plead and prove its defences.

50. Be that as it may, even without going into the issue of lack of pleadings on the plea now pressed, the Appellant-Insurance Company has led no evidence to establish any breach of the specified conditions of the insurance policy. The Insurance Company never produced the insurance policy. The permit applicable to the insured vehicle was also not produced. The Appellant-Insurance Company did examine an R.T.O. Official, but no evidence was elicited. Therefore, simply because there is some evidence of alteration, the Appellant-Insurance Company cannot presume that there must have been some breach of the permit conditions and, based on such an assumption, seek to avoid liability. Sections 66, 77, 78 and 79 of the M.V. Act speak about various terms and requirements of such a permit. However,

none of these provisions offer any assistance on the factual aspect of the present matter. Without any factual foundation, there is no question of applying these provisions. These provisions do not suggest that the insurance company be exonerated simply because some alteration was carried out to the insured vehicle. Therefore, even this fourth point for determination will have to be answered against the Appellant-Insurance Company.

51. On the aspect of the quantum of compensation, the Appellant-Insurance Company cannot be permitted to raise such an issue because, admittedly, no leave was sought by the insurance company under Section 170 of the M.V. Act. The Appellant-Insurance Company can, therefore, be permitted to raise only the statutory defences envisaged under Section 149(2) of the M.V. Act. This position is made clear by the Hon'ble Supreme Court in the case of *Nicolletta Rohtagi* (supra).

52. However, since Mr Matlock D'Souza was to be heard on the issue of the quantum of compensation raised by the Claimants by filing cross objections, even Mr Lopes was heard on the said issue. He submitted that there is no evidence to sustain the finding that the deceased Kundan Mayekar was earning ₹20,000/- per month. On the other hand, Mr D'Souza submitted

that the evidence on record was sufficient to conclude that Kundan Mayekar was earning ₹40,000/- per month.

53. With the assistance of the learned Counsel, the evidence on the aspect of the quantum of compensation was re-evaluated. The evidence supports the finding that the deceased Kundan Mayekar used to earn around ₹20,000/- per month. First, there is evidence that Kundan owned the garage/workshop. There is evidence of his experience and expertise in the field of welding. Finally, there is evidence in the form of bills which gives an idea about the kind of business that Kundan was involved in and his daily earnings from the repairs and welding of motor vehicles.

54. From the bills produced on record and the Claimants' oral evidence, it does appear that several trucks and lorries were used to be repaired by Kundan at his workshop. This probabilises Mr D'Souza's contention that during the mining season in 2010-11, Kundan had considerable business and, consequentially, income.

55. Thus, there is sufficient evidence to sustain the finding about Kundan's monthly income of ₹20,000/-. The evidence, however, does not suggest the figure of ₹40,000/- per month, as urged by Mr D'Souza. In the circumstances, the figure of ₹20,000/- per month appears more than probable and accurate.

Thus, there is no merit even in the fifth point for determination. Consequently, there is also no merit in the cross objection filed on behalf of the Claimants. The fifth point for determination is answered accordingly.

56. In this case, the driver, represented by Mr Vaze, had filed a substantive appeal beyond the prescribed limitation period. The delay in instituting this appeal was condoned, subject to the driver paying costs of ₹5,000/-. Because no such costs were paid as directed, the application for condonation of delay stood dismissed. As a consequence, the substantive appeal stood dismissed. In such circumstances, it would not be appropriate to grant the driver the relief now prayed for by him by resorting to the provisions of Order 41, Rule 33 of the C.P.C. However, it must be observed that the finding about even the driver being jointly and severally liable may not be correct because the evidence on record does not suggest that the driver was, in any manner, concerned with the accident in which Kundan Mayekar unfortunately expired.

57. For all the above reasons, both the Appeals and the cross objection are liable to be dismissed and, are hereby, dismissed. In view of the disposal of the appeals, the civil application does not

survive and is disposed of. However, there shall be no order for costs.

58. The Appellant-Insurance Company has deposited the awarded amount. Now that the appeals and the cross objections are dismissed, the Claimants will be entitled to withdraw the deposited amount and the interest that shall have accrued on the same.

59. For effective withdrawals, the Claimants must furnish identification and bank details. The Registry to ensure that the amounts are directly transferred to the Claimants' bank accounts.

60. The two appeals and the cross-objection are disposed of in the above terms without any order for costs.

M.S. SONAK, J.

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