

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**BEFORE HON. SHRI JUSTICE ALOK VERMA,J.**

**M.A. No.94/2006**

**Chamariya S/o Khumsingh Bhilala**

**Vs.**

**Narayan S/o Lakshminarayan Maheshwari & others**

---

Shri Manish Jain, learned counsel for the appellant.

Shri Arjun Pathak, learned counsel for the respondent No.3.

---

**JUDGMENT**

**(Passed on ...../09/2016)**

This Miscellaneous Appeal arose from award passed by learned Additional Accident Claims Tribunal Kukshi District-Dhar in Claim Case No.111/2004 dated 07.10.2005 whereby the learned Tribunal dismissed the application filed by appellant under Section 166 of Motor Vehicle Act, for award of compensation amount of Rs.9,50,000/-.

2. According to the appellants the accident took place on 23.03.2000 at about 10:00-11:00 AM. At the time of accident, it is stated that the tractor was loaded with explosive and tractor was sent by respondent No.1 Narayan S/o-Lakshminarayan Maheshwari to the spot where the incident occurred. The

registered owner of the tractor was Mannalal S/o-Lakshminarayan Maheswari. The tractor bearing registration No. CII/9558 was insured by respondent No.3. It is further stated that the driver Ramesh brought tractor to the field where a well was being dug. The explosives were used for digging of the well. It is stated that after drilling the hole in the well it were filled with explosive. To trigger he explosion current was supplied from the tractor. It is further stated that when the driver started the tractor to give current to the explosives, the explosives loaded in the tractor exploded and in the explosion the driver Ramesh died. The present appellant was standing near by looking at the job, which the driver was doing. Due to the splinters from the explosion he sustained various penetrating injuries on the chest and back and also fracture of ribs. It is also stated that driver Ramesh was not trained in the job. The explosive was illegally carried without permit.

3. The respondent Nos.1 and 2 denied of the averment made in the in the application. The respondent No.3 also denied the averment made in the application and it was the case of respondent No.3 that the appellant was not traveling in the tractor. The incident did not take place out of use of motor vehicle under Section 165 of Motor Vehicle Act, and therefore the Tribunal had no jurisdiction to decide the application.

4. The learned Tribunal after recording evidence of both the

parties, gave a finding that the First Information Report of Ex-P1, was not lodged by the appellant and therefore, it was necessary to call the maker of First Information Report. The person who lodged the FIR and the writer of the FIR was not examined by the appellant and therefore, FIR Ex.P-1 cannot be read in evidence. It was further held by the learned Tribunal that according to the statement of the appellant the incident took place as the explosive loaded in the tractor were exploded, and therefore, the incident took place while the tractor was in stationary condition and not when it was in use and therefore under Section 165 of Motor Vehicle Act, the Tribunal had not jurisdiction to hear and decide the application.

4. The Tribunal however, found that the tractor was covered under the policy issued by respondent No.3 and there was no violation of insurance policy. However, in opinion of the tribunal the Tribunal had no jurisdiction to decide the application. The Tribunal did not assess the quantum of compensation and dismissed the application.

5. The learned counsel for the appellant placed reliance on judgment of Uttranchal High Court in case of **Oriental Insurance Company Limited vs Banu Begum and another 2007 ACJ 476**. In this case a tanker carrying explosive was parked in the workshop for repair. The welder in the workshop was doing repair

work, when the tanker suddenly got exploded which caused fatal injury to the welder. It was held that the incident took place out of use of the motor vehicle. The learned counsel cited judgment of Division Bench of this Court in case of **Gayatri Bai and another vs Ahmadji and others 2000 ACJ 1323**. In this case the bus was in stationary condition. The driver and cleaner had raised the chassis over a jack for changing spring of the vehicle. Suddenly the jack slipped and the conductor got pressed between the mudguard and wheels. It was held by the Division Bench of this Court that the incident took place out of use of the motor vehicle.

6. The learned counsel also placed reliance on judgment of Hon'ble Apex Court in case of **Shivaji Dayanu Patil vs Vatschala Uttam 1991 ACJ 777**. In this case a collusion took place between tractor and petrol tanker and the tanker turned turtle. After 4½ hours of the incident, the petrol tanker caught fire injuring and causing death to several persons, who assembled near it for collecting petrol leaking out of the tanker. It was held that the incident took place out of use of the vehicle. Also the learned counsel cited judgment of Hon'ble Apex Court in case of **New India Insurance Company Limited vs Yadu Sambhaji More and others 2011 ACJ 584**. In this case the facts were similar to the case of Shivaji Dayanu Patil (supra) and in this case also the Hon'ble Apex Court held that the incident took place out of use of

the vehicle. The learned counsel also cited the judgment of Division Bench of this Court in case of **National Insurance Company Limited vs Kanha and another MACD 2008(2) (M.P.) 659**. In this case the tractor was being parked and it was in stationary condition. It was being used to run a thresher machine. The accident took place in which hands of one of the employee of the insured were chopped. It was held that the incident took place out of use of the vehicle. On the similar ground where the incident took place while thresher was attached to the tractor. Learned counsel cited judgment of this Court in case of **National Insurance Co. Limited Indore vs Kamla Bai MACD 2010(1) (M.P.) 106** and **Oriental Insurance Company Limited vs Savthanji Khodaji Thakor & others MACD 2007(2) (Gujrat) 1231** and **United India Insurance Company limited vs Rajendra and others 2011 ACJ 782**.

7. Learned counsel for the respondents cited judgment of Bombay High Court in case of **Famidabee and others vs Kalim Khan and others 2014 ACJ 989**. In this case Famidabee was owner of the land where work of digging of well was in progress. She used explosives for digging. Respondent No.2 was the owner of the tractor. Explosives were being used for digging the well. The explosives were planted by respondent No.2 and his employees inside the well and for the purpose of causing the

explosion, electric current was given from the battery of the tractor which was parked nearby, when the explosion took place. A large stone flew in the air fell on the head of Famidabee who was standing in front of shop in the village. Distance between well and Famidabee was 300 ft. Famitabee died due to the head injury. The High Court of Bombay held that only battery of the vehicle was used to provide current. The vehicle was not in use and therefore the incident did not take place out of the use of the vehicle as required by Section 165.

8. Reverting to the present case, I find that the facts are slightly different than those of Famidabee (*supra*). Here according to eye witness, the incident took place in the tractor itself and not in the well. The explosives were loaded in the tractor and brought there by deceased driver Ramesh and for this purpose the tractor was used as a vehicle and explosion took place in the tractor itself, due to which the parts of tractor flew in the air and caused penetrating wound to the present appellant. The incident is similar to the one where thresher was attached to the tractor and the accident took place and therefore, so far as the present case is concerned, in the considered opinion of this Court, the Tribunal erred in holding that the incident took place out of use of the vehicle as required by Section 165 of Motor Vehicle Act.

9. So far as observations of the Tribunal in respect of scribe

of F.I.R. are concerned. It may be pointed out that proceedings under Motor Vehicles Act are not purely civil in nature and provisions of Evidence Act do not applied with full strictness. On such proceedings the F.I.R. is produced for collateral purpose and therefore, when it was not denied by the respondents that the F.I.R. relates to the incident in question. It should be taken into consideration and registered fact mentioned in the F.I.R., are also form basis of any conclusion drawn by the tribunal

**10.** In this view of the matter the finding of the Tribunal is liable to be set aside. Coming to the quantum of the compensation in this case the appellant filed discharge tickets of M.Y. hospital Indore. According to Ex-A1 he remained admitted in the hospital from 24.12.2000 to 12.03.2000 about eighteen days and thereafter again he was admitted in M.Y. Hospital Indore on 29.03.2000 and remained in the hospital till 02.05.2000 for four days. Therefore in all twenty two days he remained in the hospital. The discharge ticket did not mention that he suffered fracture of ribs. It was only mentioned that there was some penetrating wound and he was treated for this.

Taking the injuries suffered by the appellant into consideration a sum of Rs.25,000/- may be awarded to him for pain and suffering etc, Rs.10,000/- may be awarded for expenses on treatment, as he has not filed any paper for this and Rs.5,000/-

for dependency and transport. Accordingly total amount of compensation comes to Rs.40,000/-.

Accordingly this application is partly allowed. The finding of the Tribunal that the incident did not take place out of use of the vehicle is set aside. It is directed that the respondents are liable to pay appellant Rs.40,000/- jointly and severally. They are also liable to pay interest at the rate of 7% per annum from the date of presentation of the application 24.10.2004. The cost of appeal shall be borne by the respondents.

Counsel's fees as assessed at Rs.2,000/- is certified.

Ravi

**( ALOK VERMA )**  
**JUDGE**