

1

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL

ON THE 20th OF MARCH, 2024

MISC. APPEAL No. 732 of 2018

BETWEEN:-

**FUTURE GENERALI INDIA INS.CO.LTD. THR. 2ND FLOOR 509-510
MARHATAL MODEL ROAD JABALPUR (MADHYA PRADESH)**

.....APPELLANT

**(BY SHRI TEJVINDER SINGH LAMBA - ADVOCATE FOR THE APPELLANT)
)**

AND

- 1. SMT. SANTOSHI W/O LATE HIRDESINGH KUMRE, AGED ABOUT 25 YEARS, VILLAGE GUDNA CHHAPARA P.S. AND TEH. LAKHNADON DISTT. SEONI (MADHYA PRADESH)**
- 2. AMAR S/O HIRDESINGH KUMRE, AGED ABOUT 3 YEARS, VILLAGE GUDNA CHHAPARA PS AND TEHSIL LAKHNADAUN (MADHYA PRADESH)**
- 3. VARSHA D/O HIRDESINGH KUMRE, AGED ABOUT 5 YEARS, VILLAGE GUDNA CHHAPARA PS AND TEHSIL LAKHNADAUN (MADHYA PRADESH)**
- 4. SHARDA D/O HIRDESINGH KUMRE, AGED ABOUT 8 YEARS, VILLAGE GUDNA CHHAPARA PS AND TEHSIL LAKHNADAUN (MADHYA PRADESH)**
- 5. SMT MANGLI W/O TULARAM KUMRE, AGED ABOUT 55 YEARS, VILLAGE GUDNA CHHAPARA PS AND TEHSIL LAKHNADAUN (MADHYA PRADESH)**
- 6. SABIR S/O FIRDAUS KHAN, AGED ABOUT 36 YEARS, VILLAGE GANESHGANJP S LAKHNADAUN (MADHYA PRADESH)**
- 7. SHRIMAN JAIN STONE CRASHER GANDHI WARD 1 LAKHNADAUN TAHSIL (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SARDAR AVTAR SINGH - ADVOCATE FOR THE RESPONDENTS NO.1 TO 3 AND SHRI AKHILESH KUMAR JAIN - ADVOCATE FOR THE RESPONDENT NO.6)

MISC. APPEAL No. 1566 of 2018

BETWEEN:-

1. SABIR S/O FIRDAUS KHAN, AGED ABOUT 36 YEARS, VILLAGE GANESHGANJ P.S. LAKHNADAUN SEONI (MADHYA PRADESH)
2. SHRIMAN JAIN STONE CRASHER GANDHI SEONI GANDHI WARD 1 LAKHANDAUN (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI AKHILESH KU JAIN - ADVOCATE)

AND

1. FUTURE GENERAL INSURANCE CO. LTD. THROUGH 2ND FLOOR ,509-510 MARHATAL MODEL RODEL (MADHYA PRADESH)
2. SMT. SANTOSHI W/O LATE HIRDESINGH KUMRE, AGED ABOUT 25 YEARS, VILLAGE GUDNA CHHAPARA PS TEH. LAKHNADON (MADHYA PRADESH)
3. AMAR S/O LATE HIRDESINGH KUMRE, AGED ABOUT 3 YEARS, OCCUPATION: MINOR THROUGH GUARDIAN MOTHE SMT. SANTOSHI VILLAGE GUDNA CHHAPARA PS TEH. LAKHNADON (MADHYA PRADESH)
4. VARSHA D/O LATE HIRDESINGH KUMRE, AGED ABOUT 5 YEARS, OCCUPATION: MINOR THROUGH GUARDIAN MOTHE SMT. SANTOSHI VILLAGE GUDNA CHHAPARA PS TEH. LAKHNADON (MADHYA PRADESH)
5. SHARDA D/O LATE HIRDESINGH KUMRE, AGED ABOUT 8 YEARS, OCCUPATION: MINOR THROUGH GUARDIAN MOTHER SMT. SANTOSHI VILLAGE GUDNA CHHAPARA PS TEH. LAKHNADON (MADHYA PRADESH)
6. SMT. MANGLI W/O TULARAM KUMRE, AGED ABOUT 55 YEARS, VILLAGE GUDNA CHHAPARA PS TEH. LAKHNADON (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SARDAR AVTAR SINGH - ADVOCATE FOR THE RESPONDENTS NO.2,3,4,5 AND 6)

These appeals coming on for admission this day, the court passed the following:

ORDER

This common order shall govern disposal of M.A.No.732 of 2018 (Future Generali India Ins. co. Vs. Smt. Santoshi and Others) and M.A.No.1566 of 2018 (Sabir & Shriman Vs. Future General Insurance Co.Ltd & Others) filed under Section 173(1)/173 of the Motor Vehicle Act, arising out of common award dated 30.11.2017 passed by 1st Additional Motor Accident Claims Tribunal, Lakhnadaun, District-Seoni in MACC No.49/2014.

2. M.A.No.732/2018 has been filed by Insurance Company, whereas, M.A.No.1566/2018 has been filed by owner/driver of offending vehicle. Both these appeals have been filed for setting aside award/exoneration from liability to pay the compensation/reduction of compensation.

3. Learned counsel for the appellant Insurance company, after referring to impugned award as well as relying upon Chairman, ***Rajasthan State Road Transport Corporation and Others Vs. Santosh and Others*** (2013) 7 SCC 94, submits that in the instant case, offending vehicle does come within the definition of Motor Vehicle as defined in Section 2(28) of Motor Vehicle Act. Further, after referring to para-8 of ***New India Assurance Company Limited Vs. Balu Banjara & Others***, 2008 (2) MPHT 252, it is submitted that Principle laid down in Balu Banjara (Supra) does not apply to the facts of the case as in Balu Banjara, J.C. machine was having four wheels, whereas in the instant case, offending vehicle is a chain mounted caterpillar machine. It is also urged that in view of Sections 165 and 166 of the Motor Vehicles Act, claim petition under Section 166 of Motor Vehicles Act (hereinafter referred to as "Act") is maintainable only when accident occurs from use of motor vehicle and in the instant case, offending vehicle is not "motor vehicle", it is a chain mounted caterpillar vehicle. Therefore, respondent claimant's claim under Section 166 of Act is not maintainable.

4. Learned counsel for the respondent-Insurance Company, submits that principle laid down in ***Bose Abraham ETC. Vs. State of Kerala and Another*** (2001) AIR (SC) 835 does not apply to the facts of the case. In the instant case, vehicle has not been adopted for use of road and it has not been registered under Act.

5. Further, it is also urged that Principle laid down in ***Oriental Insurance Company Limited Vs. Cheruvakkara Nafeessu and Others and others***, (2001) 2 SCC 491 does not apply in the instant case because in Oriental Insurance Company limited case Policy was issued under Act and there was also exclusion clause. On above grounds, it is urged that impugned award be set aside and Insurance Company's be exonerated from liability to pay the compensation.

6. Learned counsel for the appellant/owner/driver for in M.A.No.1566 of 2018, submits that from Insurance Policy (Ex.D/1), it is evident that vehicle is a chain mounted caterpillar vehicle and it is not Motor Vehicle as defined under Act, therefore, claim petition filed by the claimants is not maintainable. It is also urged that in the instant case, deceased met with an accident on account of negligence of himself. It is urged that deceased slipped and therefore, sustained injury. It is also urged that appellant witness No.2 Dilip is not an eye-witness and his name is not mentioned in witness list as mentioned in the charge-sheet. Learned Tribunal has not taken into consideration statements recorded by the Criminal Court i.e. Ex.D/2 to Ex.D/5. On above grounds, it is urged that impugned award be set aside.

7. Learned counsel for the respondent/claimant, after relying upon ***Bose Abraham Etc. Vs. State of Kerala and Another*** (2001) AIR (SC) 835, submits that in the instant case, offending vehicle comes within the category of Motor Vehicle as defined in Section 2(28) of "The Act of 1988" and in the instant case, deceased was third party, therefore it cannot be said that the liability of Insurance Company is limited. It is also urged that no fault can be found with Tribunal's finding with respect to application of

Principle of pay and recovery. With respect to above submission submissions as learned counsel for the respondents has also relied upon Oriental Insurance Company (Supra) On above grounds, it is urged that appeals filed by Insurance Company and owner be dismissed.

8. I have heard learned counsel for the parties and perused the record of the case.

9. Application for seeking compensation to be filed before Claims Tribunal is envisaged **under Section 165 of the Act of 1988**. Relevant portion of which is extracted below:

165. Claims Tribunals - (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunal (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating 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.

Explanation - 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 section 140 (Added by Act of 54 by 1994, sec 52 w.e.f. 14.11.1994 [and section 163 A].

10. From perusal of above provision, the application for grant of compensation before the Claims Tribunal is maintainable only when accidents involving death or bodily injury of a "person" arising out of the use of motor vehicle. The application before the Tribunal will only be maintainable if the death or injury is caused by use of motor vehicle.

11. Respondent/claimant have filed present claim petition under Section 166 of Act on account of accident from chain mounted excavators caterpillar. Core issue involved in these appeals relates to whether chain mounted excavator caterpillar, (hereinafter referred as offending object), from which instant accident has occurred, comes within the purview

of Motor vehicle as defined in Section 2(28) of Act.

12. Section 2(28) of Motor Vehicle Act, 1988 defines “Motor Vehicle”/”Vehicle” as follows-

“motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding¹ [twenty-five cubic centimetres]

13. Definition of 'Construction Equipment Vehicle' as envisaged under the Central Motor Vehicles Rules, 1989 under Rule 2 (ca) as it stood prior to 2015 is extracted below for ready reference:

“construction equipment vehicle” means rubber tyred, (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer, fork lift truck, self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off-highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with “on or off” or “on and off” highway capabilities

Explanation- A construction equipment vehicle shall be a non-transport vehicle the driving on the road of which is incidental to the main off-highway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off-highway construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than road network, not equipped to travel on public roads on their own power;]

14. Construction of word “Motor Vehicle” has been dealt by Hon’ble Apex Court as well as various High Courts in different pronouncements.

15. Hon'ble Apex Court in the case of **Bolani Ores. Ltd Vs. State of Orrisa** (1974) 2

SCC 777 (Three Judge Bench) has held as under:-

"21. The decisions rendered on the definition of 'motor vehicle' under the English Road Traffic Act are of little help, because that definition has reference to the words "intended or adapted", while the element of intention has no relevance under the Act, where the word "adapted" alone is used. It has been urged before us that since the learned Chief Justice Lord Parker had referred to the meaning of the words "intended" and "adapted" separately in the context of the English Road Traffic Act, we should take assistance from his observations. It appears to us that where two words of different import are used which in the context of the scheme of the Act and its purpose play an important part, to ask us to take the meaning given of one of the words and import it as the meaning for the purposes of the Act even where the same word is used, is perhaps to place us in a similar predicament as that of the gentleman who when asked to expound on Chinese metaphysics.

23. The meaning of the word "adapted" in Section 2(18) of the Act is itself indicated in Entry 57 of List II of the Seventh Schedule to the Constitution, which confers a power on the State to tax vehicles whether propelled mechanically or not and uses the word "suitable" in relation to its use on the roads. The words "adapted for use" must therefore be construed as "suitable for use". At any rate, words "adapted for use" cannot be larger in their import by including vehicles which are not "suitable for use" on roads. In this sense, the words "is adapted" for use have the same connotation as "is suitable" or "is fit" for use on the roads.

24. The question would then arise, are dumpers, rockers and tractors suitable or fit for use on roads? It is not denied that these vehicles are on pneumatic wheels and can be moved about from place to place with mechanical power. The word "vehicle" itself connotes that it is a contrivance which moves. A vehicle which merely moves from one place to another need not necessarily be a motor vehicle within the meaning of Section 2(18) of the Act. It may move on iron flats made into a chain

such as a caterpillar vehicle or a military tank. Both move from one place to another but are not suitable for use on roads. It is not that they cannot move on the roads but that they are not adapted, made fit or suitable for use on roads. They would, if used, dig and damage the roads.....

27. A 'motor vehicle' under Section 2(18) has been defined as "any mechanically propelled vehicle adapted for use upon road...." Having regard to the context of the definition of "public place" in Section 2(24) of the Act, the regulatory character of the Act, and the use of the word 'road' used in a public Act, road would mean a "public road" which word as already noticed has been used in the Andhra Pradesh (Andhra Area) Motor Vehicles Taxation Act. The word "public place" has been defined in Section 2(24) as meaning "a road, street, way or other place whether a thoroughfare or not, to which the public have a right of access". If the public have no right of access to any place which is not a road, street, way or thoroughfare it will not be a public place. A motor vehicle which is not adapted for use upon roads to which the public have no right of access is not a motor vehicle within the meaning of Section 2(18) of the Act. But where a vehicle is adapted for use on a road which is neither more nor less than that it is made suitable or fit for use upon roads, i.e. public roads, it is a motor vehicle, and if such a motor vehicle is a goods vehicle under Section 2(8) which means a vehicle which is not only suitable or fit for use upon roads but is "constructed or adapted for use for the carriage of goods" or where it is not so constructed or adapted when used for the carriage of goods solely or in addition to passengers, or is a public service vehicle within the meaning of Section 2(25) of the Act, namely "any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward....", it has to be registered under Section 22 and can only be driven by a person who holds a licence under Section 3 of the Act. Where a vehicle is adapted for use upon roads and though it is not driven on the public roads or in a public place even then if it carries goods or passengers which may not be for hire or reward or the passengers may be friends or relatives of the owner or the goods may belong to the owner and plying in a

place to which the public has, as a matter of right, no access, it nonetheless cannot be driven without its being registered or without the driver holding a licence to drive such a vehicle."

16. Hon'ble Apex Court in *Bose Abraham ETC. Vs. State of Kerala & Another*, AIR 2001 SC 835 has held as under:-

"2. The Entry Tax Act defines a 'motor vehicle' as is defined under the Motor Vehicles Act. The High Court was influenced by the fact that registration is done under the Motor Vehicles Act and also requires license for driving under that Act and these aspects clearly indicate that the vehicle is a 'motor vehicle'. So long as such vehicle is capable of being adapted for use on roads, it has necessarily to be held to be 'motor vehicle' and is liable to be taxed under the Act. On the contention that Section 18 of the Act which enables the registering authority to collect the tax even before the registration is not permissible is also rejected stating that the amount of entry tax paid under the Act is liable to be deducted out of the general sales tax payable by the appellant for the purchase of the vehicle, and dismissed the writ petitions.

3. The short question that arises for consideration in these appeals is whether 'motor vehicle' as defined in Section 2(28) of the Motor Vehicles Act would include excavators and road rollers so as to attract the levy under Kerala Tax on Entry of Motor Vehicles into Local Areas Act (hereinafter referred to as 'the Act'). The learned counsel for the appellant submitted that (i) the excavators and road rollers are not motor vehicles to fall under the definition of motor vehicle u/s 2(j) of the Act; (ii) even if the excavators and road rollers are construed to be motor vehicles for the purpose of the Motor Vehicles in order to be used on road inasmuch as excavators are used in an enclosed area while road rollers are used for the purpose of making roads and not as a vehicle on road; (iii) incidence of payment of entry tax before the registration is not proper.

6. Section 2(j) of the Act defines 'motor vehicle' to mean a motor vehicle as defined in Section 2(28) of the Motor Vehicles Act, 1988 (Central Act 59 of 1988). Subject to the provisions of the Act, Section 3 of the Act enables the levy and collection of tax on the

entry of any motor vehicle into local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act at such rate as may be fixed by the Government. Therefore, in order to attract tax under the provision of Section 3 of the Act, a motor vehicle must have entered into a local area for use or sale therein and secondly which is liable for registration under the Motor Vehicles Act.

7. We hold that the excavators and road rollers are motor vehicles for the purpose of the Motor Vehicles Act and they are registered under the Act. The High Court has noticed the admission of the appellants that the excavators and road rollers are suitable for use on roads. However, the contention put forth now is that they are intended for use in the enclosed premises. Merely because a motor vehicle is put to a specific use such as being confined to an enclosed premises, will not render the same to be a different kind of vehicle. Hence, in our view, the High Court has correctly decided the matter and the impugned order does not call for any or any concession given under the local Sales Tax Act will have to be dealt with in the course of assessment arising under the Entry Tax Act"

17. In Chairman, Rajasthan State Road Transport Corporation and Others Vs.

Santosh and Others (2013) 7 SCC 94, Hon'ble Apex Court has held as under:-

"30. As to whether a particular vehicle can be defined as motor vehicle in terms of Section 2(28) of the Act, is to be determined on the facts of each case taking into consideration the use of the vehicle and its suitability for being used upon the road. Once it is found to be suitable for being used on the road, it is immaterial whether it runs on the public road or private road, for the reason, that actual user for a particular purpose, is no criterion to decide the name. The definition of motor vehicle takes within its ambit, a dumper and tractor. A tractor which is used basically for agricultural purposes and a dumper is used in the factory premises, can suitably be adapted for being used on the road, therefore, they will meet the requirement of the definition of motor vehicle under Section 2(28) of the Act. The word "only" used in Section 2(28) of the Act clearly shows that the exemption is confined only to those kinds of vehicles which

are exclusively being used in a factory or in any closed premises. Thus, a vehicle which is not adapted for use upon the road, is only to be excluded."

18. Co-ordinate Bench of this Court in para-8 of the *New India Assurance Company Limited Vs. Balu Banjara & Others*, 2008 (2) MPHT 252 has held as under-

"8 Section 2 (28) of the Motor Vehicles Act defines motor vehicle. According to which only those vehicles are not covered under the definition of motor vehicle, which are running upon the fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or vehicle having less than 4 wheels fitted with engine capacity of not exceeding 25 cubic centimeters. In the present case the appellant has examined Ramesh Gagrani, A.O. of the Company, who has categorically admitted that the JCB machine is having 4 wheels. It has also been admitted that it is being driven by the driver and it is being used for the purpose of construction of roads. It is also admitted by him that it moves on the roads. So far as the law laid down by Hon'ble the Jharkhand High Court is concerned, it is of no help to the appellant because in this case the Hon'ble Jharkhand High Court has held that the machineries such shovels, traxcavators, cranes, rappidozers, excavators, which are not adapted for use upon roads and are plied exclusively within enclosed premises of mines are not motor vehicles. In the present case the JCB machine is running on the roads and is being used for construction of the roads. Only because it is not being registered by the Regional Transport Authority as motor vehicle and no registration number is being given, it cannot be said that the JCB was not a motor under the provisions of the Motor Vehicles Act. In the facts and circumstances of the case, this Court is of the view that the learned Tribunal has rightly held that the JCB machine is motor for the purpose of Motor Vehicles Act."

19. Chhatisgarh High Court has held in the case of **Rajeshwari, and Others Vs. Rasool Mohammed and Others**, reported in **2020 Legal Eagle (CHH) 421** as under:-

"23. Now question arises is whether the dozer comes within the

purview of motor vehicles as defined under Section 2 (28) of the Act of 1988 or not. Motor vehicle or vehicles which is mechanically propelled vehicle adopted for use upon road has been included within the definition of motor vehicles and in the definition of motor vehicle, the vehicles have been excluded from the definition of 'motor vehicle' which are running upon fixed wheels or vehicle of a special type adopted for only use in factory or any other closed premises.

24. Rule 2 (ca) of the Rules, 1989 defines the Construction Equipment Vehicle in which it is specifically mentioned that it should be rubber tyred, rubber padded or steel drum wheel mounted, meaning thereby the vehicles mentioned therein and having wheels of a prescribed type, only will come within the purview of Rule 2 (ca) of the Rules, 1989. Under the explanation clause of said Rule in which again there is an exclusion of the vehicle which are to be used incidentally on highway and the vehicle / equipment designed adopted for use in any closed premises, factory or mines other than road net work.

25. In view of the aforementioned definitions as discussed above, if the facts of this case are considered, it would be apparent that the finding recorded by learned Claims Tribunal that offending dozer involved in the accident was running on collar chain and not on the rubber tyres, or rubber padded or steel drum wheel mounted is not in dispute. When once it is admitted by learned counsel for the appellants that the vehicle involved in the accident is a dozer run on collar chain wheels, it is apt clear that it cannot be adopted for use upon roads though it is mechanically propelled vehicle. It clearly specifies its use to be in any closed premises, factory or mines, other than road net works.

26. Motor vehicle or vehicles which are adapted for use upon roads are only included within the definition of 'motor vehicle' as provided under Section 2 (28) of the Act of 1988 and further under Rule 2 (ca) of the Rules, 1989, vehicles which is manufactured for its use, with 'on or off' or 'on and off' highway capabilities. In view of the finding recorded by learned Claims Tribunal in its order paragraph-17 that offending dozer was a collar chain fitted vehicle, it cannot be said that the said vehicle can also be used on highway or public road.

27. Hon'ble Supreme Court while considering the case of Rolani Ores Ltd Vs State of Orissa and other connected cases reported in (1974) 2 SCC 777 has considered the word 'motor vehicle' for the purposes of its registration and held as under:

“15. In all these cases the common question would be whether the definition of a 'motor vehicle' as it existed before the Amendment Act of 1956 is the same as in s. 2(c) of the Taxation Act or does the definition in s. 2(c) of the Taxation Act mean that the motor vehicle as defined in the Act from time to time is to be adopted for the purpose of s. 2(c) of the Taxation Act. In so far as the larger question is L251 Sup.CI/75 concerned, as to Whether dumpers, rockers and tractors are motor vehicles at all within the meaning of the first part of the definition of 'motor vehicle' in s. 2 (18) of the Act, which is the same before and after the amendment, it is contended that these vehicles are :not suitably adapted for use upon roads, which according to the learned Advocates mean the public roads or roads, to which the public has a right of access. The Motor Vehicles Taxation Acts are enacted in exercise of the powers conferred on the State Legislatures under entry 57 of List II of the Seventh Schedule to the Constitution, while the Motor Vehicles Act is enacted by the Parliament in exercise of the 'concurrent legislative power in entry 35 of List III of the Seventh Schedule to the Constitution. Entry 57 of List II empowers legislation in respect of taxes on vehicles, whether mechanically propelled or not,suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III. The power exercisable under entry 57 is the power to impost taxes which are in nature of regulatory and compensatory measures. The regulatory and compensatory nature of the tax is that the taxing power should be exercised to impose taxes on motor vehicles which use the roads in the State or are kept for use thereon either throughout the whole area or parts thereof and are sufficient to make and maintain such roads : See The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and others.(1) In this case, the earlier decision in Atiabari Tea Company Ltd. v. The State of Assam and others (2) was considered. Since the taxing statute is a regulatory or compensatory statute, it is contended that the provisions of ss. 6B, 7, 9A of the Taxation Act relate only to the actual use of the public road. It is pointed out that s. 6 of the Taxation Act does not place the burden of taxation on the registered owners of the motor vehicles, but only on the persons who keep the motor vehicles for use which would mean use their on the public roads. If no such use of public roads is made or the vehicles are not such as can be used on the public roads, then no tax could be levied under the Taxation Act. Reference in the Taxation Act to the registered owners is, it is submitted, meant only for the purpose

of enabling refund of tax paid but not payable in terms of the Act, or s. 7 of the Taxation Act. Under Entry 35 of the Concurrent List, the Parliament as well as the State Legislatures can legislate in respect of only mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. It has no power to deal with vehicles which are not mechanically propelled though under the Taxation Act these non-mechanically propelled vehicles which are suitable for use on roads can also be taxed even without their being registered under the Act. It will thus be seen that while entry 57 of List II is solely concerned with taxes on vehicles whether mechanically propelled or not, entry 35 deals with also the principles on which taxes on such vehicles are to be levied. Taxes on vehicles cannot the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression 'principles of taxation' denote rules of guidance in the matter of taxation. The ambit and amplitude of these two legislative entries in the respective Lists was dealt within State of Assam Vs Labanya Probha Debi, where Suba Rao CJ., speaking for the Constitution Bench of this Court observed at p. 614

"The two entries deal with two different matters though allied ones-one deals with taxes on vehicles and the other with the principles on which such taxes are to be levied. when two entries in the Constitution, whether in the same List or different Lists, deal with two subjects, if possible, an attempt shall be made to harmonize them rather than to bring them into conflict. Taxes on vehicles in their ordinary meaning connote the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression " principles of taxation" denotes rules of guidance in the matter of taxation. We, therefore, hold that the Amending Acts do not come into conflict with the existing law in respect of any principles of taxation, but only deal with a subject-matter which is exclusively within the legislative competence of the State Legislature."

It is contended that having regard to the nature of the vehicles question they are particularly suitable for the functions they are performing and unsuitable for the roads on which they would be only a source of damage, inconvenience, danger and uneconomical compared with the other vehicles usually utilised for transport of goods. Accordingly it is submitted that : (1) the present case should be determined with reference to the definition of 'motor vehicle' read without the amendment in the Act, as such vehicles operating solely within the

appellants' premises should not be liable to tax; (2) the vehicles not being suitable for public roads would not be either registered or taxed whether before or after 1956. Both for the purposes of registration and taxation the common question arises, viz., whether the vehicles in question are adapted for use upon roads, which, it is submitted, are public roads or roads to which public have a right of access. If they are not, then they are not 'motor vehicles' within the meaning of either the Act or the Taxation Act; (3) the concept 'adapted for use on roads' must lie within the ambit of the expression used by the Constitution; otherwise it would be unconstitutional. It must, therefore, follow that the definition can only refer to vehicles which are reasonably suitable for the road in the sense that an average man could think that plying of the vehicles on the road would be one of the normal uses of the vehicles. That alone would be a test of suitability; and (4) for the interpretation of s. 22 of the Act it would be permissible and even obligatory to examine the section not in isolation but in the light of the object and scheme of the Act and the regulatory provisions regarding the licensing of drivers, issuing of permits, provisions for compulsory registration and other regulatory provision are confined to the vehicles on the public roads. The provisions of s. 22 are definitely to advance the objects of the Act and to effectuate the regulatory provisions. By the very language the principal purpose is to insist upon registration in respect of vehicles plying in public places. Further, the expression must be interpreted to advance the object of the Act exactly as the other para of s. 22 does. In this view the expression "purpose of carrying passengers or goods" cannot mean the personal use of the owner. A person himself cannot be the passenger and goods, and as such it must not be interpreted disjunctively. It is a single expression "passenger or goods". It is conceivable that this alternative part of the section is only to ensure that in connection with the journey on a public road even if a motor vehicle goes into a place which will not be strictly a public place like hotel or inside a railway, such as in a Railway Station, or even inside the premises of a bus depot, hospitals, etc. provisions for compulsory registration should be applicable. The judgment of the High Court is assailed on the ground that while formulating the test to determine whether a vehicle is adapted for use on the roads it has evidently equated compatibility with suitability, because at certain places it has laid down the test in terms of compatibility and at other places in terms of suitability. This is clearly illustrative by its decision regarding

'tractor'. A tractor without a tailor can neither carry passengers nor goods. In the instant case, it is said that the tractor cannot ply in a public place, nor does it ply in any other place for carrying passengers or goods. It could not evidently fall within s. 22 of the Act. Though this is so, the High Court says that because it can be adapted by attaching a tailor, it comes within s. 2(18), forgetting that what we are concerned with is a tractor without a tailor which is actually used to supply compressed air to certain plants or machines, which clearly shows that the High Court did not have a correct concept of "adapted for use on road".

16. Shri Soli Sorabji on behalf of the interveners has more or less adopted a similar line of argument and has referred us to the several dictionary meanings of the word 'adapted'. He has also referred to the English cases on this question and submitted that no vehicle can be taxed unless it possesses the attribute of being "suitable for use on roads". The expression "adapted for use on roads" must be construed as suitable for use on roads in the light of entry 57; otherwise, the legislation would be ultra vires the said entry, and consequently such a construction should be avoided by courts. He further submitted that the Orissa High Court has misconstrued the judgment of the Supreme Court in *State of Mysore v. Syed Ibrahim*,⁽¹⁾ where the observations were made with reference to the definition of "a public service vehicle" as defined in s. 2(25) of the Act, under which user by itself was sufficient to bring the vehicle within its purview. He has referred us to ss. 47(f), 55(f), 71(2), 74, 75(1) and (3) and 77 of the Act in support of his proposition that having regard to the general object, purpose and the policy underlying the Act the expression "roads" must mean public roads and not private roads. If so, the dumpers, rockers and tractors etc. which do not ply or are not suitable for plying on public roads cannot be either registered under the Act or taxed under the Taxation Act.

22 As usual references have been made to the Dictionaries but quite often it is not possible to hold a dictionary in one hand and the statute to be interpreted in the other for ascertaining the import and intent of the word or expression used by the Legislature. The shade of meaning of a word, its different connotations and collocations which one finds in a dictionary does not relieve us of

the responsibility of having to make the ultimate choice of selecting the right meaning. We choose that meaning which is most apt in the context, colour and diction in which the word is used. The use of a dictionary ad lib without an analysis of the entire Act, its purpose and its intent, for ascertaining the meaning in which the Legislature could have used the word or expression may not lead us to the right conclusion. With this caution before us for avoiding any of the aforesaid methods which might lead to a possible incongruity, we will examine the different facets to which our attention has been drawn.

23 The meaning of the word "adapted" in s. 2(18) of the Act is itself indicated in entry 57 of List II of the Seventh Schedule to the Constitution, which confers a power on the State to tax vehicles whether propelled mechanically or not and uses the word "suitable" in relation to its use on the roads. The words "adapted for use" must therefore be construed as "suitable for use". At any rate, words "adapted for use" cannot be larger in their import by including vehicles 'Which are not "suitable for use" on roads. In this sense, the words "is adapted" for use have the same connotation as "is suitable" or "is fit" for use on the roads.'

28. Hon'ble Supreme Court in the aforementioned judgment had held that the vehicles adoptable or suitable for running on the road to be included under the definition of motor vehicles. The vehicle involved in the case at hand as discussed above was fitted with collar chain which will damage the road if it is used on the road as such not adaptable for use on roads. Hence, this vehicle will fall within the exclusion clause of definition under Section 2(28) of the Act of 1988 and also the excluded clause of explanation of Rule 2(ca) of the Rules of 1989."

20. Kerala High Court has held in the case of *Intelligence officer, squad No. iv, Kozhikode and others Vs. Ray constructions Ltd.* (2006) 147 STC 438 as under:-

"The short question that arises for consideration in this case is whether an excavator not running on inflated tyres, but on iron chain plates such as a caterpillar vehicle or a military tank

would be a motor vehicle within the meaning of section 2(28) of the "The Act of 1988" read with section 2(1)(j) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 and therefore would fall under entry 1 of the Schedule to the Kerala Tax on Entry of Goods into Local Areas Act, 1994 and is liable to tax under section 3 of the said Act.....

The scope of sub-section (28) of section 2 of the Motor Vehicles Act and also section 2(1)(j) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 was considered by this court and apex Court on several occasions which requires no further reiteration. Apex Court in Bose Abraham's case [2001] 121 STC 614 ; (2001) 9 KTR 336, also has taken the view that excavators and road rollers are motor vehicles within the meaning of sub-section (28) of section 2 read with section 2(1)(j) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994. The excavator in question is mounted on iron plates made into chain such as caterpillar vehicle or a military tank. Such an excavator is used for excavating the earth and loading in lorries. They cannot be used upon public roads since roads would get damaged by the chains. Further the excavator can gain only a speed of 1.5 km per hour. The excavator moves around only in the works site and that it is not suitable or adapted for use in public roads. We have referred to the decision of the Supreme Court in Bolani Ores Ltd. v. State of Orissa (1975) 2 SCR 138 ; AIR 1975 SC 17. We may extract a portion of the judgment which reads as follows :

“The question would then arise, are dumpers, rockers and tractors suitable or fit for use on roads ? It is not denied, that these vehicles are on pneumatic wheels and can be moved about from place to place with mechanical power. The word ‘vehicle’ itself connotes that it is a contrivance which moves. A vehicle which merely moves from one place to another need not necessarily be a motor vehicle within the meaning of section 2(28) of the Act. It may move on iron flats made into a chain such as a caterpillar vehicle or a military tank. Both move from one place to another but are not suitable for use on roads. It is not that they cannot move on the roads but that they are not adapted, made fit or suitable for use on roads. They would, if

used, dig and damage the roads.”

Reference may also be made to the decision of the apex Court in Central Coal Fields Ltd. v. State of Orissa AIR 1992 SC 1371, wherein the apex Court held as follows :

“.. .. Pictures of various types of dumpers have also been sent to us which indicate prominently one factor that these dumpers run on tyres, in marked contrast to chain plates like caterpillars or military tanks. By the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads.”

The above decisions would categorically show that the apex Court itself had made a distinction between vehicles fitted with chain plates like caterpillars and military tank and others. The excavator referred to in Bose Abraham's case [2001] 121 STC 614 (SC) ; (2001) 9 KTR 336, was a motor vehicle fitted with inflated tyres and not chain plates like caterpillars or military tank.

Under the abovementioned circumstances, we are in agreement with the learned single Judge that the excavators fitted with chain plates like caterpillars like military tanks are not motor vehicles within the meaning of sub-section (28) of section 2 of the Motor Vehicles Act read with section 2(1)(j) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994."

सत्यमेव जयते

21. In the instant case, accident has occurred from chain mounted excavator caterpillar and in the light of legal provisions and principles of law as enunciated by Hon'ble Apex Court as well as coordinate Bench of this Court and other High Courts, discussed and mentioned in preceding paras, in this Court's considered opinion, offending vehicle i.e. chain mounted caterpillar, does not come within the purview of motor vehicle as defined in motor vehicle Act.

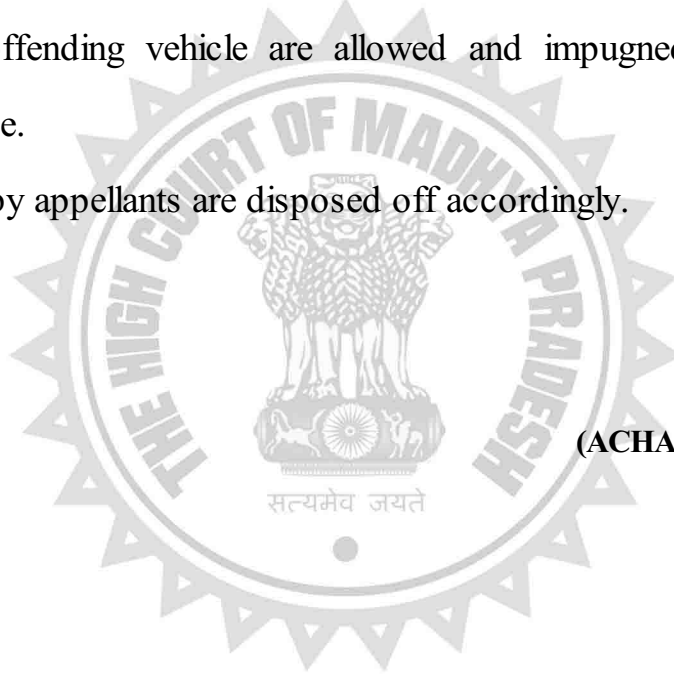
22. Claimants have filed present claim petition under Section 166 of Motor Vehicle Act and an application under Section 166 of Act of 1988 is only maintainable when accident involving death or bodily injury of a person arising out of use of motor vehicle. As in the instant case, offending vehicle, does not come within the purview of motor vehicle,

hence, claimants' claim petition under Section 166 of Motor Vehicle Act is not maintainable.

23. Hence, in view of discussion in the foregoing paras, in this Court's considered opinion, learned Tribunal has wrongly held that chain mounted excavator caterpillar (offending vehicle) comes within the purview of motor vehicle under Motor Vehicles Act. Therefore, findings recorded by the Tribunal with respect to above being perverse and illegal are hereby set aside. Therefore, claimants are not entitled to receive any compensation under Section 166 of Act.

24. In view of above, appeals filed by appellant Insurance Company as well as owner/driver of offending vehicle are allowed and impugned award passed by the Tribunal is set aside.

25. Appeals filed by appellants are disposed off accordingly.



**(ACHAL KUMAR PALIWAL)
JUDGE**