Shivaji Dayanu Patil and another

Vs

Vatschala Uttam More

Spl. Leave Petn. (Civil) No. 14822 of 1990

(B. C. Ray, S. C. Agrawal JJ)

17.07.1991

JUDGEMENT

S. C. AGRAWAL, J.:-

1.The questions raised for consideration in this petition for special leave to appeal involve the interpretation of the expression "arising out of the use of a motor vehicle" contained in Section 92A of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act').

2. On October 29, 1987, at about 3 a.m., there was a collision between a petrol tanker bearing Registration No. MKL-7461 and a truck bearing Registration No. MEH-4197 on the National Highway No. 4 near village Kavatha, in District Satara, Maharashtra. The petrol tanker was proceeding from Pune side to Bangalore whereas the truck was coming from the opposite direction. As a result of the said 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 the overturning of the petrol tanker, the petrol contained in it leaked out and collected nearby. At about 7.15 a.m., an explosion took place in the said petrol tanker resulting in fire. A number of persons who had assembled near the petrol tanker sustained burn injuries and a few of them succumbed to the said injuries. One of those who died as a result of such injuries was Deepak Uttam More. The respondent is the mother of Deepak Uttam More. Petitioner No. 1 is the owner of the said petrol tanker and Petitioner No. 2, the insurer of the same.

3. The respondent, as the legal representative of her deceased son, filed a claim petition before the Motor Accident Claims Tribunal, Satara ('Claims Tribunal') under S. 110 of the Act claiming Rs. 75,000/-as compensation from the petitioners. She also made a claim for payment of Rs. 15,000/-as compensation u/ S. 92A of the Act. It appears that claim petitions were also filed by the legal representatives of other persons who had died as a result.of the burn injuries sustained by them in the explosion and. fire in the petrol tanker. The petitioners contested the claim petitions filed by the respondent and other claimants u/S.92A of the Act and raised objection with regard to thejurisdiction of tne Claims Tribunal to entertain such petitions on the ground that explosion and fire resulting in injuries to the deceased could not be said to be an accident arising out of the use of a motor vehicle. The Claims Tribunal, decided all the claim petitions filed under S. 92A of the Act by a common order dated December 2, 1989 whereby the said petitions were dismissed on the ground that the explosion could not be said to be an accident arising out of the use of the petrol tanker and that the provisions of S. 92A of the Act were not attracted. The Claims Tribunal was of the view that the explosion and the fire which took place after about four hours had no connection whatsoever with the accident which took place at 3 a.m. and that the explosion and the fire was altogether an independent accident. The Claims Tribunal also observed that the villagers tried to

take the benefit of the earlier accident and tried to pilfer petrol from the petrol tanker and while thus pilfering the petrol there was friction which caused ignition and explosion and since an outside agency was responsible for the explosion and fire which situation was created by the villagers themselves the explosion could not be said to be an accident arising out of the use of the tanker. The respondent filed an appeal against the said order of the Claims Tribunal before the High Court. The said appeal was allowed by a learned single Judge of the High Court by judgment dated February 5, 1990.* The learned single Judge disagreed with the finding of the Claims Tribunal that the explosion was a direct consequence of the attempt to pilfer petrol from the tanker and observed that the Tribunal was not justified in proceeding on the assumption that all the injured persons and deceased were engaged in pilfering the petrol and the explosion was a direct consequence of the same. The learned single Judge also held that in view of sub-see. (4) of S. 92A of the Act if there is a wrongful act, neglect or default on the part of the deceased or the injured, the claim u/ S. 92A of the Act for compensation for no fault liability cannot be rejected. With regard to the applicability of S. 92A of the Act, the learned single Judge observed that the fact that at the material time the tanker was not being driven on the Highway but was lying turtle on its side would make no difference and that it was a vehicle lying on the side of the Highway and would be covered by the expression 'use' in S. 92A of the Act and compensation would be payable under no fault liability of S. 92A of the Act. He, therefore, directed payment of Rupees 15,000/- as compensation u/ S. 92A of the Act to the respondent. The petitioners filed a Letters Patent Appeal against the said decision of the learned single Judge which was dismissed by a Division Bench of the High Court by judgment dated August 16, 1990. The Appellate Bench of the High Court has affirmed the finding of the learned single Judge that there was no evidence whatsoever that the person or persons in respect otwhose deaths compensation had been claimed under S. 92A were themselves committing theft or pilferage of petrol at the time of their deaths and that these victims could have only been curious by-standers at the site of the accident. The learned Judges have observed that the expression 'use of a motor vehicle' covers a very wide field, a field more extensive than which might be called traffic use of the motor vehicle and that the use of a vehicle is not confined to the periods when it was in motion or was moving and that vehicle would still be in use even when it was stationary. The learned Judges were of the view that merely because there was interval of about four and half hours between the collision of the petrol tanker and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between earlier event and the later incident of explosion and fire and that the earlier collision if not the cause was at least the main contributory factor for the subsequent explosion and fire in the tanker in question inasmuch as the tanker was carrying petrol which was a highly combustible and volatile material and after the collision the petrol tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and there was grave risk of explosion and fire from the petrol coming out of the tanker and the tanker was allowed to remain in such a dangerous condition for hours without any effort being made to prevent such great hazard of fire and explosion from petrol escaping from the tanker. According to the learned Judges, the collision between the tanker and the' other vehicle which occurred earlier and the escape of petrol from the tanker which ultimately resulted in explosion and fire were not unconnected but related events. The learned Judges rejected the submission made on behalf of the petitioners that in the instant case the first information report recorded by the police and the panchanama indicated that the explosion and fire near the petrol tanker had been caused by careless act of throwing away of a match stick used for lighting a beedi or cigarette. The learned Judges held that the papers and documents filed before the Claims Tribunal under Rule 306B of the Bombay Motor Vehicles Rules, 1959 did not establish that the fire was ignited by someone carelessly throwing a match stick. Feeling aggrieved by the said decision of the Appellate Bench of the Bombay High Court, the petitioners have file this petition for special leave to appeal. A notice for

final disposal was issued on the petition and the learned counsel for the parties have been heard at length.

* Reported in AIR 1991 Bombay 234.

4. Shri G.L. Sanghi, the learned counsel appearing for the petitioners, has urged that in the instant case, it cannot be said that the explosion and fire in the petrol tanker which occurred at about 7.15 a.m., i.e., nearly four and half hours after the collision involving the petrol tanker and the other truck was an accident arising out of the use of a motor vehicle and, therefore, the claim petition filed by the respondent could not be entertained u/ S. 92A of the Act. Shri Sanghi has made a three-fold submission in this regard. In the first place, he has submitted that the petrol tanker was not a motor vehicle as defined in S. 2(18) of the Act at the time when the explosion and fire took place because at that time the petrol tanker was lying turtle and was not capable of movement on the road. The second submission of Shri Sanghi is that since before the explosion and fire the petrol tanker was lying immobile it could not be said that the petrol tanker, even if it be assumed that it was a motor vehicle, was in use as a motor vehicle at the time of the explosion and fire. Thirdly, it has been submitted by Shri Sanghi that even if it is found that the petrol tanker was in use as a motor vehicle at the time of the explosion and fire, there was no causal relationship between the collision which took place between the petrol tanker and the truck at about 3 a.m. and the explosion and fire in the petrol tanker which took place about four and half hours later and it cannot, therefore, be said that explosion and fire in the petrol tanker was an accident arising out of the use of a motor vehicle.

5. Before we proceed to deal with the aforesaid submissions of Shri Sanchi, it would be relevant to mention that S. 92A of the Act forms part of Chapter VII-A which was introduced in the Act by Motor Vehicles (Amendment) Act, 1982 (Act 47 of 1982). The said Chapter bears the heading "LIABILITY WITHOUT FAULT IN CERTAIN CASES" and contains Ss.92A to 92E. The purpose underlying the enactment of these provisions, as indicated in the Statement of Objests and Reasons appended to the Bill, was as follows :

There has been a rapid development of road transport during the past few years and large increase in the number of motor vehicles on the road. The incidence of road accidents by motor vehicles has reached serious proportions. During the last three years, the number of road accidents per year on the average has been around 1.45 lakhs and of these the number of fatal accidents has been around 20,000 per year. The victims of these accidents are generally pedestrians belonging to the less affluent sections of society. The provisions of the Act as to compensation in respect of accidents can be availed of only in cases of accidents which can be proved to have taken place as a result of a wronglful act or negligence on the part of the owners or drivers of the vehicles concerned. Having regard to the nature of circumstances in which road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what are known as 'hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown....."

6. In this context, it may bepointed out that before the. said amendment this Court had highlighted the need for legislation providing for no fault liability in motor accidents claims in a number of decisions. (Sec : Manjusri Raha v. B.L. Gupta (1977) 2 SCR 944 : (AIR 1977 SC 1158); State of

Haryana v. Darshana Devi, (1979) 3 SCR 184 : (AIR 1979 SC 855); Bishan Devi v. Sirbaksh Singh, (1980) 1 SCR 300 : (AIR 1979 SC 1862) and N.K.V. Bros. Ltd. v. M. Karumai Ammal, (1980) 3 SCR 101 (AIR 1980 SC 1354)).

7. Section 92A which made provision for liability to pay compensation in certain cases on the principle of no fault read as under:

> "92-A. Liability to pay compensation in certain cases on the principle of no fault - (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a Motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the prqvisions of this section.
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> (2) The amount of compensation which shall be payable under sub-sec. (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.
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> (3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.
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> (4) A claim for compensation under sub-sec. (1) shall not be defeated by reason of any wrongful act,neglect or default of the person in respect of whose death or permanent disablement the claim has been.made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

8. Section 92B preserved the right to pay compensation for death or permanent disablement under other provisions of the Act and it provided as follows:

> "92-B. Provisions as to other right to claim compensation for death or permanent disableinent - (1) The right to claim compensation u/ S. 92A in respect of death or permnent disablement of any person shall be in addition to any other right (hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.
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> (2) A claim for compensation u/ S. 92A in respect of death or permanent disabletnent of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/ S. 92A and also in pursuance of any right on the principle of fault, the claim for compensation u/ S. 92A shall be disposed of as aforesaid in the first place.
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> (3) Notwithstanding anything contained in sub-section(l), where in respect of the death or permanent disablement of any person, the person liable to pay compensation

u/ S. 92A is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the firstmentioned compensation and -

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned, he shall be liable to pay (in addition the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the firstmentioned compensation is equal to or less than the amount of the second-mentioned compensation, he shall not be liable to pay the second' mentioned compensation."

9. In S. 92C of the Act, the expression , Dermanent disablement' for the purpose of chapter VII-A was explained. S. 92D made the provisions of Chapter VII-A applicable in relation to any claim in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923 (8 of 1923) resulting from an accident of the nature referred to in sub-sec. (1) of S. 92-A. S. 92E of the Act gave overriding effect to the provisions of Chapter VII-A over any other provisions of the Act or of any law for the time being in force.

10. In Gujarat State Road Transport. Corporation v. Ramanbhai Prabhatbhai, (1987) 3 SCR 404 : AIR 1987 SC 1690), a reference has been made to the background in which Chapter VIIA was introduced in the Act and it has been observed:

"When the Fatal Accidents Act, 1855 was enacted there were no motor vehicles on the roads. in India. Today, thanks to the modern civilisation, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher, [1868] LR 3 HL 330, 340. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault. In order to meet the above social demand on the recommendation of the Indian Law Commission Chapter VIIA was introduced in the Act. (pp 415-416) (of SCR). (at . 1697 of AIR)."

11. In that case,thisCourtaftertakingof the provisions contained in S. 92A has further observed: (1987 (3) SCR 404: AIR 1987 SC 1690).

"It is thus seen that to a limited extent relief has been granted u/ S. 92A of the Act to the legal representatives of the victims who have died on account of motor vehicles

> accidents. Now they can claim Rs. 15,000/-without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified."(Pp. 416-417) (of SCR): (at Pp. 1697-98 of AIR).
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> 12. It is thus evident that Section 92A in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose. The same approach has been adoptsions 6f the - Act. [See Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi (1982) 1 SCR 860: (AIR 1981 SC 2059); and Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan, (1987) 2 SCR 752: (AIR 1987 SC 1184)1.

13. The expression "arising out of the use of motor vehicles" was also used by Parliaent in sub-sec. (1) of S. 1 10 of the Act wherein provision was made for constitution of Motor Accidents Claims Tribunals for speedy and expeditious adjudication of claims of compensation in respect of accidents involving death or bodily injuries to persons arising out of the use of motor vehicles or damages to any property of a third party so arising or both. Furthermore, by sub-sec. (1) of S. 94 of the Act an obligation was imposed that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter VIII of the Act. S. 95 prescribed the requirements of such insurance policies as well as limits of liability. In cl. (b) of sub-see. (1) of S. 95, it was laid down that the policy of insurance required must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-see. (2) against (i) any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place and (ii) 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. While construing the expression "arising out of the use of a motor vehicle" in sub-sec. (1) of S. 92A of the Act, egard will have to be had to the fact that expressions to the same effect were also contained in Ss. 95 and 1 10 of the Act.

14. The first submission of Shri Sanghi is based on the definition of the expression "motor vehicle" contained in sub-sec. (18) of S. 2 of the Act which was as under: "2(18) "motor 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 which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises."

15. Shri Sanghi has urged that the word "adapted"in the aforesaid provision has been construed by this court in Bolani Ores Ltd. v. State of Orissa, (1975) 2 SCR 138: (AIR 1975 SC 17) to mean suitable or fit for use on the roads and that in the instant case, it cannot be said that at the time when the explosion and fire took place the petrol tanker which was lying turtle was suitable or fit for use

on the road. We find it difficult to accept this contention. The petrol tanker was a vehicle manufactured for the purpose of transporting petrol. It was a vehicle which had been adapted for such use and was suitable for use on the road for transporting petrol. At the time when the petrol tanker collided with the truck on the national highway, it was being used for the purpose of transporting petrol. It cannot, therefore, be disputed that when the said collision took place it was a motor vehicle as the said expression was defined in S. 2(18) of the Act. Did it cease to be motor vehicle after the collision with the truck on account of its lying turtle on its side at some distance from the road as a result of the said collision? In our view, this question must be answered in the negative. Merely because the petrol tanker had turned turtle as a result of the collision and was lying at a short distance away from the road, does not mean that it had ceased to be suitable or fit for use on the road and it had ceased to be a motor vehicle. No material has been placed on record to show that the petrol tanker would not have been in a position to move after it was put back on the wheels.

16. The question whether a vehicle has ceased to be a mechanically propelled vehicle has been considered by the English Courts in cases involving prosecution for offence under S. 15 of the Vehicles (Excise) Act, 1949 which imposed a penalty on a person using on a public road any mechanically propelled vehicle for which a licence under the said Act was not in force. In Newberry v. Simmonds, (1961) 2 QB 345, the prosecution was in respect of a motor-car whose engine had been stolen some time prior to the period in question. It was contended by the owner that since the engine of the motor-car had been stolen it had ceased to be a mechanically propelled vehicle. Negativing the said contention, it was held:

> "We are, however, satisfied that a motorcar does not cease to be a mechanically propelled vehicle upon the mere removal of the engine if the evidence admits the possibility that the engine may shortly be replaced and the motive power restored." (p. 350)
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> 17. In Smart v. Allan, (1963) 1 QB 291, a similar question arose. Here the defendant had bought a car for Pounds 2 and subsequently sold it as scrap for 30s. It was found that the engine was in a rusty condition and was incomplete and it did not work, and there was no gear-box or electric batteries; and the car was incapable of moving under its own power, having been towed from place to place and that it could only have been put in running order again by supplying a considerable number of spare parts and effecting considerable repairs, the cost of which would have been out of all proportion to its value. In support of the prosecution it was urged that every vehicle which starts its life as a mechanically propelled vehicle remains such until it is physically destroyed. Rejecting the said contention, Lord Parker, C. J. observed:
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> "..... it seems to me as a matter t)f common sense that some limit must be put, and some stage must be reached, when one can say: "This is so immobile that it has ceased to be a mechanically propelled vehicle." Where, as in the present case, and unlike Newberry v. Simmonds, there is no reasonable prospect of the vehicle ever being made mobile again, it seems to me that, at any rate at that stage, a vehicle has ceased to be a mechanically propelled vehicle." (p. 298) We are inclined to agree with this formulation.

18. In the instant case, it cannot be sale' that the petrol tanker as a result of the collusion with the truck was damaged to such an extent that there was no reasonable prospect of the vehicle ever being made mobile again. In the circumstances, it cannot be held that the petrol tanker which was a motor

vehicle when it collided with the truck had ceased to be a motor vehicle after the said collision and it could not be regarded a motor vehicle u/ S. 2(18) of the Act at the time when the explosion and fire took place.

19. The second submission of Shri Sanghi was that even if it be assumed that at the time' when the explosion and fire took place in the petrol tanker it was a motor vehicle, the tanker was not being used as a motor vehicle at that time inasmuch as it was lying immobile on its side. It is, however, not disputed by Shri Sanghi that at the time when the petrol tanker had collided with the truck, it was being used as a motor vehicle but his submission was that the said user came to an end on such collision when the petrol tanker turned turtle and was rendered immobile. This contention postulates a restricted meaning for the word "use,, in the expression "use of the motor vehicle" by confining it to a situation when the vehicle is mobile. The learned counsel for the respondent has, on the other hand, suggested a wider connotation for the word "use" so as to include the period when the vehicle is stationary and has invited our attention to the observations in Elliott v. Grey, (1960) 1 QB 367; Government Insurance Office of New South Wales v. R. J. Green and Lloyd Pty. Ltd., (1965) 114 CLR 437; Pushpa Rani Chopra v. Anokha Singh, 1975 Acc CJ 396 (Delhi); General Manager, K.S.R.T.C. v. S. Satalingappa, 1979 Acc CJ 452 : (AIR 1979 Karnataka 10); and Oriental Fire and General Insurance Co. Ltd. v. Suman Navnath Rajguru, 1985 Acc CJ 243 (Bom).

20. Elliott v. Grey (supra) related to prosecution for offence under Section 35(1) of the Road Traffic Act, 1930 for using a motor car on road without there being in force in relation to such user an insurance policy in respect of third-party risks complying with the requirements of Part 2 of the said Act. The motor car of the appellant was standing on the road outside the appellant's house for the past few months, after it broke down and in the meanwhile the insurance cover of the motor car had terminated. While it was thus parked, another motor vehicle had collided with appellant's motor car. On that date, the appellant had cleaned the car, sent the battery to be recharged and had replaced the old carburettor with a new one. The car could not be mechanically propelled because the engine would not work. On behalf of the appellant it was urged that the ordinary use of the words "to use" in relation to a motor car contemplates some active movement, either driving it or taking part in a journey in it or moving it and the word "use" is quite inapt in relation to a motor car which cannot be used because it is out of action. The said contention was rejected. The word "use" was construed in a wider sense to mean "to have the advantage of a vehicle as a means of transport including for any period or time between journey". In taking this view, Lord Parker, C.J. stated that he was influened by the fact that S. 35 appeared in Part 2 of the Road Traffic Act under the heading "provisions against third party risks arising out of the use of motor vehicles" which is intended for protection of third parties.

21. Similarly in Government Insurance Office of New South Wales v. R. J. Green and Lloyd Pty. Ltd., (1965 (114) CLR 437) (supra), Barwick, C.J., while construing the word 'use' in Motor Vehicles (Third Party Insurance) Act, 1942-1951 (N.S.W.) has observed that the said Act indicated an intention to cover a very wide field, a field more extensive than what might be called the traffic use of the motor vehicle. The learned Chief Justice has further observed: "In my opinion, the relevant use of the vehicle cannot be confined to the periods it is in motion, or its parts moving in some operation. It may be in use though stationary."

22. In Pushpa Rani Chopra v. Anokha Singh, (1975 Acc CJ 396) (supra), a learned Judge of the Delhi High Court, while constructing the word 'use' in S. 110 of the Act, has held that the said word has been used in a wider sense and it covers all employments of the motor vehicle on the public places including its driving, parking, keeping stationary, repairing, or leaving unattended on the

road or for any other purpose. In that case, the truck in question was stationary as its axle had broken down and it was parked on the road at the time of the accident.

23. In General Manager, K.S.R. T.C. v. S. Satalingappa, (AIR 1979 Karnataka 10) (supra), the vehicle in question was a transport bus which was stationed by its driver on a slope unattended. The bus suddently started moving and dashed against a tea shop. It was held by a Division Bench of the Karnataka High Court that the bus was in use at that time.

24. In Oriental Fire and General Ins. Co. Ltd. v. Suman Navnath Rajguru, (1985 Ac c CJ 243) (supra), a petrol tanker was parked near the footpath on the ' road in front of a petrol pump and it burst and exploded causing fatal injuries to a passer-by. A Division Bench of the Bombay High Court rejected the contention that at the material time, the petrol tanker was not in 'use'.

25. These decisions indicate that the word "use" in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some break-down or mechanical defect. Relying on the abovementioned decisions, the Appellate Bench of the High Court has held that the expression "use of a motor vehicle" in S. 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the 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 that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break-down or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck.

26. The only other question which remains to be considered is whether the explosion and fire which caused injuries to the deceased son of the respondent can be said to have taken place due to an accident arising out of the use of a motor vehicle viz. the petrol tanker. Shri Sanghi has urged that the expression 'arising out of.the use of a motor vehicle'implies a causal relationship between the user of the motor vehicle and the accident which has resulted in death or disablement and that in the present case it cannot be said that the explosion and fire which took place in the petrol tanker four and half hours after the collision and after the tajqker had turned turtle was an accident arising out of the use of the petrol tanker. In this regard, Shri Sanghi has emphasised that the persons who sustained injuries as a result of the explosion and fire in the petrol tanker were pilfering petrol which had leaked out from the petrol tanker and the explosion and fire was the result of,the said unlawful activity of those persons and that it was not on account'of the user of the petrol tanker. Shri Sanghi, in this connection, has placed reliance on the decision in Mackinnon Machkenzie and Co. Pvt. Ltd. v. Ibrahim Mahommed Issak, (1970) 1 SCR 869: (AIR 1970 SC 1906), wherein this Court has construed the expression 'arising out of employment'appearing in S. 3 of the Workmen's Compensation Act 1923 and has laid down that there must be a causal relationship between the accident and the employment. Shri Sanghi has urged that similarly there must be a causal relationship between the accident and the user of the motor vehicle for the purpose of maintainability of a claim under Section 92A of the Act.

27. With regard to the submission of Shri Sanghi that the persons who sustained injuries as a result of the explosion and fire in the petrol tanker were pilfering petrol which had leaked out from the

tanker and that the explosion and fire was the result of this unlawful activity of those persons, we find that Claims Tribunal has recorded a finding that persons from the village Kavatha had gathered with their tins and barrels with the intention to pilfer petrol from the tanker and while pilfering the petrol probably ignition was caused by friction, but the said finding of the Claims Tribunal has not been upheld by the High Court. The learned single Judge has observed:

> "The learned member was influenced by the fact that certain villagers were trying to pilfer from the tanker to indicate that the explosion was a direct consequence of the attempt of pilfering the petrol from the tanker. In my view, the learned member was not justified in proceeding on the assumption that all the injured and the deceased were engaged in pilfering the petrol and the explosion was a direct consequence of the same..... It would not be just to hold that all the injured as also the deceased who met their fate on account of the explosion were all engaged in the crime of pilfering of the petrol."

28. The Appellate Bench affirming the said finding of the learned single Judge has laid down :

> "The learned single Judge has also rightly pointed out that there was also no evidence whatsoever that the person or persons in respect of whose deaths compensation had been claimed u/ S. 92-A were themselves actually committing theft or pilferage of petrol at the time of their deaths. These victims could have been only curious by standers at the site of the accident..... We find that in the instant case the papers and documents including the F.I.R. and the panchanama produced before the Tribunal did not establish that the fire was ignited by someone carelessly throwing a match stick."

29. We find no ground for interfering with these findings recorded by the High Court and we must proceed on the basis that the persons who sustained injuries as a result of the explosion and fire in the petrol tanker were not indulging in any unlawful activity which may have caused the said explosion and fire. The matter has, therefore, to be examined in the light of the meaning to be assigned to the words "arising out of" in the expression "accident arising out of the use of a motor vehicle" in S. 92-A.

30. The words "arising out of" have been used in various statutes in different contexts and have been construed by Courts widely as well as narrowly, keeping in view the context in which they have been used in a particular legislation.

31. In Heyman v.DarwinsLtd.,1942AC 356, while construing the arbitration clause in a contract, Lord Porter expressed the view that as compared to the word "under", the expression "arising out of" has a wider meaning. In Union of india v. E. B. Aaby's Rederi A/ S, 1975 AC 797, Viscount Discount Dilhorne and Lord Salmon stated that they could not discover any difference between the expression "arising out of" and "arising under" and they equated "arising out of" in the arbitration clause in a Charter Party with , arising under."

32. In Samick Lines Co. Ltd. v. Owners of the Antonis P. Lemos, (1985) 2 WLR 468, the House of Lords was considering the question whether a claim for damages based on negligence in tort could be regarded as a claim arising out of an agreement under S. 20(2)(1)(h) of the Supreme Court Act, 1981 and fell within the Admiralty jurisdiction of the High Court. The words "any claim arising out of any agreement relating to the carriage of goods in a ship or to the use of hire of a ship" in S. 20(2)(1)(h) were held to be wide enough to cover claims, whether in contract or tort arising out of

any agreement relating to the carriage of goods in a vessel and it was also held that for such an agreement to come within paragraph (h), it was not necessary that the claim in question be directly connected with some agreement of the kinds referred to in it. The words "arising out of" were not construed to mean "arising under" as in Union of India v. E. B. Aaby's A/ S (supra) which decision was held inapplicable to the "The words" injury caused by or ar ising out construction of S. 20(2)(1)(h) and it was observed by Lord Brandon:

> "With regard to the first point, I would readily accept that in certain contexts the expression "arising out of" may, on the ordinary and natural meaning of the words use, be the equivalent of the expression "arising under", and not that of the wider expression "connected with." In my view, however, the expression "arising out of" is, on the ordinary and natural meaning of the words used, capable, in other contexts, of being the equivalent of the wider expression "connected with". Whether the expression "arising out of" has the narrower or the wider meaning in any particular case must depend on the context in which it is used."

Keeping in view the context in which the expression was used in the statute it was construed to have the wider meaning viz. "connected with".

33. In the context of motor accidents the expressions "caused by" and "arising out of" are often used in statutes. Although both these expressions imply a causal relationship between the accident resulting in injury and the use of the motor vehicle but they differ in the degree of proximity of such relationship. This distinction has been lucidly brought out in the decision of the High Court of Australia in Government Insurance Office of N.S.W. v. R. J. Green's case (1965 (114) CLR 437) (supra), wherein Lord Barwick, C.J. has stated :

> "Bearing in mind the general purpose of the Act I think the expression'arising out of'must be taken to require a less proximate relationship of the injury to the relevant use of the vehicle than is required to satisfy the words caused by'. It may be that an association of the injury with the use of the vehicle while it cannot be said that that use was causally related to the injury may yet be enough to satisfy the expression 'arise out of' as used in the Act and in the policy." (p. 433)

34. In the same case, Windeyer, J. has observed as under :

> "The words 'injury by or arising out of the use of the vehicle' postulate a causal relationship between the use of the vehicle and the injury. 'Caused by' connotes a 'direct' or 'Proximate' relationship of cause and effect. 'Arising out of'extends this to a result that is less immediate; but it still carries a sense of consequence." (p. 447)

35. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections. 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In S. 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation u/ S. 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be,connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in S. 92-A enlarges the field of protection made available to the victims of an accident and is in consonance

with the beneficial object underlying the enactment.

36. Was the accident involing explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle? In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on slopping ground resulting in escape of highly inflammable petrol and th,, there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded 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 were not unconnected but related events and merely because there was 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. In the circumstances, it must be held that the explosion and fire resulting in the injuries whichled to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. the petrol tanker No. MKL 7461.

37. Shri Sanghi has also raised a question as to the procedure to be followed by the Claims Tribunal while adjudicating claims u /S. 92A of the Act and has submitted that such claims have to be adjudicated upon like other claims u/ S. 110A of the Act and that claimant must first adduce evidence to establish his/ her case and that the owner as well as the insurer of the vehicle in question must have a right to adduce evidence to rebut the same. In this context, it may be mentioned that procedure for adjudication of a claim petition u/ S. 110A of the Act by the Accident Claims Tribunal is contained in Rules 291, 311 of the Bombay Motor Vehicles Rules, 1989, (hereinafter referred to as 'the Rules'). The said Rules prescribe a form for filing a claim petition and the documents to be filed along with it (R. 291), examination of the applicant (R. 293), issue of notice to the opposite party (R. 297), filing of written statement by the opposite party (R. 298), framing of issues (Rule 299), recording of evidence (Rr. 300 and 301), local inspection (R. 302) and judgment and award of cornpensation (Rule 306).

38. After the enactment of S. 92-A, amendments have been made in the Rules in 1984.

39. In R. 291A which has been inserted by such amendments, it has been provided that :

> "Notwithstanding anything contained in R. 291, every application, for a claim under S. 92A shall be filed before the Claims Tribunal in triplicate and shall be signed by the appellant and the following documents be appended to every such application, namely,
>
> (i) Panchnama of the accident ;
>
> (ii) First information report ;
>
> (iii) Injury Certificate or in case of death, post morterm report or death certificate and ;
>
> (iv) a certificate regarding ownership and insurance particulars of vehicle involved in the accident from the Regional Transport Officer or the Police."

40. Rule 297 was substituted by the following provision :

> "297. Notice to opposite party.- (1) If the application is not dismissed under Rule 296, the Claims Tribunal shall, on an application in writing made to it by the applicant, sent to the owner or the driver of the vehicle or both from whom the applicant claims relief (hereinafter referred to as "the opposite party") and the insurer, a copy of the application, together with a notice of the date on which it will dispose of the application, and may call upon the parties to produce on that date any evidence which they may wish to tender.
>
> (2) Where the applicant makes a claim for compensation u/ S. 92A, the Claims Tribunal shall give notice to the owner and insurer, if any, of the vehicle involved in the accident directing them to appear on a date not later than ten days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the claims application filed by the claimant. The Claims Tribunal shall state in such notice that in case they fail to appear on such appointed date the Tribunal will, proceed ex parte on the presumption that they have no contention to make against the award of compensation."

41. Rule 306A empowers the claims Tribunal to obtain whatever supplementary information and documents which may be found necessary from the police, medical and other authorities and proceed to award the claim whether the parties who were given notice to appear or not on the appointed date.

Rule 306B lays down :

> (1) The Claims Tribunal shall proceed to award the claim of compensation u/ S. 92A on the basis of- (i) registration certificate of the motor vehicle involved in the accident ;
>
> (ii) insurance certificate or policy relating to the insurance of the vehicle against third party risks;
>
> (iii) panchnama and first information report;
>
> (iv) postmortem certificate or death cerrtificate; or certificate of injury from the mecticai officer; and
>
> (v) the nature of the treatment given by the medical officer who has examined the victim.
>
> (2) The Claims Tribunal in passing orders, shall make an award of compensation of fifteen thousand rupees in respect of the death and of seven thousand five hundred rupees in respect of the permanent disablement to be paid by insurer or owner of the vehicle involved in the accident.
>
> (3) Where compensation is awarded to two or more persons, the Claims Tribunal shall also specify the amount payable to each of them.
>
> (4) The Claims Tribunal in passing order under sub-rule (2) shall direct the insurer or

owner of the vehicle involved in the accident to pay the amount of compensation to the claimant within two weeks from the date of the said order.

(5) The Claims Tribunal shall as far as possible dispose of the application for compensation within forty-five days from the date of receipt of such application.

42. Rule 306C prescribes the procedure of disbursement of compensation u/ S. 92A to the legal heirs in case of death. The submission of Shri Sanghi is that in spite of the aforesaid amendments which have been introduced in the Rules after the enactment of S. 92A, the Claims Tribunal is required to follow the procedure contained in the other rules before awarding compensation under S. 92A of the Act. In other words, it must proceed to adjudicate the claim after the opposite party is afforded an opportunity to file the written submission under Rule 298, by framing issues under Rule 299 and after recording evidence in accordance with Rules 300 and 301 and that it is not permissible for the Claims Tribunal to make an order purely on the basis of the documents referred to in Rules 291 A, 306A and 306B. In our opinion, the said submission of Shri Sanghi cannot be accepted. The object underlying the enactment of Section 92A is to make available to the claimant compensation amount to the extent of Rs. 15,000/- in case of death and Rs. 7,500/ - in case of permanent disablement as expeditiously as possible and the said award has to be made before adjudication of the claim u/ S. 110A of the Act. This would be apparent from the provisions of S. 92B of the Act. S. 92B(2) of the Act provides that a claim for compensation u/ S. 92A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/ S. 92A and also in pursuance of any right on the principle of fault, the claim for compensation u/ S. 92A shall be disposed of as aforesaid in the first place. With a view to give effect to the said directive contained in S.92B of the Act, the Maharash'tra Government has amended the Rules and has inserted special provisions in respect of claims under S. 92A in Rules 291 A, 291 B, 297(2), 306A, 306B, 306C and 306D of the Rules. The object underlying the said provisions is to enable expeditious disposal of a claim petition u/ S. 92A of the Act. The said object would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as for, adjudicating a claim petition u/ S. 1 10A of the Act. Moreover, for awarding compensation u/ S. 92A of the Act, the Claims Tribunal is required, to satisfy itself in respect of the following matters :

(i) an accident has arisen out of the use of a motor vehicle ;

(ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim ;

(iii) the clame is made against the owner and the insurer of the motor vehicle involved in the accident.

43. The documents referred to in Rules 291A and 306B will enable the Claims Tribunal to ascertain the necessary facts in regard to these matters. The panchanama and the First Information Report will show whether the accident had arisen out of the use of the motor vehicle in question. The Injury Certificate or the postmortem report will show the nature of injuries and the cause of death. The Registration Certificate and Insurance Certificate of the motor vehicle will indicate who is the owner and insurer of the vehicle. In the event of the Claims Tribunal feeling doubtful about the correctness or genuineness of any of these documents or if it considers.it necessary to obtain supplementary information or documents, Rules 306A empowers the Claims Tribunal to obtain such

supplementary information or documents from the Police, medical or other authorities. This would show that Rr. 291 A, 306A and 306B contain adequate provisions which would enable the Claims Tribunal to satisfy itself in respect of the matters necessary for awarding compensation U/ S. 92A of the Act and in view of these special provisions which were introduced in the Rules by the amendments in 1984, the Claims Tribunal is not required to follow the normal procedure prescribed under the Act and the Rules with regard to adjudication of a claim u/ S. 110A of the Act for the purpose of making an order on a claim petition u/ S. 92A of the Act.

44. In the result, we find no merit in this special leave petition which is accordingly dismissed. By order dated January 7, 1991, while directing issue'of notice on the special leave petition, it was ordered that the issue of the said notice shall be subject to the condition that the petitioners shall deposit a sum of Rs. 5,000/- in the Registry of this Court towards cost of the respondent and that the notice shall be issued only after the amount of cost has been deposited and the said amount shall be paid over to the respondent on her putting in appearance in this Court and the payment of the amount of cost to the respondent shall be irrespective of the result of the special leave petition. In view of the said order, no further direction with regard to costs is necessary.

Petition dismissed.

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