SUPREME COURT OF INDIA

Kalim Khan

Vs.

Fimidabee

C.A.No.8785-8786 of 2015

(Dipak Misra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

03.07.2018

JUDGMENT

Dipak Misra,CJI.,

1. The legal representatives of the deceased Firoz preferred a claim petition being MAC Petition No. 64 of 2006 before the Chairman, Motor Accidents Claims Tribunal (for short, 'the tribunal'), Washim under Section 166 of the Motor Vehicles Act, 1988 (for brevity, "the Act") claiming compensation of Rs. 15 lacs on the foundation that the deceased was an Assistant Teacher in Urdu Primary School at Pusad run by Zilla Parishad, Yeotmal and was drawing monthly salary of Rs. 8,123/- and they were respondent on the income of the deceased. The assertion in the claim petition was that land situated in survey number 136 of village Kajleshwar, Tq Karanja, Washim District was belonging to Respondent No. 1 who had commenced the work for digging of well in the above agricultural land. On 08.04.2005 at about 4.15 p.m., when the deceased was returning towards his house after purchasing certain articles from the grocery shop, a heavy stone came flying and fell on his head, as a consequence of which, he sustained grievous injuries and was carried for treatment in a jeep to the hospital where he was declared dead. The case of the claimants before the Tribunal was that the stone fell on the deceased due to blasting operation carried out for digging of well in the field of respondent No. 1. It is further put forth that the tractor belonging to the 1st respondent and insured with the respondent No. 4 was used for digging up well by keeping the blasting machine and, therefore, the causing of death by the use of the tractor was established.

2. The tribunal, appreciating the materials brought on record, came to hold that digging of the well with use of blasting machine was carried on in the field of the owner and the tractor was used for digging of the well with the blasting machine. Thereafter, it proceeded to deal with fixing of the liability and the quantum of the compensation. On the first aspect, it took note of the submission advanced on behalf of the insurer that the owner had committed breach of the policy by using the tractor for commercial use. To bolster the said stance, the insurer asserted that the owner had not taken permission from the competent authority for carrying on the blasting work in his field and, hence, there was violation of the policy. On behalf of

the owner, the stand was taken that the tractor was used for agricultural purposes, for digging of the well was carried on for the irrigation of the crops which work was incidental to agriculture and hence, there was no violation of the policy.

3. The tribunal came to hold that on the basis of the material brought on record, the vehicle was used for commercial purpose and, therefore, there was a fundamental breach of the insurance policy. It further opined that the cause of the death of the deceased was due to vehicular accident because of the evidence brought on record. Emphasis was laid on the fundamental breach of the insurance policy by the owner and, ultimately the liability was fastened on him directing him and other respondent to pay the compensation of Rs. 9,30,000/- with interest at the rate of 6% per annum from the date of the petition till realization.

4. Two appeals were preferred before the High Court challenging the award of the tribunal. The High Court noted that the power for trigger of the explosives came from the battery of the tractor which was parked nearby and as explosion took place, a large stone flew in air and fell on the head of the deceased who was standing in front of a shop that was 300 ft. away. It addressed to the concept of 'use of motor vehicle' and in that context stated that the tractor, when it is stationary with the additional implements/machines can be run using the power generated by its engine for thrashing and cutting agriculture produce. It also dwelt upon the concept that when a storage battery of a vehicle is disconnected and taken for some other use, sometimes it is used for other purposes without disconnecting the battery from the vehicle. On the factual issue, the High Court opined that the battery of the vehicle was still installed inside and the terminals were used for providing power to the use of explosive. However, it further went on to say that the battery was practically detached from the vehicle and was not a part of the vehicle and on that basis ruled that use of battery for causing explosion cannot be said to be use of vehicle, for the vehicle was not used for causing explosion. Eventually, it held that it could not be said that the accident that took place had arisen out of the use of motor vehicle as defined in Section 165 of the Act and, therefore, the claim petition under Section 166 was not maintainable. Expressing the aforesaid view, the High Court set aside the award passed by the tribunal.

5. We have heard Ms. Aparna Jha, learned counsel for the appellants, Ms. Aishwarya Bhati, learned counsel for the respondent No. 2 and Mr. Abhishek Kumar, learned counsel for the respondent No. 4.

6. As is noticeable, the High Court has recorded a finding that the battery was practically detached from the vehicle. The correctness of this finding is required to be determined first. It is necessary to note here that the tribunal has treated the accident to be a vehicular accident and entertained the claim. As we find, the High Court has not analyzed any evidence brought on record to come to the conclusion that the battery of the vehicle was practically detached from the vehicle and was not a part of the vehicle. On the contrary, the Tribunal had noticed that the panchnama of the tractor, Ex-42, clearly showed that the tractor was in the field and the blasting machine was found on tractor with wrapped gas pipe and an explosive battery found on the tractor with the wooden cover. It has referred to Ex-41 and other oral evidence

to record the finding that the blasting machine was kept on the tractor driven by the driver engaged by the owner and the tractor was used for digging of the well with the blasting machine. The insurer, as is evident, had only raised a singular plea with regard to use of the tractor, namely, 'commercial purpose' and on that foundation, it had advanced the stance that there had been fundamental breach of the insurance policy. Keeping in view the evidence on record, we agree with the view expressed by the tribunal that the battery was still installed on the vehicle and the power was drawn from the battery for explosive purposes. Having arrived at the aforesaid conclusion, we shall proceed to deal with the concept of 'use' and determine whether the accident could be regarded as a vehicle accident.

7. Section 165 deals with the claims tribunals. It uses the word 'use of motor vehicles'. For the sake of completeness, we reproduce the relevant part of the said provision:-

> "Section 165. Claims Tribunals.—
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> (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (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 "

The aforesaid provision makes it vivid that the tribunal can adjudicate the claims for compensation in respect of accidents arising out of use of motor vehicles. Thus, the fundamental requirement is that the accident should arise out of the use of the motor vehicle. If there is no use of the motor vehicle, the question of vehicular accident will not arise.

8. In this context, reference to certain definitions, as stated in the dictionary clause would be apt. Section 2(28) defines 'motor vehicle' or 'vehicle'. It reads as follows:-

> "(28) "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 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 or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters;"

Section 2(44) defines 'tractor' to mean a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller.

9. Keeping the aforesaid definitions in view, we are required to analyze whether the use of the vehicle in the manner in which it is done can be treated as use of the vehicle to cause a vehicular accident. This Court in *Shivaji Dayanu Patil and another v. Smt. Vatschala Uttam*

More[1] was dealing with conceptual meaning of the phrase "arising out of the use of motor vehicle" as contained in Section 92-A of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the 1939 Act'). We may note with profit that Section 92-A(1) used the words "an accident arising out of the use of a motor vehicle" and Section 165 of the Act that has been reproduced hereinabove also uses the words "arising out of the use of motor vehicles". Thus, there has been no change in this part of the provision.

10. In Patil's case, there was a collision between a petrol tanker and a tractor on the national highway as a result of which, the petrol tanker went off the road and fell on its left side as a result of its turning turtle, the petrol contained in it leaked out and collected nearby. The accident took place at about 3 a.m. and at about 7.15 a.m. an explosion took place in the said petrol tanker resulting in fire and the persons who had assembled near the tanker sustained injuries and one of them succumbed to the injuries. On a claim petition being filed, the tribunal dismissed the same 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 provision of Section 92-A of the 1939 Act were not attracted. It expressed the view that the accident that took place at 7.15 a.m. was an independent explosion. On appeal, the learned single Judge of the High Court held that though at the material time the tanker was not being driven on the highway and was lying turtle on its side on the highway but it would be covered by the expression 'use' as contemplated in Section 92-A of the 1939 Act. In Letters Patent Appeal, the Division Bench opined that the expression 'use' of 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 a vehicle would still be in use even when it was stationary. It had also expressed the view that it could not be inferred that there was no causal relation between the earlier event and the later incident of explosion and fire and further, the earlier collision if not the cause, was at least the main contributory factor for the subsequent explosion. Being of this view, the Division Bench affirmed the judgment of the learned single Judge.

11. This Court referred to the Statement of Objects and Reasons for introduction of Section 92-A to Section 92-E of the Motor Vehicles (Amendment) Act, 1982. Analyzing, Chapter VII-A of the 1939 Act which was amended by Act 47 of 1982 dealt with "Liability without fault in certain cases", the Court referred to the anatomy of Section 92-A, the purpose behind it, the concept of beneficial legislation and proceeded to interpret the words 'arising out of the use of motor vehicle'. Be it noted, on behalf of the petitioners therein, a contention was raised that the tanker had ceased to be a mechanically propelled vehicle. The Court relied on the decision in *Newberry v. Simmonds*[2] wherein it was held that the motor car does not cease to be a mechanically propelled vehicle upon the mere removal of the engine if the evidence admits the possibility that engine may shortly be replaced and the moving power restored. The Court further referred to the authority in *Smart v. Allan*[3] where the defendant had brought a car for £ 2 and subsequently sold it as scrap for 30 cents. 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. It was contended before the House of Lords that every vehicle which starts its life as a mechanically propelled vehicle remains as such until it is physically destroyed. The said submission was rejected by Lord Parker, CJ who observed thus:-

> "... it seems to me as a matter of 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."

This Court agreed with the aforesaid formulation and reasoning and came to hold that the petrol tanker had not ceased to be a motor vehicle.

12. The two-Judge Bench thereafter proceeded to interpret the expression 'use of the motor vehicle', for it was urged that a vehicular accident could only take place when the vehicle is mobile.

13. Learned counsel for the petitioner therein urged for placing a narrow meaning on the word 'use' by confining it to a situation only when the vehicle is mobile. On behalf of the respondent, it was suggested that a wider connotation for the word 'use' should be taken so as to include the period when the vehicle is stationary. On behalf of the respondents, observations made in *Elliott v. Grey*[4], *Government Insurance Office of New South Wales v. R.J. Green & Lloyd Pty. Ltd*[5]. , *Pushpa Rani Chopra v. Anokha Singh*[6], *General Manager, K.S.R.T.C. v. S. Satalingappd and Oriental Fire*[7] *and General Insurance Co. Ltd. v. Suman Navnath Rajguru*[8] were pressed into service. The Court, after referring to the decisions cited by the respondent and the analysis made by the High Court, opined:-

> "26. ...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 breakdown 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."

14. After so holding, the Court proceeded to consider whether explosion and fire which caused injuries to the insured and eventual death of one could be said to have taken place due to an accident arising out of the use of the motor vehicle, i.e., the petrol tanker. In that context, the question of causal relationship between the user of the motor vehicle and the accident which has resulted in death or disablement arose. Be it stated, the stand of the petitioner that the deceased and the injured persons were engaged in pilferage of petrol and the explosion of fire took place because of the unlawful activities was negative as the finding recorded by the tribunal on the said score had been overturned by the learned Single Judge whose view had been approved by the appellate Bench of the High Court.

15. The Court referred to *Heyman v. Darwins Ltd*[9]. , *Union of India v. E.B. Aaby*[10] *s* Rederi A/S and *Samick Lines Co. Ltd. v. Owners of the Antonis P. Lemos*[11] and thereafter adverted to
the decision of the High Court of Australia in R.J. Green Case 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."
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> The observation of Windeyer, J. that was reproduced by the Court is to the following effect:-
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> "The words 'injury caused 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."
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> 16. The two-Judge Bench, appreciating the wider connotation, proceeded to lay down:-
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> "36. 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 Section 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment."

17. Thereafter, the Division Bench posed the question, whether the accident involving explosion and fire in the petrol tanker was connected with the use of tanker as a motor vehicle. Concurring with the view of the High Court, it ruled:-

> "37. .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 the sloping ground resulting in escape of highly inflammable petrol and that 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 which led 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."

[Emphasis supplied]

The aforesaid analysis throws immense light to understand the concept of "related events" and "causal relation". They have been distinguished from an event which is not connected. Needless to say, the appreciation of causal relation is a question of fact in each case and is to be weighed and appreciated on the basis of the materials brought on record.

18. In *Union of India v. United India Insurance Co. Ltd. and others*[12], a two-Judge Bench has opined that the words 'use of the motor vehicle' is to be construed in a wider manner. The learned Judges referred to the decision in Patil's case wherein reference was made to the Australian case in R.J. Green (supra) and to the observations of Lord Barwick, C.J. that those words have to be widely construed. The Court, in the latter case, referred to the observations of Windeyer, J. in R.J. Green's case which read thus:-

"... no sound reason was given for restricting the phrase, 'the use of a motor vehicle' in this way. The only limitation upon it . that I can see is that the injury must be one in any way a consequence of a use of the vehicles as a motor vehicle."

The aforesaid passage emphasizes on "consequence of a use". It is equated with a "related event".

19. The aforesaid view has been reiterated in *Samir Chanda v. Managing Director, Assam State Transport Corporation*[13]. In the said case, a bomb exploded inside the bus as a result of which the appellant sustained serious injuries on his legs. The tribunal passed an award in favour of the claimant. In appeal preferred by the respondent, the High Court, while not disturbing the finding of the tribunal on facts, expressed the view that there was no negligence on the part of the owner or the driver of the vehicle and, therefore, the question of paying compensation did not arise. This Court referred to Patil's case and placing reliance on the same, opined:-

> "14. ... The explosion took place inside the bus is an admitted fact and the usual police escort was not there. The High Court, except observing that there was no negligence, has not upset the finding of the Tribunal that the atmosphere during the period of accident was so polluted requiring care on the part of the conductor and the driver of the bus. There cannot be any doubt that the accident arose out of the use of the motor vehicle justifying the claim of the appellant."

20. The decision in United India Insurance Co. Ltd. (supra) has ruled that if it is ultimately found that there is no negligence on the part of the driver of the vehicle or there is no defect in the vehicle but the accident is only due to the sole negligence of the other parties/agencies, then on that finding, the claim would go out of Section 110(1) of the 1939 Act because the case would then become one of exclusive negligence of the Railways. Again if the accident had arisen only on account of the negligence of persons other than the driver/owner of the motor vehicle, the claim would not be maintainable before the tribunal.

21. The said opinion has been overruled by a three-Judge Bench decision in *Union of India v. Bhagwati Prasad (Dead) and others*[14]. We have placed reliance on the Division Bench judgment, as we are really not concerned about the overruled part. However, we may note with profit that Bhagwati Prasads case expands the horizon of the jurisdiction of the Motor Accidents Claims Tribunal by stating that a combined reading of Sections 110 and 110-A, which deal with the constitution of one or more Motor Accidents Claims Tribunals and application for compensation arising out of an accident, as specified in sub¬section (1) of Section 110 unequivocally indicates that the Claims Tribunal would have the jurisdiction to entertain application for compensation both by the persons injured or legal representatives of the deceased when the accident arose out of the use of a motor vehicle. The crucial expression conferring jurisdiction upon the Claims Tribunal constituted under the Motor Vehicles Act is the accident arising out of the use of a motor vehicle and, therefore, if there has been a collision between the motor vehicle and railway train then all those persons injured or legal representatives of the deceased could make application for compensation before the Claims Tribunal not only against the owner, driver or insurer of the motor vehicle but also against the Railway Administration. Once such an application is held to be maintainable and the tribunal entertains such an application, if in course of enquiry the tribunal comes to a finding that it is the other joint tortfeasor connected with the accident who was responsible and not the owner or driver of the motor vehicle then the tribunal cannot be held to be denuded of its jurisdiction which it had initially. In other words, in such a case also tribunal would be entitled to award compensation against the other joint tortfeasor.

22. From the aforesaid authorities, it is limpid that the expression 'use of the vehicle' under certain circumstances can be attracted when the vehicle is stationary or static. A Division Bench of the High Court of Orissa in Kanhei Rana and another v. Gangadhar Swain and others while dealing with a situation where the deceased labourer after loading the truck with logs lost his life. The tribunal had categorically found that death was on the account of fall of a log, when the truck was being loaded with logs. The learned Single Judge, in appeal, had concurred with the view of the tribunal by opining that the fall of the log had no nexus

with the use of the vehicle not even remotely, and there was no material to show that the fall of the log was occasioned due to use of the vehicle. He had further held that the careless handling of goods being loaded on or unloaded from a vehicle had no connection to the vehicle itself. Reversing the conclusion of the learned single Judge, the Division Bench opined that the concept of movement being not intrinsically or inherently connected with the use and the term 'use' having been connotatively expanded, there can be no doubt that the same can also be extended to the arena/sphere of a claim advanced under Section 110 of the 1939 Act. Heavy onus is cast on the driver to avoid negligence while the vehicle is in use. If the term 'use' in its conceptual sweep engulfs no motion or no movement or stationariness, then by logical corollary it is made essential that the driver or for that matter any agent of the owner should be careful and non-negligent. Negligence in driving is regarded as a fact that the vehicle is in motion. But the definition of 'use' having been expanded in its broader canvas, it has to clothe in its sweep other categories of negligence. To elaborate, when a vehicle remains static, it cannot constitute that the driver is negligent because of his rash and negligent driving. On the contrary, it has to embody some other different types of negligence. Of course that would depend upon the facts and circumstances of each case. The Division Bench of the High Court went on to say that the apex Court in Patil (supra) was dealing with the negligence so far as it was concerned with Section 92 of the Act, but as the language of Section 92-A and Section 110 of the old Act used the same phraseology and there is absence of any etymological distinction, the same meaning should be given to the expression under Section 110 of the old Act. The appellate Bench held that there was causal relationship with the accident which had resulted in the death of the claimant.

23. We entirely agree with the aforesaid analysis, for it is in accord with the view of the decisions of this Court.

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

25. Presently, we shall scrutinse the factual score in the case at hand. As is evincible, the battery was installed in the tractor and the explosives were charged by the battery. The purpose was to dig the well in the field. In such an obtaining factual matrix, it would be an erroneous perception to say that the vehicle was not in use as stipulated under Section 165 of the Act. Hence, we have no hesitation in holding that the Division Bench has fallen into error on the said score.

26. Having said that, we have to presently analyse on whom the liability should be mulcted. As is evident, the insurer has advanced the plea that the tractor was insured under "Farmer Package Policy" for agriculture purpose by the owner of the vehicle. However, it was used for commercial purpose by mounting a blasting machine thereon. That use was in breach of insurance policy and, therefore, the insurer was not liable to pay the compensation. The insurer also examined its employee, namely, Mr. Chararkar to establish the fact that the owner of the vehicle had committed breach of insurance policy by using it for commercial purpose and for transporting the blasting machine. The tribunal has adverted to the plea of the insured that the vehicle was used for digging of the well in the field of respondent No. 1 (Fimidabee w/o Abdul Gaffar) which obviously was for irrigation and incidental to agricultural activity and not in breach of the insurance policy. The rival contention in this behalf has been considered by the tribunal in the following words:-

"29. The Respondent No.2 has admitted the fact that Insurance Policy of offending tractor was for the agricultural purpose. The insurance of offending tractor was taken at Jaipur, Rajasthan. It was brought for commercial activity namely the blasting work. The blasting machine was found on the tractor. No permission from Competent Authority was taken for the blasting work and therefore, the Respondent No.2 has used tractor for commercial purpose and consequently there was fundamental breach of the Insurance Policy. The Respondent No.2 committed fundamental breach of the Insurance Policy allowing the use of tractor for commercial purpose and therefore, the decision cited supra is inapplicable."

And again in paragraphs 35, 36 and 37, the tribunal has observed:-

"35. The Respondent No. 1 has come with the case that digging work with blasting operation was given with sole responsibility of Respondent Nos. 2 and 3. The Respondent Nos. 2 and 3 have come with the case that blasting work for digging of well was taken at the risk of Respondent No.1 to 3 have not produced documentary evidence showing that digging work of well with blasting operation was being done on the sole responsibility either of Respondent No.1 or of the respondent Nos. 2 and 3. In absence of such evidence, the Respondent Nos. 1 to 3 are jointly and severally liable to pay compensation.

36. It was submitted on behalf of Respondent No.4 that Respondent No.2 committed fundamental breach of Instruction Policy by using the tractor for commercial purpose and therefore, Respondent No.4 cannot be directed to make the payment to petitioners and recover the same from the owner of offending tractor.

37. The Respondent No.2 allowed the use of offending tractor for doing the blasting work and therefore there was fundamental breach of the Insurance Policy. Since there was fundamental breach of the Insurance Policy for using the offending tractor for commercial purpose and consequently, Respondent No. 4 is not liable to pay the compensation and directed to pay the same and recover the same from Respondent No. 2 owner of offending tractor. The High Court, however, has not analysed this issue at all, for it took the view that as the vehicle was not used for causing explosion, it could not be said that the accident had arisen out of use of motor vehicle as defined under Section 165 of the Act.

27. From the factual position as already analysed earlier, it is noticed that the battery of the tractor was used for digging of well in a field used for agricultural purpose. The insured had contended that the work of digging of well in a field used for agricultural purpose would embrace an activity associated with agriculture for irrigating the field and we have answered the same in the affirmative. We may immediately state that our answer does not help in fastening the liability because there has been no analysis as regards the terms and conditions of the policy and its fundamental character. The High Court, as we notice, has not dealt with any of these matters, the adjudication whereof has now become inevitable to answer the issue about the liability to be borne by the insurer, the owner of the vehicle (insured) or otherwise. This adjudication requires analysis of relevant material including the insurance policy and evidence of concerned witnesses, for understanding the terms and conditions of the policy regard being had to nature of policy and the extent of the liability of the insurer, if any. As the High Court has not considered this aspect at all, we deem it appropriate to relegate the parties to the High Court for determining the singular issue about fastening of the liability on the insurer or the owner of the vehicle. Under these circumstances, we are of the considered opinion that until that issue is finally decided, the insurance company must pay the compensation amount payable to the claimants as determined by the tribunal in terms of the award dated 5th January, 2008, which payment will be subject to the outcome of the remanded appeals to be decided by the High Court. Needless to state that the claimants need not contest the remanded proceedings before the High Court as it is remitted only for limited purpose to determine the liability amongst the insurer (United India Assurance Co. Ltd.) and owner of the vehicle, Kanhaiyalal.

28. In view of the aforesaid analysis, we partly allow both the appeals, set aside the judgment of the High Court dated 10 th October, 2013 in First Appeal Nos. 494 of 2013 and 437 of 2008 and restore both the First Appeals to the file of the High Court to their original numbers for being decided on the question as to who should be made liable to pay the compensation amount as determined by the tribunal to be paid to the claimants. We request the High Court to decide the First Appeals expeditiously, with reference to the limited issue of liability to pay compensation. In terms of this order, the insurance company is directed to deposit the compensation amount before the tribunal within eight weeks hence, which will be without prejudice to the rights and contentions of the insurance company in the remanded First Appeals. In the event the insurance company succeeds, it will have the right to recover the same with interest accrued thereon from the owner of the vehicle. The amount deposited by the insurance company shall be disbursed by the tribunal keeping in view the law laid down in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and others*[16.]

29. In the facts and circumstances of the case, there shall be no order as to costs.

Judgment Referred.

[1]*(1991) 3 SCC 0530* [2]*(1961) 2 ALL ER 0318* [3]*(1962) 3 ALL ER 0893* [4]*(1960) 1 QB 0367*
[5]*(1965) 114 CLR 0437* [6]*(1975) ACJ 396 (Del HC)* [7]*(1979) ACJ 452 (Kant* [8]*(1985) ACJ 243 (Bom*

HC) *HC)*

[9](1942) AC 0356 *[10](1975) AC 0797* *11(1985) 2 WLR 0468* *[12](1997) 8 SCC 0683*

[13](1998) 6 SCC 0605 *[14] (2002) 3 SCC 0661* *15 AIR 1993 ORI 0089* *[16](1994) 2 SCC 0176*