
(1990) 10 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No"s. 194 to 198 of 1989 and 3, 5 and 95 of 1990

Himachal Road Trans. Corpn. and Others

APPELLANT

Vs

Om Prakash and Others

RESPONDENT

Date of Decision : 29-10-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 165

Citation : (1992) ACJ 40 : (1991) 2 ShimLC 328

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : Deepak Gupta, for the Appellant; Bhupender Gupta, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—All these appeals arise out of the same accident and since a similar question is involved, they are being decided by a common judgment.

2. Briefly, the case is that bus No. HIK 3227, driven by Kehar Singh and conducted by Ajeet Singh, left Pathankot bus stand on 20.5.1988. After just crossing Chakki Bridge, a bomb which was lying hidden in the bus, exploded causing injuries to some and proving fatal to others travelling in the bus.

3. Consequently, the heirs of the deceased and the victims of the blast preferred claim petitions before the Motor Accidents Claims Tribunal (I), Kangra Division. Among other things, it has been stated that the bus was stationed at bus stand, Pathankot which is a disturbed area and is hot with terrorist activities. Number of attempts had been made by the terrorists to attack Himachal Road Transport Corporation (hereinafter referred to as the "HRTC") buses in the area of Punjab. However, nothing was done to safeguard the vehicles in this area and this bus was not attended by any guard and the conductor and the bus driver were not present in the bus for sufficient long time and no checking of passengers coming into and going out of the bus was done. The negligence of both the conductor

and the driver has been pointed out to the extent that they allowed the bus to remain unattended in a disturbed area that was prone to serious terrorist activities and did not care to even check the luggage and passengers before starting the bus from the bus stand. The HRTC, its driver and conductor had been quite reckless and negligent in attending to the bus and looking after the safety of passengers with the result that someone planted the material inside the bus which exploded and caused fatal injuries to some and personal injuries to others on account of the use of the motor vehicle in question.

4. These allegations have been disputed by the HRTC and their principal objection is that the Motor Accidents Claims Tribunal has no jurisdiction to entertain the claim petitions, since the incident occurred due to terrorist activities and not out of the use of the motor vehicle. The allegation of negligence pointed out by the claimants has also been disputed and it has been stated that guards are provided to night buses and it was the duty of the in charge of the bus stand to look after the buses parked at the general bus stand which belongs to the State of Punjab. It has also been stated that the passengers did not point out some unclaimed object lying in the bus and in case that had been done, prompt action could have been taken by the conductor and the driver, who also sustained injuries due to this explosion.

5. Instead of deciding the claim petitions on merits, the Tribunal proceeded to frame a preliminary issue in the following form:

Whether the petition under the Motor Vehicles Act is maintainable?

6. After hearing the learned Counsel for the parties, the Tribunal came to the conclusion that it had jurisdiction to entertain the claim petitions. Accordingly, the preliminary objection was decided in the affirmative with the result that HRTC preferred the present appeals against this decision of the Tribunal stating, inter alia, that the Tribunal did not decide the matter in accordance with law, since, looking to the facts of this case, the deaths or bodily injuries to persons did not arise out of the use of the motor vehicle. According to the learned Counsel appearing for HRTC, the Tribunal has given such a wide interpretation to the expression "use" that it was neither intended by the plain language of Section 165 of the Motor Vehicles Act, 1988 (comparable to Section 110 of the old Act). According to the learned Counsel, this kind of incident is too remote and is something which is totally unconnected with the use of the vehicle.

7. There is no dispute that HRTC bus HIK 3227 was being driven by Kehar Singh and Ajeet Singh was the conductor in this bus on 20.5.1988 and it was parked at bus stand Pathankot where various persons boarded it. After covering a short distance, some material in the bus exploded at place Chakki. Therefore, it is clear that the explosion took place inside the bus. Obviously, it appears to have been kept inside the bus while it was stationary at Pathankot bus stand.

8. It was in the knowledge of HRTC that the bus was coming through Punjab territory where terrorist activities were quite common and in the past also some

of its buses had already been affected by terrorist activities. In these circumstances, recurrence of such incidents were quite foreseeable and it should have taken necessary precautions to guard its buses and to prevent any possible kind of harm to the travelling public through its buses. It should have, while plying buses in these areas, engaged guards to look after the buses or the driver and the conductor of the bus should have been vigilant in the absence of any guard in the bus. They should have seen that no explosive was kept by any one while the bus was stationed temporarily at Pathankot bus stand. At least one of them should have been there to look after the bus while the passengers were away; vigil should have been kept on persons getting into the bus and leaving it. They should have verified the articles inside the bus with the assistance of the passengers. Nothing was done. Although it was their primary duty in which they have miserably failed.

9. Mr. Deepak Gupta, learned Counsel for HRTC submitted that the bus was stationary and was not in use while it was at bus stand Pathankot. I see no substance in this argument of the learned Counsel for the reason that the bus was in use and had a definite route through which it was to pass. Simply because it was stationed for sometime at Pathankot bus stand does not mean that it was not in use. Parking of a passenger bus on a definite route at some places during the journey does not mean non-user of the vehicle during that time. Such a meaning cannot be given to word "use" u/s 110 of the Motor Vehicles Act.

10. Next, it was also submitted that the incident in question is too remote, therefore, unconnected with the use of the vehicle. This submission is without force, since it is not a case where something is thrown at the bus all of a sudden which could not at all be anticipated. Here, can come cases where a tree all of a sudden falls on bus or someone shoots at the bus which could not be anticipated nor could be possibly guarded against. The present case does not fall under the category of such kind of cases. Here, the explosion occurred inside the bus and the explosive material was placed by someone inside the bus and in a territory where such incidents were quite common, therefore, recurrence of such incident could very easily be anticipated and it was essential to take precautionary measures by HRTC and its crew. Although there is no judgment directly dealing with this kind of situation nor any was brought to my notice by either of the learned Counsel, however, even if there be none, I am of the considered opinion that the court has to find remedy to deal with such incidents, taking place quite frequently instead of leaving the aggrieved party without any efficacious, speedy and effective remedy and to ask them to initiate the claims before a civil court.

11. In view of the aforesaid discussion, I am of the opinion that the negligence on the part of the appellants is quite evident and the Motor Accidents Claims Tribunal has jurisdiction to deal with these claim applications. For arriving at the aforesaid conclusion, I draw quite a good deal of support from some of the judgments which were placed before me by the learned Counsel for the parties during the course of the hearing of these matters.

12. In *Varadamma Vs. H. Mallappa Gowda and Others*, the conductor gave a signal to the driver to move the bus without ensuring that all the passengers had got down from the bus. As a result of which the deceased, who was still on the footboard, fell and was killed underneath the hind wheel of the bus. The question was whether the owner could be held liable for the negligence of the driver as well as the conductor and whether the accident arose out of the use of the motor vehicle. The court held that the conductor acted negligently while giving signal to the driver to move without ensuring that all the passengers had duly alighted from the vehicle. The owner was held vicariously liable for the negligence of the driver and the conductor and it was held that the accident arose out of the use of the motor vehicle. Repelling the contention that he was not a passenger at that time, the court held that the deceased was a passenger travelling in the bus and he was still in the act of getting down from the bus at the bus stop at Lingadahalli and it was due to the negligence of the conductor in giving the signal to the driver that the deceased fell down and got crushed under the hind wheel of the bus and it could not be said that the accident was not due to the use of the motor vehicle.

13. In *Chaurasiya & Co. v. Pramila Rao* 1974 ACJ 481 the driver of the passenger bus drove it over causeway submerged under water. The bus skidded towards left and one of its wheels got stuck in the stones embedded on the sides. The passengers, when noticed that the water level was rising, they climbed over the bus top. The bus was swept away by the current of water and the passengers were thrown in the surging water. Again, the question was whether it was too remote a cause or was it due to the negligent driving of the bus driver. In addition to this, the court was also called upon to decide whether the accident arose out of the use of the motor vehicle and whether the Claims Tribunal had jurisdiction to entertain the claim. All these questions were answered in the affirmative, although, it was pleaded that the death of the passengers was as a result of their own decision to remain in the bus, or they should have crossed the passage on foot as was done by one of the passengers. While examining the question of negligence and the remoteness of accident, the court attributed the negligence to the driver, who could have easily assessed the danger and waited till the surging water receded. The accident was held to be direct consequence of his negligence and arose out of the use of the vehicle.

14. In *Pushpa Rani Chopra v. Anokha Singh* 1975 ACJ 396 the word "use" came for interpretation and B.C. Misra, J. of Delhi High Court said that:

(15) The contention of the learned Counsel has been repelled by the court below and in my opinion rightly. The word "use" occurring in Section 110 of the Act has been used in a wide sense. It covers all employments of the motor vehicle on the public places including its driving, parking, keeping stationary, repairing, leaving unattended on the road or for any other purpose. The driver of the offending vehicle had certainly taken out the vehicle and had driven it on the public road and had parked it, as its axle had broken down and then left it without

reasonable precautions. If a vehicle is being driven and is stopped or parked for being repaired or otherwise, then it cannot be said that the vehicle is not being used. Supposing some driver thinks fit to stop a vehicle in the middle of a busy road and to start repairing it or decides to rest in the seat, it cannot be said that he can escape the liability by pleading that at that time the vehicle was not being used.

15. In *N. Ajjappareddi Vs. Selvaraj and Others*, the claimant had stretched his feet underneath a stationary lorry which had been stationed on the left side of the road due to the breaking of springs. Another vehicle lorry came and dashed against the vehicle, thereby moving it and running over the legs of the claimant. Claim petition for damaging the legs was moved u/s 110-A of the Motor Vehicles Act and the case of the respondent was that there was no rashness or negligence on the part of the driver of the lorry. It was also contended on behalf of the insurance company that the claim could not be adjudicated under the Motor Vehicles Act and it was not liable to pay compensation. The Tribunal rejected the contention raised by the insurance company and awarded the compensation. In appeal, the same objection was taken unsuccessfully and the two Judges Bench of Karnataka High Court observed that:

We will first take up the appeal of the insurance company. The contention that the claim could not have been adjudicated u/s 110-A of the Act is, in our opinion, untenable. The lorry had been insured against third party risk. Merely because the lorry itself did not strike against Ajjappareddi, it cannot claim that it is absolved of its liability. The striking of that lorry against the stationary lorry, which was the immediate cause for injury to the person, is covered by the risk, the coverage of which has been undertaken by the insurance company. u/s 110 of the Act, the Tribunals are constituted 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 and the insurance policy is also in regard to the risks attendant on the use of motor vehicles in a public place. It is, therefore, clear that this is a claim arising u/s 110 of the Act and the Tribunal was competent to adjudicate upon the claim.

16. In *General Manager, K.S.R.T.C. v. S. Satalingappa* 1979 ACJ 452 the bus was parked on a slopy surface and was left unattended. Suddenly it started moving and dashed against the tea stall causing damage and resulting in the fracture of shoulder bone of the claimant. The question was whether this slipping of the bus and causing of accident had arisen on account of the use of the motor vehicle. The contention was that the Tribunal was not justified in entertaining the claim petition as it could not be said that the accident occurred out of the use of the motor vehicle. Answering this question, the learned Judges of Karnataka High Court said that Section 110 (1) of the Motor Vehicles Act states that a State Government may, by notification in the official Gazette, constitute one or more Motor Accidents Claims Tribunals, 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, 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. In this way, the Tribunal gets jurisdiction to adjudicate upon the claims for compensation in respect of accidents involving the death or bodily injury, out of the use of motor vehicles. Proceeding further, the court said:

The short point, therefore, that arises for our consideration in this appeal is, whether it could be said that the slipping of the bus on a slope causing accident can be said to arise out of the use of the motor vehicle. It is not disputed before us that the bus was going on a road. It is further not disputed that the bus was halted on a slope by the driver. Thus, it is obvious that the bus was in use and the negligent act of the driver occurred while he was using the bus. Hence, it is manifest that the accident has arisen out of the use of the motor vehicle. The Tribunal has held so. We see no reason to disagree from the view taken by the Tribunal.

17. In *Government Insurance Office of New South Wales v. RJ. Green & Lloyd Pvt. Limited* 1967 ACJ 329 the High Court of Australia was faced with a situation where the workman was injured while loading the vehicle which was stationary. The question arose whether it could be said that the injuries were sustained out of the use of the vehicle. In the view of the court, there was no valid reason to restrict the phrase "the use of a motor vehicle" simply because the vehicle was not in motion. The view of the court appears to be that the cause of the injury must flow out of the use of the motor vehicle.

18. In *Padmanabhan Nair Vs. Narayanikutty and Another*, the facts were that the passenger in the bus died of burns when a can of petrol lying in it caught fire, and it was stated that the deceased was himself responsible, since he was intoxicated and his clothes caught fire when he lit a cigarette and the petrol was also being carried by the deceased himself. The learned Judges came to the conclusion that the defence taken was not proved and it was held that the employees of the bus were negligent in allowing the petrol to be carried in the vehicle. Word "use" came for extensive examination before the court and the opinion of the two Judges Bench was that this accident arose out of the use of motor vehicle. It is worthwhile to quote the view of the court in paras 9, 10, 11 and 12 of this judgment, since I have also taken the same view in this matter:

(9) The jurisdiction of the Tribunal is attracted if there is an accident involving death of, or bodily injury to, a person. This accident should arise out of the use of a motor vehicle. The primary fact which, therefore, attracts the jurisdiction of the Tribunal is the use of a motor vehicle. The word "use" is used in the section in a wide sense. It covers all employments of a motor vehicle, so that whenever the vehicle is put into action or service, there is "user" of the vehicle within the provisions of Section 110, whether the vehicle was being driven, or repaired or simply parked or kept stationary or left unattended. In that sense the vehicle is used, whenever the vehicle is driven out for any purposes whatsoever. This, without anything more, is sufficient to attract Section 110. It is not the purpose

for which or the person who employs or uses the vehicle that matters. Therefore, whenever any accident occurs causing death of or injury to persons because of the vehicle or in the course of its user the jurisdiction of the Claims Tribunal arises.

(10) Reference may, in this connection, be made to the decision of the Karnataka High Court in *General Manager, K.S.R.T.C. v. S. Satalingappa* 1979 ACJ 452. In that case a vehicle belonging to the Karnataka State Road Transport Corporation had been stopped on a slope unattended. The bus suddenly started moving down and dashed against a tea stall causing considerable damage to the tea stall as also injuries to the claimant, the owner of the stall. The claimant applied for compensation for injuries to his person and for damage caused to his property. The contention in defence was that the vehicle moved down the slope, by itself, as its gear got released and as such it could not be said that the accident arose on account of the use of the motor vehicle or due to the negligence of the driver and, therefore, the Tribunal had no jurisdiction to entertain the claim. The Division Bench in the Karnataka High Court ruled:

"It is not disputed before us that the bus was going on a road. It is further not disputed that the bus was halted on a slope by the driver. Thus, it is obvious that the bus was in use and the negligent act of the driver occurred while he was using the bus. Hence, it is manifest that the accident has arisen out of the use of the motor vehicle."

(Emphasis added)

The High Court of Delhi had also occasion to consider the scope of the section in the case reported in *Pushpa Rani Chopra v. Anokha Singh* 1975 ACJ 396. That was a case where a truck belonging to the second respondent was lying stationary on the road, with a broken axle. The truck had been parked on the roadside. The deceased who was driving a motor cycle during the dark night at about 10.45 p.m. at a time when there were no street lights on the road, dashed against the rear of the stationary truck. The rider and his two children died on the spot. Claim was made against the owner of the truck and it was met with the plea that the vehicle was not in use and hence the Tribunal had no jurisdiction. It was held:

The word "use" occurring in Section 110 of the Act has been used in a wide sense. It covers all employments of the motor vehicle on the public places including its driving, parking, keeping stationary, repairing, leaving unattended on the road or for any other purpose. The driver of the offending vehicle had certainly taken out the vehicle and had driven it on the public road and had parked it, as its axle had broken down and then left it without reasonable precautions. If a vehicle is being driven and is stopped or parked for being repaired or otherwise, then it cannot be said that the vehicle is not being used. Supposing some driver thinks fit to stop a vehicle in the middle of a busy road and to start repairing it or decides to rest in the seat, it cannot be said that he

can escape the liability by pleading that at that time the vehicle was not being used. The expression is, therefore, employed in a wide sense and is practically synonymous with bringing out a motor vehicle in a public place and using the public place for the motor vehicle. The condition in which the motor vehicle arrives or is kept and the purpose for which it is being driven or is being kept, stationary is not a jurisdictional fact to determine the jurisdiction of the Tribunal to decide the claim, although these questions may or may not have any bearing on the merits of the case.

The court then adverted to the use of the term in certain other provisions of the Act and observed that those provisions did not control or limit the connotation of the term "use" in Sections 110 and 110-A of the Act. The jurisdiction of the Tribunal to deal with this dispute was thus upheld.

(11) In *Chaurasiya & Co. v. Pramila Rao* 1974 ACJ 481 one Satyanarayan Rao was a passenger in the bus which was involved in the accident. The vehicle was driven over a causeway across the Sunar river. The river was overflowing the causeway. Nevertheless, the driver drove on. The bus skidded and one of its wheels got stuck in the stones embedded on the sides of the causeway. The passengers remained in the bus, but when they found the water level rising, they climbed to the top of the bus. After some time the bus was swept away by the flood, it rolled over, throwing the passengers on the top into the surging waters. Satyanarayan Rao was one of those killed and there was a claim for compensation by his widow and children before the Tribunal constituted u/s 110-A. One of the defences set up was that the Tribunal had no jurisdiction as the accident was stated to be one not arising out of the use of the vehicle. The contention was overruled and the jurisdiction of the Tribunal upheld.

(12) We may also refer to *Elliot v. Grey* (1959) 3 ALLER 733 where the Queen's Bench considered the meaning of the phrase "to use a motor vehicle on a road" appearing in Section 35 (1) of the Road Traffic Act, 1930. That was a case where the appellant had been charged u/s 35 (1) of the said Act for using a motor car on a road on February 7, 1959, without there being in force in relation to the user an insurance policy in respect of third party risks. On February 7, 1959, the car was standing on the road outside the appellant's house, having been placed there by the appellant after it had broken down on December 20, 1958. Before February 7, 1959, the appellant had jacked up the wheels, removed the battery and terminated his insurance cover. On February 7, 1959 he had unjacked the wheels, cleaned the car and sent its battery to be recharged, but the car could not be mechanically propelled because the engine would not work. In fact he had no intention of driving it on that day or of moving it from its position on the road. The question was whether on that day the car was being used by him within the meaning of Section 35 (1), which reads:

Subject to the provisions of this part of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on road unless there is in force...

Lord Parker, C.J., speaking for the court observed:

In the present case, although this car could not be driven, there is nothing to suggest that it could not be moved. As I pointed out in argument, for all we know, it was on the top of a hill and a little boy could release the brake and the car could go careering down the hill. In the absence, at any rate, of a finding that it was immovable as, for instance, that the wheels were removed or something of that sort, I cannot bring myself to think that this car was not fairly and squarely within the words which I have used, "have the use of the motor vehicle on the road". Counsel for the respondent further contended that, even if the car was completely immobilised, an offence would be committed, but for my part I find it unnecessary in the present case to go so far. Here was a car which could be moved, albeit not driven and in those circumstances I think that the owner had the use of it on a road within the meaning of Section 35 (1).

The court thus took the view that "use" in the section meant "to have the use of and even if the vehicle could not be driven, the appellant had the "use" of it.

19. In *Krishna Roadways, Nathdwara v. Madan Lal* 1984 ACJ 263 a radiator cap was thrown by the force of steam and boiling water fell on the child, who was travelling in the bus. The child died due to extensive burns and there was evidence that the driver had poured water in the radiator on the way. It was found that the driver had not placed the cap on the radiator properly when the water was poured in it and the question arose whether the accident occurred out of the use of the motor vehicle and whether the driver was responsible and also whether the Motor Accidents Claims Tribunal had jurisdiction to entertain such claims. The questions were answered in the affirmative by the learned single Judge of the Rajasthan High Court when he said in para 8 of this judgment that:

(8) ...The expression used in Section 110-A is "arising out of the use of motor vehicles". The word "use" has been used in a wide sense. The word "use" in the Oxford Dictionary has been defined to mean "purpose for which thing can be used", "application to a purpose", "employ for a purpose" and "right or power of using". It has been admitted that Someshwar was sitting in the bus and he was sitting on the front seat on the left of the engine out of which a portion of the radiator was coming out. The lid (cap) of the radiator was thrown by the force of the steam and the boiling water from the radiator fell on the body of Someshwar which resulted in causing extensive burns over his body. It cannot be denied that the vehicle was not in use at that time. This sudden event or unexpected happening or misfortune happened causing burns not due to the fault of Someshwar but from the consequence of which he may be entitled to some legal relief. The vehicle was in use and while it. was in use the unexpected event had happened.

20. In *Oriental Fire & General Ins. Co. Ltd. v. Suman Navnath Rajguru* 1985 ACJ 243 the court was concerned with the case where the deceased was walking along the road when an oil tanker parked near the footpath exploded, The

deceased succumbed to injuries sustained as a result of this accident. The case of the insurance-company was that it was not liable to pay compensation, since the vehicle was not in "use" much less in a "public place" and that the vehicle was not in motion. The question that arose for consideration was whether the injury arose out of the use of motor vehicle. The learned Judges of Bombay High Court came to the conclusion that the vehicle was standing near the footpath on the road and was not in any garage and relying on *Elliot v. Grey* (1959) 3 ALLER 733 holding that owner of the vehicle had used the vehicle on the road notwithstanding the fact that the vehicle could not be driven as such for want of battery, held that the insurer was liable to pay the compensation.

21. Then, in *Mangilal Vs. M.P.S.R.T.C.*, the deceased fell down and died when the ladder affixed to the bus gave way while he was climbing up the same for the purpose of checking his luggage on the bus top. The respondent's case was also that the bus was stationary and it could not be said that the accident arose out of the use of motor vehicle. The learned Judge held that the accident arose while the motor vehicle was in use and halting of the same for various purposes like loading, unloading of luggage, alighting or boarding etc. are part of the employment of the vehicle. It is useful to refer to paras 6 and 7 of this judgment which are as under:

(6) The moot question to be considered for decision of this case, therefore, is whether the death of the deceased who died as a result of accident due to fall from the ladder attached to the bus while it was in a state of rest, could be said to be "arising out of the use of motor vehicle". The answer to this question depends on the interpretation of the word "use" in the expression "arising out of the use of motor vehicle". The meaning of the word "use" given in the Compact Edition of the Oxford English Dictionary (Vol. II) reads as follows:

Act of using or fact of being used; the act of employing the thing for any (especially a profitable) purpose; the fact, state or condition of being so employed; utilisation or employment for or with some aim or purpose, application or conversation to some (exp. good or useful) end.

In Webster's Unified Dictionary and Encyclopedia (Vol. 6) the word "use" means "state of being in employment as, the car is in constant use".

(7) From the meaning of the word "use" extracted from the dictionaries aforesaid, it is clear that a motor vehicle which is in a state of being in employment for any purpose can be said to be a motor vehicle in use. While the bus is in a state of motion it is employed in carrying passengers and while it is in a state of rest or stationary, it is still in the state of employment for enabling the passengers to alight from or board the bus or for loading and unloading the luggage. Indeed, a motor vehicle which is put on the road is in a state of being in employment or constant use and consequently any accident involving such a motor vehicle causing death or bodily injury to any person is an accident arising out of the use of motor vehicle.

22. In Union of India (UOI) Vs. Dhanraji Devi and Others, words "arising out of the use of motor vehicle" came again for consideration before the single Bench of Allahabad High Court. Facts were that the truck hit a cycle which, in turn, collided with another cycle resulting in the death of its pillion rider. The contention of the respondent was that there was no collision between the truck and the cycle on which the deceased was travelling. The question again was whether the death was caused as a result of accident arising out of the use of the truck and the learned Judge held that collision of the truck with the other cycle was the immediate and proximate cause of hitting the cycle on which the deceased was travelling and the arguments of remote connection was repelled by the court.

23. In Union of India represented by Union of India (UOI) Vs. Bhimeswara Reddy and Others, the accident took place between a rail engine and the bus on manned level crossing. The railway engine came without putting on the lights and without blowing the whistle of which the gateman had no notice, so the gate was not closed. The engine hit the rear side of the bus at the crossing thereby injuring several passengers. On evidence, the court came to the conclusion that the accident took place due to the negligence of the engine driver, therefore, civil court had jurisdiction to entertain the suit for compensation and the Motor Accidents Claims Tribunal could not entertain the claim in such circumstances.

24. Similarly, in Union of India Vs. Smt. Sushila Devi and others, the Full Bench of Allahabad High Court also held that in order to give jurisdiction to the Motor Accidents Claims Tribunal, it is necessary that the motor vehicle should contribute whether by itself or along with some other joint tortfeasors to the accident and mere involvement of a motor vehicle by itself, and without more, would not vest the Claims Tribunal with jurisdiction to entertain the claim. Negligent use of the motor vehicle by the driver towards the causing of accident is necessary.

25. High Court of Gujarat in Gujarat State Road Transport Corporation Vs. Union of India and Others, also decided that where there is contribution of an outside agency with the motor vehicle in question, the Claims Tribunal has jurisdiction to entertain the claim petition and in the case before the court the engine driver was held 75 per cent responsible for the collision with the bus in whose case the liability was fixed at 25 per cent.

26. Mr. Deepak Gupta, learned Counsel for the HRTC, placed strong reliance on Bhola Ram v. State of Himachal Pradesh 1982 ACJ 99 to repudiate the claim of the claimants and to submit that the Claims Tribunal has no jurisdiction to entertain the present application. In this case a truck belonging to the Himachal Pradesh Government fell into a deep khud near Ganasidhar resulting in the death of the driver and the owner of the goods. The claim petition was dismissed by the Tribunal on the finding that the accident had taken place on account of giving way of false projection of the road which was supported on wooden logs and not due to the negligence of the driver. The matter came before this Court where an

alternative plea was raised that even if the accident be taken to have occurred on account of sagging of road, the State would be liable in tort to pay the compensation being owner of the road. The learned Judge rejected this plea and held that the Tribunal had no jurisdiction to entertain any claim against the State as owner of the road.

27. In my view, this case does not support the case of the appellants, since the accident in this case had not resulted on account of rash and negligent driving of the motor vehicle. On the contrary, the driver of the motor vehicle was the victim and the allegation was that there was mishap only on account of bad road and on that basis the State, as owner of the road, was sought to be made liable. In view of the facts of this case, the decision rightly turned against entertaining of any claim petition as the accident was not alleged to have resulted on account of any rash and negligent use of any motor vehicle which is sine qua non for the initiation of a petition u/s 110-B of the Motor Vehicles Act, as also held by the Supreme Court in *Minu B. Mehta v. Balkrishna Ramachandra Nayan*, 1977 ACJ 118 wherein the court said: "This plea ignores the basic requirements of the owner's liability and the claimants' right to receive compensation. The owner's liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a Tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of Torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to strange results." Therefore, it can be said .that Bhola Ram's

27. In my view, this case does not support Therefore, it can be said .that Bhola Ram's case 1982 ACJ 99 is neither a case of is that there is no merit in these appeals and driver's negligence nor a case of composite they are dismissed. The Motor Accidents negligence. The accident was on account of Claims Tribunal will move speedily to decide causes with which the driver did not at all these cases. Costs on parties, contribute. Appeals dismissed.

28. The result of the aforesaid discussion