

**(2001) 05 GAU CK 0015**

**In the Gauhati High Court**

**Case No : C.R.P. No's. 362, 369, 371 to 373 of 2000**

New India Assurance Co. Ltd.

APPELLANT

Vs

Nalini Boro and Others

RESPONDENT

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**Date of Decision : 07-05-2001**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115  
Constitution of India, 1950 — Article 226, 227  
Motor Vehicles Act, 1988 — Section 140, 166, 175  
Public Liability Insurance Act, 1991 — Section 6

**Citation : (2003) ACJ 855 : (2001) 2 GLT 484**

**Hon'ble Judges : J.N. Sharma, J**

**Bench : Single Bench**

**Advocate : K.H. Choudhury and Sheikh Muktar, S.S. Sharma, S. Dutta, B.K. Jain, K.K. Dey and M. Choudhury, for the Appellant; A.S. Dasgupta, S.P. Deka, M.K. Choudhury, P. Baidya and I. Sikdar, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

J.N. Sarma, J.—C.R.P. Nos. 369, 370, 371, 372, 373 and 362 of 2000, all these raise the same question of law and facts and as such they are taken up for hearing together.

2. I have heard Mr. S.S. Sharma, the learned advocate for petitioner in all the revision petitions, Mr. K.H. Choudhury, learned senior advocate assisted by Sheikh Muktar as amicus curiae in all the civil revision petitions, Mr. M.K. Choudhury, learned advocate for the opposite parties in C.R.P. No. 373 of 2000, Mr. A.S. Dasgupta, learned advocate for the opposite party in C.R.P. No. 373 of 2000 and Mr. S.P. Deka, learned Counsel for the opposite party in C.R.P. No. 370 of 2000. Certain claim cases were filed before the Motor Accidents Claims Tribunal at Guwahati u/s 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the death of some persons. These persons admittedly died due to the injuries received in an accident which occurred on 1.11.1998 at Khanapara, Guwahati.

2A. The case which was made out in the claim cases was that certain vehicles carrying L.P.G. (liquefied petroleum gas) were kept in an unattended condition, there was leakage of L.P.G. from one of the tankers and that suddenly at about 10.30 p.m., a blast occurred in the tanker as a result of which there was a vast fire and as a result of which a number of persons were killed and others also suffered burnt injuries. In the process of the blast one of the tankers was blown off to a distance of about 50 ft. near the Assam Veterinary College Hospital and in that process these persons were killed and accordingly a number of claim cases were filed and different orders were passed on different dates. All these tankers belonged to different persons (Sic.), under Assam Petroleum Transport Company, Khanapara and they were the carriers of liquefied petroleum gas. They used to carry gas from Noonmati and these tankers carried gas for delivery to the bottling plants at Bongaigaon and Khanapara is almost in the middle of the destination. No doubt at the time when the accident occurred these tankers were in stationary state, after loading liquefied petroleum gas they were on their way to Bongaigaon. On these claims, the insurance company, petitioner herein, filed the written statements and resisted the claims for no fault liability. It may be stated herein that all these tankers had valid insurance with the petitioner company and on the date of accident there was a valid policy. A defence was taken up in all the claim cases and that defence, inter alia, reads as follows:

That there is no cause of action against the answering opposite party and the claimant has no right to relief against them and as such the claim petition is liable to be dismissed against the answering opposite party. The policy obtained in the case is an Act policy which does not cover any other risk including public liability which arose in the instant case.

On this ground it is sought to be urged that as the deceased persons were not the passengers of the vehicle, they are not entitled to any compensation and that it will not cover the case of this accident. The learned Tribunal passed an order that the benefit of no fault liability shall be available and accordingly directed to make payment of no fault liability of rupees fifty thousand in the case of death and no order was passed for payment in the case of injury. Cases under no fault liability are as follows: M.A.C. Nos. 450, 827, 693, and 339 of 1999 M.A.C. No. 400 of 2000 and this common order dated 12.7.2000 was passed, against that order as mentioned above, these revisions have been filed.

3. No doubt u/s 115 of the CPC jurisdiction is available to this court to interfere with an appropriate order of the Motor Accidents Claims Tribunal as decided by the Full Bench of this court holding that the Motor Accidents Claims Tribunal is a court for the purpose of Section 115 of the Code of Civil Procedure, but we will have to see as to whether the impugned order requires interference at all even if it comply with Clauses (a), (b), (c) of Section 115 of the Code of Civil Procedure.

4. The next question is that even if these petitions are deemed to be under Article 227 of the Constitution, whether this court should exercise the power if it does not find any flagrant violation of justice. It is settled law that even if all the

clauses of Section 115 of the Code of Civil Procedure, that is Clauses (a), (b), (c) are fully satisfied, a High Court may not interfere with such a decision if the order does not cause a flagrant violation of justice. The same is the decision with regard to Article 227 of the Constitution. So from that angle the impugned order does not call for any interference. But I do not want to leave the matter at that stage as the matter has been argued strenuously by the learned advocate for the petitioner and I want to decide the matter on merit. Mr. Sharma, learned advocate for the petitioner makes threefold submissions:

(i) That there is a special Act that is, the Public Liability Insurance Act, 1991 and these claims are to be decided under that particular Act.

(ii) That the policy does not cover the liability of the insurance company for such an accident.

(iii) That the vehicles were not in use and as such it shall not come within the purview of the Motor Vehicles Act.

5. Regarding the first submission, one should bear in mind the objects of the Act, 1991. That Act was brought into existence after the Bhopal gas leakage tragedy, that is, the purpose of the Act was to provide actual public liability insurance for installations handling hazardous substance to provide minimum relief to the victims and it was made mandatory for every owner handling hazardous substance to take out insurance policies for the purpose. It is submitted by Mr. Sharma that the owner of the tanker did not take out any policy with regard to this and as such the victims are not entitled to any relief. In reply to this contention Mr. Choudhury, learned Counsel for the opposite parties replied that this is not the correct proposition of law and because of the failure on the part of the owner to take out any policy under the Act, 1991, even if it is mandatory, that will not deprive the third party in claiming compensation under the Motor Vehicles Act. That question came up for consideration before the single Judge of the Allahabad High Court in U.P. State Electricity Board and Another Vs. District Magistrate and Others, and it was brought to my notice by Mr. S.P. Deka, learned Counsel for the opposite parties, that that was a case where a claim petition was filed before the Collector u/s 6(1) of the 1991 Act. The facts before the Allahabad High Court were that the respondent Nos. 1 and 3 are the father and mother of one late Anil Gurung. They filed a claim petition on 10.7.95 u/s 6(1) of the 1991 Act before the Collector. True copy of the application is Annexure 1 to the writ petition. In this application it has been alleged that the applicants are the parents and legal representatives of late Anil Gurung who was unmarried and employed in Hilton Hotel, Dehradun. Anil Gurung used to financially support his parents from his income. On 16.10.1994 Anil Gurung had gone for a wedding and while going in the wedding procession, the trolley of the band came into contact with an electric wire which had been hanging at a low height of about 10 ft. due to negligence of the respondents in the claim petition. There was no sign or indication about this electric wire which could be seen by anyone so as to give warning. This wire came into contact with the trolley and consequently caused

the death of three workers and the members of the wedding procession (Anil Gurung) on the spot. The deceased were Shafiq Ahrned, Bhrampal, Sanjoy Singh alias Sanu and Anil Gurung. Three persons were also injured, namely, Ajit Singh and Yusuf, the proprietor of the band. All these deaths and injuries were caused because the high tension wire was hanging at a height of about 10 ft. It was alleged that the respondents had been negligent since the wire had been hanging at a low height. It was further alleged that on 16.10.94 when the electric wire came into contact with the band trolley, sparks were seen coming from the trolley. A member of the band, Zahid escaped injury because he was on a wooden stand and was wearing plastic shoes. Another member of the band, Awwal Hussain took some dry stick and removed the wire from the trolley. The injured and dead persons were taken to the hospital. In the post-mortem of the deceased it was revealed that the deaths were due to electric shock. Anil Gurung was 24 years of age when he died. He was the sole earning member in his family and the support of his family has come to an end and their lives have been plunged into darkness. Jhalak Bahadur Gurung, the father of Anil Gurung is 75 years of age and he does not get pension, etc. Anil Gurung was earning Rs. 935 per month as an employee of Hilton Hotel and he was likely to get promotion and increment. On the basis of these averments the claim petitioners prayed for award of compensation under the 1991 Act.

5A. In reply to the claim petition an objection/written statement was filed on behalf of the U.P. State Electricity Board, true copy of which is Annexure 2 to the writ petition. In para 2, it is stated that whenever electricity connection is required for a marriage, permission is required to be obtained. No application for electricity connection for the marriage was moved, and the requisite permission was not obtained. It was denied that the high tension electric wire was at a height of 10 ft. It was also denied that the high tension wire was the cause of the accident. It was alleged that a high tension wire cannot be a loose wire. It was denied that the accident occurred due to negligence on behalf of the respondents in the claim petition. It was alleged that the claim petition was not legally maintainable under the 1991 Act as electricity was not a hazardous substance. It was further alleged that the petitioners, were not legal representatives of the deceased and were not authorised by the legal representatives. It was further alleged that the application was not moved in the prescribed form. It was further alleged that notice in Form 2 was not given and hence the claim petition was not maintainable. The Allahabad High Court pointed out that:

(2) It is felt essential, therefore, to provide for mandatory public liability insurance for installations handling hazardous substances to provide minimum relief to the victims. Such an insurance apart from safeguarding the interests of the victims of accidents would also provide cover and enable the industry to discharge its liability to settle large claims arising out of major accidents. If the objective of providing immediate relief is to be achieved the mandatory public liability insurance should be on the principle of "no fault liability" as it is limited to only relief on a limited scale. However, availability of immediate relief would

not prevent the victims to go to courts for claiming larger compensation.

6. In the case of *M.C. Mehta v. Union of India* 1987 ACJ 386 (SC), the Supreme Court has gone much further than *Rylands v. Fletcher* (1868) LR 3 330, in imposing strict liability. The court observed, "if the enterprise is permitted to carry on any hazardous or inherently dangerous activity for its profit the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overhead". The court observed that this strict liability is not subject to any of the exceptions to the rule in *Rylands v. Fletcher* (supra). The court observed that the respondent Nos. 2 and 3 may in addition to the amount awarded to them by the impugned award also institute any other proceedings, whether by means of a suit or otherwise, before the appropriate forum for claiming further relief, and if they do so, the said proceedings shall be decided within six months of the institution of the same in accordance with law.

7. On the basis of this authority it is urged that this Act is no bar to avail a claim petition if otherwise maintainable. I respectfully agree with this decision of the Allahabad High Court and I reject the contention of Mr. Sharma with regard to the first point.

8. The second question is whether the vehicle was used as required u/s 92-A of the old Act or Section 140 of the new Act. Mr. Sharma in this connection places reliance on the following decisions: *North Goalpara Motor Workers' Cooperative Society Ltd. Vs. New India Assurance Co. Ltd. and Others*, In that case it was provided that: Motor accident-Compensation- Use of motor vehicles covers accidents which occur both when the vehicle is in motion as well as when it is stationary- Bomb exploded inside the bus when it was stationary-Accident arising out of the use of the vehicle-Petitioner entitled to compensation. Again in *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, the Apex Court pointed out that:

"No fault liability" envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising out from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permit that compensation paid under "no fault liability" can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. Therefore, even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply.

Again Allahabad High Court pointed out in *U.P. State Electricity Board and*

Another Vs. District Magistrate and Others, as follows:

(63) However, we are now witnessing a swing once again in favour of the principle of strict liability. The Bhopal gas tragedy, the Chernobyl nuclear disaster, the crude oil spill in 1988 on to the Alaska coastline from the oil tanker Exxon Valdez and other similar incidents have shocked the conscience of people all over the world and have aroused thinkers to the dangers in industrial activities.

9. A suit was filed before Andhra Pra-desh High Court claiming damages and the suit was decreed. A revision was filed before the Subordinate Judge Court, but it was dismissed on the ground that appeal was available. Thereafter a writ petition was filed before the High Court challenging the decree. The High Court held that the writ petition cannot be maintainable in view of the fact that an appeal was available. But it is urged that a decree is a nullity and, therefore, can be challenged by way of writ petition. The argument before the High Court was that there is a bar in the civil court in matters of accident arising out of the motor vehicle and as such the suit is not maintainable and reliance was placed on State of Madhya Pradesh v. Bahadur AIR 1971 SC 1718, wherein the Supreme Court pointed out that whenever a judgment is prima facie illegal and clear violation of any law the party can go to the civil court and such judgment can be quashed by the High Court in its jurisdiction under Article 226 of the Constitution of India. The Andhra Pradesh High Court came to a finding that at the relevant time the motor vehicle was not being used, it was being stationed at the time when the accident occurred and it was held by the Andhra Pradesh High Court that Section 175 of the Motor Vehicles Act shall not be a bar to oust the jurisdiction of the civil court and ultimately the writ petition was dismissed. This case is of no help to the petitioner and as a matter of fact it goes against the argument advanced by learned Counsel for the petitioner.

10. The next case relied by the learned Counsel for the petitioner is 2001 T.A.C. 3 (Sic.), that is a decision of the Supreme Court. The brief fact in that case was that a policy came into existence after the accident took place, and the Supreme Court came to a finding that in such a situation, no policy was there and as such question of an award of no fault liability does not arise. This case is of also no help to the petitioner.

11. On the other hand, learned Counsel for the opposite party strenuously relied on the following decisions:

(i) United India Insurance Co. Ltd. v. Suhagini Paul 1997 (1) GLT 352, wherein a Full Bench decision of this court pointed out that u/s 140 of the Motor Vehicles Act, the insurance company is debarred to raise any plea of its liability at the stage of considering the matter of no fault liability. That this matter was earlier placed before the Full Bench of this court reported in 1993 (1) G.L.J. 184, wherein a Full Bench decision of this court pointed out that it is not a good law. The Full Bench of this court answered this question and held that no interference is called for in exercise of court's revisionary jurisdiction u/s 115, CPC when it is

an interlocutory order with regard to no fault liability.

(ii) The next case relied on by the learned Counsel for the opposite party is Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, In that case the Apex Court was considering Section 92-A of the old Act which is verbatim Section 140 of the Motor Vehicles Act save and except amount of compensation is fixed. The facts of that case are almost same with the present case. What happened in that case is that a petrol tanker collided with a lorry on the national highway when it was proceeding from Pune side to Bangalore and this accident occurred at 3 a.m. and the petrol tanker went off road and fell on its left side at a distance of 20 ft. from the highway and 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 few of them died as a result of such injuries and the question which was meted was whether the claim made by these persons for compensation shall come within the purview of the Motor Vehicles Act. The Supreme Court answered the question raised in that case as follows:

(12) Section 92-A was 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 the purpose. The same approach has been adopted by this court while constructing the provisions of the Act. [See Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi 1981 ACJ 507 (SC) and Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan 1987 ACJ 411 (SC)].

11A. The next question which was taken up by the Supreme Court was that the meaning of expression "arising out of the use of motor vehicles" and the Apex Court considered the matter in toto in paras 16 and 26. The Apex Court pointed out as follows:

(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 u/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. Negating the said contention, it was held:

"We are, however, satisfied that a 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 the engine may shortly be replaced and the motor power

restored."

(26) 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 breakdown or mechanical defect. Relying on the above-mentioned decisions, the appellant Bench of the High Court has held that the expression "use of a motor vehicle" in Section 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 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.

12. The Apex Court pointed out when a motor vehicle is in move from one place to another and when it remains stationary at some place because of breakdown or because of some other reasons it will be deemed that the vehicle is in use. The Supreme Court pointed out that the expression "arising out of the use of motor vehicles" has a wider connotation. In para 36 the Supreme Court pointed out as follows:

(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 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 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.

And in that connection the Supreme Court pointed out that the death of the person was due to an accident arising out of the use of motor vehicle. The conditions necessary for granting relief u/s 92-A of the Motor Vehicles Act have been prescribed by the Supreme Court in para 44 and they are as follows:

- (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 claim is made against the owner and insurer of the motor vehicle involved in the accident.

13. In a recent case, Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, the Apex Court has pointed out that no doubt liability is different from strict liability and the Supreme Court laid down that, in India we have gone a step further than the strict liability as enshrined in Rylands v. Fletcher (1868) LR 330 the Supreme Court laid down that, if somebody dies in an accident and/ or something and mischief is caused out of it he is responsible and answerable for such a thing. Regarding no fault liability a single Bench judgment of this court in North Goalpara Motor Workers' Cooperative Society Ltd. Vs. New India Assurance Co. Ltd. and Others, wherein it has been pointed out as follows:

Use of a motor vehicle covers accidents which occur both when the vehicle is in motion as well as when it is stationary- Bomb exploded inside the bus when it was stationary-Accident arising out of the use of the vehicle-Petitioner entitled to compensation.

14. In Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, the facts were that the driver who was driving his vehicle was carrying some passengers and the autorickshaw driver was killed by the passengers when he was driving the vehicle and the question was that whether this will be an accident and can claim compensation before the Tribunal under the Motor Vehicles Act. The Apex Court came to a finding that the nature of death of the deceased was an accident arising out of the use of the motor vehicle.

15. This being the position of law, I have no hesitation to come to the conclusion that the Tribunal has the jurisdiction to entertain the claim and decide the matter on merit, whatever the amount of compensation that will be decided by the Tribunal in accordance with law. I do not find any infirmity in the impugned orders. Accordingly, all the revision petitions shall stand rejected and the stay orders, if any, passed earlier, shall stand vacated.