

(1996) 05 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Civil First Miscellaneous Appeal No's. 10 of 1994 and 80 of 1995

Sneh Sharma and Others

APPELLANT

Vs

Sewa Ram and Others

RESPONDENT

Date of Decision : 03-05-1996

Acts Referred:

Employees Compensation Act, 1923 — Section 3
Motor Vehicles Act, 1988 — Section 110, 165, 94, 95

Citation : (1996) ACJ 902

Hon'ble Judges : Bhawani Singh, Acting C.J.; R.C. Gandhi, J

Bench : Division Bench

Advocate : R.K. Bhatia and R.K. Gupta, for the Appellant; K.C. Sharma, K.S. Chib, S. Malhotra and M.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, Actg. C.J.

1. We propose to dispose of both these appeals by a common judgment. Although the facts may be slightly different but the ultimate question for

determination is identical. Before answering it, narration of facts from both the cases is being made one after the other.

Sneh Sharma v. Sewa Ram, C. Ist. M.A. No. 10 of 1994:

2. On 7.10.1992, deceased Pardeep Kumar Sharma was travelling in Matador JK 02-9051 for going to his office at Bikram Chowk, Jammu. The

vehicle was being driven in rash and negligent manner with excess speed. The driver of the vehicle tried to overtake bus No. JK 02-9021 at

Digyana, Jammu, where powerful bomb exploded in the bus, as a result of which number of passengers died and many others suffered serious

injuries. Some splinters of the bomb caused fatal injuries to the deceased and he

died.

3. Claimants sought compensation for the death of the deceased, but the Tribunal has rejected the petition holding that it has no jurisdiction to entertain the claim petition since the accident did not take place due to any negligence or rashness on the part of the driver nor it arose out of the use of the motor vehicle.

Chuni Dhuda v. Romesh Chander, C. Ist. M.A. No. 80 of 1995.

4. On 14.8.1993, the deceased started from Kishtwar to Jammu at about 5.30 a.m. through bus No. JKU 2003. The driver of the bus stopped it near Sarthal More at the instance of certain armed persons who got into the bus and asked the driver to take the bus one kilometre away and segregated the passengers on the basis of religion and shot them to death. Claim petition was preferred in which it is alleged that the driver failed to perform the duty carefully. He was thoroughly careless and negligent in stopping the bus and allowing the persons to board it knowing fully well that these persons were carrying guns and were directing the stopping of the bus at that particular time and at a dangerous place. The accident arose out of the use of motor vehicle driven rashly and negligently by the driver. Therefore, claim for compensation was maintainable. However, the Tribunal has rejected it on the ground that the accident did not arise out of the use of the motor vehicle and the driver was not responsible for the same.

5. Feeling aggrieved by the order of the Tribunal the present appeals have been preferred by the claimants. Among other things, it has been pointed out that the Tribunal did not appreciate the question involved in these cases correctly. Many important decisions, on which reliance was placed by the claimants, were not considered and appreciated by the Tribunal and that decisions, which do not apply to the facts of these cases, were taken into consideration in rejecting the claims. The expression, "arising out of the use of the motor vehicles" in Section 165 of the Motor Vehicles Act, 1988, has been interpreted in completely narrow sense although it has a wide connotation. In support of this plea, reliance was placed on Chaurasiya and Co. v. Pramila Rao 1974 ACT 481 (MP); Krishna Roadways, Nathdwara v. Madan Lal 1984 ACJ 263 ; Padmanabhan Nair v. Narayanikutty 1988 ACJ 58 ; Gouri Bi Vs. Khemraj, ;

Pushpa Rani Chopra v. Anokha Singh 1975 ACJ 39; Government

Insurance Office of New South Wales v. R.J. Green & Lloyd Pty. Ltd. 1967 ACJ 329 ; Oriental Fire & Genl. Ins. Co. Ltd. v. Suman Navnath

Raj guru 1985 ACJ 243; Gujarat State Road Trans. Corporation v. Yuvraj Digvijaysinhji 1985 ACJ 163; Orissa Cooperative Ins. Society Ltd. v.

Sarat Chandra Champati 1975 ACJ 19 ; and Abdulla Bin Ali and Others Vs. Galappa and Others, .

Learned Counsel appearing for the opposite side contended that these cases have been rightly rejected by the Tribunal since they do not fall within

the parameters of giving jurisdiction to the Tribunal to entertain cases for compensation. The facts of these cases are such which plainly

demonstrated that the accident was not caused as a result of negligence or rashness on account of the use of the motor vehicle by the driver.

During the course of submission reliance was placed on AIR 1988 Guj 18 (Sic.).

6. We do not consider it necessary to deal with all the decisions placed before us by the learned Counsel for the appellants since the Apex Court

has considered the question comprehensively in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . In this case, on 29.10.1987 at

about 3 a.m. there was a collision between a petrol tanker No. MKL 7461 and a truck No. MEH 4197 on the National Highway No. 4 near

village Kavatha, in District Satara, Maharashtra State. As a result of this collision, the petrol tanker went off the road and fell on its left side at a

distance of about 20 feet from the highway. Due to the overturning of the petrol tanker, the petrol contained in it leaked out and collected nearby.

At about 7.15 a.m. an explosion took place in the petrol tanker resulting in fire. A number of persons who had collected near the petrol tanker

sustained burn injuries and some out of them died. Claim petition was filed by the mother of the deceased against the owner and the insurer. In

addition to compensation of Rs. 75,000/-under Section 110-A of the Act, payment of Rs. 15,000/- u/s 92-A of the Act was also demanded. The

defence as set up was that the Tribunal could not entertain such a petition on the ground that explosion and fire resulting in injuries to the deceased

could not be said to be an accident arising out of the use of the motor vehicle. The claim petitions were dismissed by the Tribunal on the ground

that the explosion could not be said to be an accident arising out of the use of

the petrol tanker and that the provisions of Section 92-A of the Act were not attracted in the matter. The Tribunal was of the view that the explosion and the fire which took place after about four hours had no connection whatsoever with the accident which took place at 3 a.m. and that the explosion and the fire was altogether an independent act. On facts, the Tribunal also observed that the villagers tried to take the benefit of the earlier accident and while trying to pilfer the petrol from the petrol tanker there was friction which caused ignition and explosion, for which situation the villagers themselves were responsible. The appeal was allowed by the High Court holding that the expression 'use of a motor vehicle' covers a very wide field, a field more extensive than which might be called traffic use of the motor vehicle and that the use of a vehicle is not confined to the periods when it was in motion or was moving and that vehicle would still be in the use even when it was stationary. Merely because there was interval of about four and half hours between the collision of the petrol tanker and the explosion and fire in the tanker, it could not be necessarily inferred that there was no causal relation between earlier event and the later incident of explosion and fire and that the earlier collision if not the cause was at least the main contributory factor for the subsequent explosion and fire in the tanker in question inasmuch as the tanker was carrying petrol which was a highly combustible and volatile material and after the collision the petrol tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and there was grave risk of explosion and fire from the petrol coming out of the tanker and the tanker was allowed to remain in such a dangerous condition for hours without any effort being made to prevent such great hazard of fire and explosion from petrol escaping from the tanker. It was also held that the collision between the tanker and the other vehicle which occurred earlier and the escape of petrol from the tanker which ultimately resulted in explosion and fire were not unconnected but related events. The contention that the villagers were responsible for the occurrence when they engaged themselves to pilfer the petrol and someone carelessly threw a matchstick used for lighting a beedi or cigarette was rejected. As to the application of Section 92-A of the Act, it was found that the claims could not have been rejected.

7. Since application of Section 92-A of the Act is not in dispute, therefore, we address ourselves to the question whether the accident can be said

to have arisen out of the 'use of the motor vehicle' entitling the appellants to prefer claim petitions against the respondents and claim compensation

for the death of deceased. As such, as stated above, this question has been answered by the Apex Court in the decision referred to in the

preceding part of this judgment. Therefore, it is useful to refer to those paras of this decision which deal with this question and the same read as

under:

(13) The expression 'arising out of the use of motor vehicles' was also used by Parliament in Sub-section (1) of Section 110 of the Act wherein

provision was made for the constitution of Motor Accidents Claims Tribunals for speedy and expeditious adjudication of claims of compensation in

respect of accidents involving death or bodily injuries to persons arising out of the use of motor vehicles or damage to any property of a third party

so arising or both. Furthermore, by Sub-section (1) of Section 94 of the Act an obligation was imposed that no person shall use except as a

passenger or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle by

that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter VIII of the Act. Section 95

prescribed the requirements of such insurance policies as well as limits of liability. In Clause (b) of Sub-section (1) of Section 95, it was laid down

that the policy of insurance required must be a policy which insures the person or classes of persons, specified in the policy to the extent specified

in Sub-section (2) against (i) any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any

property of a third party caused by or arising out of the use of the vehicle in public place and (ii) the death of or bodily injury to any passenger of a

public service vehicle caused by or arising out of the use of the vehicle in a public place.

While construing the expression 'arising out of the use of a motor vehicle' in Sub-section (1) of Section 92-A of the Act, regard will have to be had

to the facts that expressions to the same effect were also contained in Sections 95 and 110 of the Act.

(20) The second submission of Mr. Sanghi was that even if it be assumed that at the time when the explosion and fire took place in the petrol

tanker it was a motor vehicle, the tanker was not being used as a motor vehicle at that time inasmuch as it was lying immobile on its side. It is,

however, not disputed by Mr. Sanghi that at the time when the petrol tanker had collided with the truck, it was being used as a motor vehicle but

his submission was that the said user came to an end on such collision when the petrol tanker turned turtle and was rendered immobile. This

contention postulates a restricted meaning for the word 'use' in the expression 'use of the motor vehicle' by confining it to a situation when the

vehicle is mobile. The learned Counsel for the respondent has, on the other hand, suggested a wider connotation for the word 'use' so as to include

the period when the vehicle is stationary and has invited our attention to the observations in *Elliott v. Grey* (1960) 1 QB 367; *Government*

Insurance Office of New South Wales v. R.J. Green & Lloyd Pty. Ltd. 1967 ACJ 329; *Pushpa Rani Chopra v. Anokha Singh* 1975 ACJ 396 ;

General Manager, Karnataka State Road Trans. Corporation v. S. Satalingappa 1979 ACJ 452 ;...

(22) Similarly in *Government Insurance Office of New South Wales v. R.J. Green & Lloyd Pty. Ltd.* 1967 ACJ 329 , Barwick, C.J., while

construing the word 'use' in Motor Vehicles (Third Party Insurance) Act, 1942-1951 (N.S.W), has observed that the said Act indicated an

intention to cover a very wide field, a field more extensive than what might be called the traffic use of the motor vehicle. The learned Chief Justice

further observed:

'In my opinion, the relevant use of the vehicle cannot be confined to the periods it is in motion, or its parts moving in some operation. It may be in

use though stationary.'

(23) In *Pushpa Rani Chopra v. Anokha Singh* 1975 ACJ 396, a learned Judge of the Delhi High Court, while construing the word 'use' in Section

110 of the Act, has held that the said word has been used in a wider sense and it covers all employments of the motor vehicle on the public places

including its driving, parking, keeping stationary, repairing or leaving unattended on the road or for any other purpose.

In that case, the truck in question was stationary as its axle had broken down

and it was parked on the road at the time of the accident.

(24) In *General Manager, Karnataka State Road Trans. Corporation v. S. Satalingappa* 1979 ACJ 452, the vehicle in question was a transport

bus which was stationed by its driver on a slope unattended. The bus suddenly started moving and dashed against a tea shop. It was held by a

Division Bench of the Karnataka High Court that the bus was in use at that time.

(25) In *Oriental Fire & Genl. Ins. Co. Ltd. v. Suman Navnath Rajguru* 1985 ACJ 243, a petrol tanker was parked near the footpath on the road

in front of a petrol pump and it burst and exploded causing fatal injuries to a passer-by. A Division Bench of the Bombay High Court rejected the

contention that at the material time, the petrol tanker was not in 'use'.

(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 Appellate 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 the 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 use at the time when it was lying on its side after the collision with the truck.

(27) The only other question which remains to be considered is whether the explosion and fire which caused injuries to the deceased son of the

respondent can be said to have taken place due to an accident arising out of the use of a motor vehicle, viz., the petrol tanker. Mr. Sanghi has

urged that the expression 'arising out of the use of a motor vehicle' implies a causal relationship between the user of the motor vehicle and the

accident which has resulted in death or disablement and that in the present case it cannot be said that the explosion and fire which took place in the

petrol tanker four and half hours after the collision and after the tanker had turned turtle was an accident arising out of the use of the petrol tanker.

In this regard, Mr. Sanghi has emphasised that the persons who sustained injuries as a result of the explosion and fire in the petrol tanker were

pilfering petrol which had leaked out from the petrol tanker and the explosion and fire was the result of the said unlawful activity of those persons

and that it was not on account of the user of the petrol tanker. Mr. Sanghi, in this connection, has placed reliance on the decision in Mackinnon

Mackenzie & Co. Pvt. Ltd. v. Ibrahim Mahommed Issak 1969 ACJ 22 , wherein this court has construed the expression 'arising out of

employment' appearing in Section 3 of the Workmen's Compensation Act, 1923 and has laid down that there must be a causal relationship

between the accident and the employment. Mr. Sanghi has urged that similarly there must be a causal relationship between the accident and the

user of the motor vehicle for the purpose of maintainability of a claim u/s 92-A of the Act.

(30) We find no ground for interfering with these findings recorded by the High Court and we must proceed on the basis that the persons who

sustained injuries as a result of the explosion and fire in the petrol tanker were not indulging in any unlawful activity which may have caused the said

explosion and fire. The matter has, therefore, to be examined in the light of the meaning to be assigned to the words 'arising out of in the expression

'accident arising out of the use of a motor vehicle' in Section 92-A.

(31) The words 'arising out of have been used in various statutes in different contexts and have been construed by courts widely as well as

narrowly, keeping in view the context in which they have been used in a particular legislation.

(32) In Heyman v. Darwins Ltd. (1942) AC 356, while construing the arbitration clause in a contract, Lord Porter expressed the view that as

compared to the word 'under', the expression 'arising out of has a wider meaning. In Union of India v. E.B. Aaby's Rederi A/S (1975) AC 797,

Viscount Dilhorne and Lord Salmon stated that they could not discover any difference between the expression 'arising out of' and 'arising under'

and they equated 'arising out of' in the arbitration clause in a Charter Party with 'arising under'.

(33) In *Samick Lines Co. Ltd. v. Owners of the Antonis P. Lemos* (1985) 2 WLR 468, the House of Lords was considering the question whether

a claim for damages based on negligence in tort could be regarded as a claim arising out of an agreement u/s 20(2)(1)(h) of the Supreme Court

Act, 1981 and fell within the admiralty jurisdiction of the High Court. The words 'any claim arising out of any agreement relating to the carriage of

goods in a ship or to the use or hire of a ship' in Section 20(2)(1)(h) were held to be wide enough to cover claims, whether in contract or tort,

arising out of any agreement relating to carriage of goods in a vessel and it was also held that for such an agreement to come within para (h), it was

not necessary that the claim in question be directly connected with some agreement of the kinds referred to in it. The words 'arising out of' were not

construed to mean 'arising under' as in *Union of India v. E.B. Aaby's Rederi A/S* (1975) AC 797, which decision was held inapplicable to the

construction of Section 20(2)(1)(h) and it was observed by Lord Brandon:

With regard to the first point, I would readily accept that in certain contexts the expression 'arising out of' may, on the ordinary and natural meaning

of the words used be the equivalent of the expression 'arising under' and not that of the wider expression 'connected with'. In my view, however,

the expression 'arising out of' is, on the ordinary and natural meaning of the words' use, capable, in other contexts, of being the equivalent of the

wider expression 'connected with'. Whether the expression 'arising out of' has the narrower or the wider meaning in any particular case must

depend on the context in which it is used.

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

(34) In the context of motor accidents the expressions 'caused by' and 'arising out of' are often used in statutes. Although both these expressions

imply a causal relationship between the accident resulting in injury and the use of the motor vehicle but they differ in the degree of proximity of such

relationship. This distinction has been lucidly brought out in the decision in

Government Insurance Office of New South Wales v. R.J. Green &

Lloyd Pty. Ltd. 1967 ACJ 329 , wherein Lord Barwick, CJ., 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 'arising out of as used

in the Act and in the policy.

(35) In the same case, Windeyer, J. has observed as under:

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 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.

(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.

(37) Was the accident involving the explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle?

In our view, in the facts and circumstances of the present case this question must be answered in the affirmative. The High Court has found that the

tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the

tanker had fallen on one of its sides on 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 the collision and 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.

[See Himachal Road Trans. Corpn. and Others Vs. Om Prakash and Others, and Smt. Inder Mohini and Others Vs. Lakhvinder Pal Singh Duggal

and Others,

8. In the aforesaid background, there remains no doubt so far as the legal position is concerned.

9. Now the question is whether the facts of the cases before us attract the application of these principles. The bus came from a place where the

militant activities were going on. Obviously, strict vigilance should have been exercised before admitting the passengers into the vehicle. It ought to

have been searched to find out whether any bomb had been planted inside it. The incoming and outgoing passengers should have been kept under

vigil and their articles kept under gaze. Passengers should have been warned to be careful about their belongings and anything which did not belong

to them be pointed out to the crew of the vehicle. All such precautions were not made. Contention that there was no legal duty to do so is hardly

convincing. The owner of the vehicle had to take care of the safety of the passengers. His duty is not limited to take the passengers against

payment of money without paying attention towards their safe passage. Such a duty is implicit in the nature of the services offered to the general

public and one does not have to look to any express provision of law in this regard. The facts clearly point out that the owner and the crew of the

bus did not pay any attention towards taking precautions for the safety of the passengers, although it was well-known that militant activities were

gaining ground and immediate precautions against such activities were necessary. The accident arose out of the use of the vehicle and there is no

doubt about it and the respondents are squarely responsible for the same.

10. The second case also presents almost the similar situation. The bus was coming from Kishtwar, starting in the early hours of the day and

passing through difficult region. The driver of the bus knew very well that persons asking him to stop the bus were armed with guns. He should not

have allowed these persons to get into the vehicle by stopping it. His carelessness has directly resulted in the incident in which number of persons

were shot dead by the militants. The owner of the vehicle ought to have known that extra care was required for plying the vehicle through the

difficult region and during that time. Negligence, therefore, is writ large and is proximate cause of the incident.

11. The result of the aforesaid discussion is that the Tribunal has not correctly examined the matter and the claim petitions have been dismissed

erroneously holding that it had no jurisdiction to entertain them. Consequently, the impugned judgments are liable to be set aside.

12. No other point was urged by the learned Counsel for the parties.

13. Therefore, both the appeals are allowed and the judgments dated 26.11.93 and 28.4.1995 passed by the District Judge, Presiding Officer,

Motor Accidents Claims Tribunal, Jammu, are hereby set aside and the cases are sent back to the Tribunal for decision on merits. Since these

claim petitions are pending since 1993, the Tribunal will see the desirability of disposing of the same expeditiously. Costs on the parties.