

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

M.A.C.M.A.No.3169 of 2012

JUDGMENT:

This Appeal under Section 173 of the Motor Vehicles Act, 1988 is filed by the insurance company assailing the award dated 09.02.2012 of the learned Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Anantapur at Gooty (hereinafter referred to as 'the Claims Tribunal') in O.P.No.643 of 2010.

2. Heard arguments of Smt. S.A.V.Ratnam, the learned counsel for appellant-Insurance Company, Sri G.Ram Mohan Reddy, the learned counsel for respondent Nos.1 to 3/claimants and Sri G.V.S.Mehar Kumar, the learned counsel for respondent No.4.

3. The following facts are required to be noticed:

Sri Uddal Kesharam Pache was a welding worker aged 22 years. On 31.08.2010 at about 6:00 A.M. he was sleeping by the side of the road in S.C. Colony, Kallur Village of Yellanur Mandal. At that time an excavator bearing registration No.XXX-0001 was

driven by its driver rashly or negligently and it ran over the legs of him causing serious injuries. He was shifted to Government Hospital, Tadipatri and from there to Government General Hospital, Anantapur where he succumbed to injuries and died at 9:00 A.M. on the same day. His parents and younger brother filed O.P.No.643 of 2010 under Sections 140 and 166 of Motor Vehicles Act praying for compensation of Rs.4,00,000/-. The owner of the offending excavator was made as respondent No.1. The National Insurance Company Limited which had issued an insurance policy was made as respondent No.2. The claim was preferred before the learned Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Anantapur at Gooty. The owner of the offending excavator did not choose to appear and contest. The insurance company filed its counter and denied the allegations and principally contended that the excavator is a miscellaneous and special type of vehicle and it is a chain mounted vehicle and does not fall within the definition of motor vehicle as provided in Motor Vehicles Act, 1988 and therefore, the Claims Tribunal did not hold jurisdiction to adjudicate the claim and prayed for dismissal of the claim.

4. The learned Claims Tribunal settled the following issues for trial:

- 1) Whether the accident occurred on 31.08.2010 due to rash and negligent driving of L & T Komatsu PC 200-6 Excavator (Proclain) Machine S.No.NL.14999 by its driver and caused the death of the deceased?
- 2) Whether the petitioners are entitled to compensation? If so, to what amount and from which of the respondents?
- 3) To what relief?

5. The father of the deceased, who is the first claimant testified as PW.1 and an eye witness to the incident testified as PW.2 and Exs.A.1 to A.4 were marked. Road Transport Officer who was earlier Motor Vehicles Inspector testified as RW.1 and officer of the insurance company testified as RW.2 and Exs.B.1 to B.4 were marked.

6. After analysis of the evidence, the Claims Tribunal held that it was because of the rash or negligent driving of excavator the incident occurred leading to the death of the deceased. His

monthly income was assessed at Rs.3,000/- and thus, annual income was Rs.36,000/-. Multiplier '15' was applied. $\frac{1}{3}$ rd of the income was deducted towards possible personal expenses of the deceased. Thus, it assessed Rs.5,40,000/- towards loss of dependency. Towards funeral expenses and transportation expenses, Rs.20,000/- was assessed, towards loss of consortium Rs.30,000/- was assessed. Thus, the total compensation it assessed was Rs.5,90,000/-. However, as the claim was made only for Rs.4,00,000/- it granted only Rs.4,00,000/- as compensation. On the question whether excavator was motor vehicle or not it discussed the contentions on both sides and held that it was motor vehicle, and the Claims Tribunal had jurisdiction. It passed the award in the following terms:

"In the result claim petition is allowed with costs and interest.

(a) The respondents 1 and 2 do pay jointly and severally compensation of 4,00,000/- (Rupees four lakh only) to the petitioners with costs and interest at 7.5% from the date of filing of the petition till the date of deposit of the amount into Court.

(b) Advocate fee is fixed at Rs.750/-,

(c) The 2nd respondent is hereby directed to deposit the compensation amount of Rs.4,00,000/- (Rupees four lakh only) with interest and costs within a period of one month from this day. On deposit of the compensation amount, the compensation amount is apportioned amongst the petitioners as follows:

Petitioners 1 and 2 : Rs.1,50,000/- (Rupees one lakh fifty thousand only) each,

Petitioner No.3 : Rs.1,00,000/- (Rupees one lakh only)

The petitioners 1 and 2 are permitted to withdraw Rs.1,00,000/- (Rupees one lakh only) each and their balance compensation amount shall be kept in fixed deposit in any nationalized bank for a period of one year. The compensation amount of the 3rd minor petitioner shall be kept in fixed deposit in any nationalized bank till he attains majority.”

7. Aggrieved by that the insurance company preferred this appeal.

8. Smt. S.A.V.Ratnam, the learned counsel for appellant-Insurance Company submits that excess compensation was awarded by the Claims Tribunal. The thrust of the argument of the learned counsel is that excavator cannot be called motor

vehicle and the Claims Tribunal committed legal error. In support of the contention, the learned counsel cited ***Future Generali India Insurance Company Limited v. Smt. Santoshi***¹.

9. As against it, Sri G.Ram Mohan Reddy, the learned counsel for respondent Nos.1 to 3/claimants, contended that the Claims Tribunal failed to award the just compensation it assessed and committed a legal error and there is clear need for enhancing the compensation and that the Court is entitled to grant just compensation without the claimants preferring the appeal or cross-objections and cited ***Surekha v. Santosh***². The learned counsel further contended that excavator is a motor vehicle within the definition of the Motor Vehicles Act, 1988 and the Claims Tribunal did not commit any legal error.

10. The points that fall for consideration in this appeal are:

1. Whether an excavator is a motor vehicle within the definition of Section 2(28) of the Motor Vehicles Act,

¹ AIRONLINE 2024 MP 1573

² (2021) 16 SCC 467

**1988 attracting the jurisdiction of the Motor
Accidents Claims Tribunal?**

**2. What is the just compensation, if any, payable to the
legal representatives of the deceased?**

POINT No.1:

11. At the material point of time the excavator was insured. Ex.B.2 is insurance policy. Motor guidelines issued by the National Insurance Company Limited are Ex.B.4. A perusal of Ex.B.2 discloses that the certificate of insurance of miscellaneous and special type of vehicles was issued for this excavator. In this insurance policy the printed material contained limitations as to use which read as below:

“Limitation as to use:

Use in connection with the insured's business. The policy does not cover (1) Use for racing pace making, reliability trial or speed testing. (2) Use for the carriage of passengers for hire or reward. (3) Use whilst drawing a trailer except the towing (other than for reward) of anyone disabled mechanically propelled vehicle.”

It further contains the limit of liability which reads as below:

“Limit of Liability:

Limit of the amount of the Company's Liability Under Section II-I(i) in respect of any one accident : as per Motor Vehicles Act, 1988

Limit of the amount of the Company's Liability under Section II-I(ii) in respect of any one claim or series of claims arising out of one event : UPTO Rs. 750000

I/We hereby certify that the policy to which the certificate relates as well as the certificate of insurance are issued in accordance with provisions of Chapter X & XI of M.V. Act, 1988.”

12. In Ex.B.4 there is a list of miscellaneous and special types of vehicles. At serial No.19 excavators are mentioned.

13. In Ex.B.4 there are guidelines for miscellaneous and special types of vehicles (Clause D) guidelines. In it at Serial No.6 “limitations as to use and driver clause are provided and at V excavators is mentioned stating that its use in connection with the insured’s business the policy covers and further mentions that the policy does not cover when it is used for racing, reliability trial or speed testing, for carriage of passengers for hire or reward,

whilst drawing a trailer except the towing of anyone disabled mechanical propelled vehicle.” It is this insurance policy, according to the appellant-insurance company, that does not cover the subject accident under the Motor Vehicles Act.

14. Section 2(28) of the Motor Vehicles Act reads as below:

2(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.”

15. The above definition informs that a motor vehicle is a mechanically propelled vehicle adapted for use upon roads, whether the power of propulsion is transmitted thereto from an external or internal source. The definition has an exclusionary principle stating that vehicles running upon fixed rails or a vehicle of a special type adapted for use only in factories or enclosed

premises and vehicles of less than four wheels fitted with engine capacity of not exceeding 25 cubic centimeters. In the case at hand, the excavator was not on any enclosed premises, and it was not a vehicle with engine less than 25 cubic centimeters or less. At the material point of time, it was not in any factory or closed premises. It was in a public place. It was also not on fixed rails. Therefore, it does not fall within the exclusionary clause of motor vehicle. The evidence of RW.1, who by the time of evidence before the Claims Tribunal, was a R.T.O., Tirupati. However, during the period of subject accident he was a Motor Vehicles Inspector, Tadipatri. When the police gave requisition to him to inspect the excavator, he gave an endorsement on Ex.B.1/requisition stating that it was a machine and was not a motor vehicle and therefore, he need not inspect. In his evidence as RW.1 he deposed those facts. On behalf of the claimants, he was subjected to cross-examination wherein he made the following statements:

- I did not inspect the vehicle. I have not perused the records of the offending vehicle.

- As per transport commissioner's circular memo No.9 dated 03.04.2002, Excavator requires registration under M.V. Act, 1988.
- Excavator can be used for road leveling, digging of canals etc.
- Excavator has an engine, breaks, gear box etc.
- Excavator moves with a chain on wheels and operates with diesel as its fuel.
- Excavator has all requisites of motor vehicle except tyres.
- Excavator can move on metal road slowly.

16. If the above statements of RW.1 are read in the context of Section 2(28) of the Motor Vehicles Act, one would notice that an excavator is mechanically propelled vehicle and at the material point of time it was adapted for use upon roads and it moves because of an engine and fuel generating power internally and it has a chassis.

17. As to whether a particular vehicle can be defined as a motor vehicle in terms of Section 2(28) of the Motor Vehicles Act, 1988, it is to be determined on the facts of each case taking into consideration the use of the vehicle and its suitability for being

used upon the road. Once it is found to be suitable for being used on the road, it is immaterial whether it runs on the public road or private road, for the reason, that actual user of particular purpose is no criterion to decide the name. The word “only” used in Section 2(28) of the Motor Vehicles Act, 1988 clearly shows that the exemption is confined only to those kinds of vehicles which are exclusively being used in a factory or in any closed premises. Thus, a vehicle which is not adapted for use upon the road is only to be excluded.³

18. In ***Bose Abraham v. State of Kerala***⁴, the question came up for consideration in the context of Kerala Tax on Entry of Motor Vehicles into Local Areas Act, 1994. Under that enactment Section 3 provides for levying and collection of tax on the entry of any motor vehicle into any local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988. The said Act defined a “motor vehicle” as is defined under the Motor Vehicles Act. Their Lordships, with reference to the

³ **Chairman, R.S.R.T.C. v. Santosh (2013) 7 SCC 94**

tax, did deal with Entry 52 and Entry 57 of List II of the Seventh Schedule to the Constitution of India and arrived at certain conclusions. However, in the process of reasoning their Lordships had to deal with the definition of “motor vehicle”. After considering the statutes and the precedent, at paragraph No.7, their Lordships held “we hold that the excavators and road rollers are motor vehicles for the purpose of the Motor Vehicles Act and they are registered under that Act.” That should clinch the issue in the case at hand. The reliance placed by the learned counsel for appellant-insurance company on the judgment of the Madhya Pradesh High Court of Jabalpur Bench in **Smt. Santoshi**⁵ wherein the vehicle was a chain mounted excavator caterpillar was held not a motor vehicle cannot be applied to the case at hand in view of what is mentioned above by this Court. In the opinion of this Court, the learned Claims Tribunal rightly considered the facts and law and gave adequate reasons and correctly held that the excavator involved in this accident is a

⁴ (2001) 3 SCC 157

⁵ Supra 1

motor vehicle and therefore the Claims Tribunal had jurisdiction to decide the case. The contrary contention raised in this appeal by the insurance company is without any merit. Hence, this point is answered against the appellant.

POINT No.2:

19. The award of the Claims Tribunal impugned here discloses that in the opinion of the Claims Tribunal Rs.5,90,000/- was just compensation. However, because the claim was made only for Rs.4,00,000/-, the Claims Tribunal seems to have restricted the award only for Rs.4,00,000/-.

20. Granting just compensation has been the law which is beyond pale of any dispute. The appeal in this case is preferred by the insurance company and there has been no cross-objections or cross-appeal from the claimants. The question then arises is whether a Court can blink at the concept of just compensation only on the ground that the claimants did not prefer appeal, but the insurance company alone preferred the appeal. It

is in this regard, in **Surekha's** case⁶ referred earlier, their Lordships' held that even in such cases the claimants' argument for just compensation shall be considered and Courts are empowered to grant what they found to be just compensation. It is in the above-referred circumstances, this Court holds that respondent Nos.1 to 3/claimants are entitled for Rs.5,90,000/-. However, on this additional amount of Rs.1,90,000/- the claimants shall remit requisite court fee before the Claims Tribunal. To that extent, the award of the Claims Tribunal shall be modified. Hence, this point is answered accordingly.

21. In the result, while this Appeal is dismissed, the impugned award dated 09.02.2012 of the learned Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Anantapur at Gooty in O.P.No.643 of 2010 is modified from Rs.4,00,000/- to Rs.5,90,000/- with 7.5% interest per annum from the date of petition till the date of realisation. Respondent Nos.1 to 3 herein who are the claimants shall remit the court fee on the

⁶ supra 2

enhanced compensation amount of Rs.1,90,000/- before the Claims Tribunal. Respondent Nos.1 and 2 before the Claims Tribunal are jointly and severally liable to pay the compensation. The appellant-Insurance Company/respondent No.2 before the Claims Tribunal is directed to deposit the amount after giving due credit to amounts, if any, deposited already within one month before the Claims Tribunal. On such a deposit, respondent Nos.1 to 3/claimants are entitled to withdraw the same as per their entitlement mentioned in the award of the Claims Tribunal along with costs and accrued interest thereon. There shall be no order as to costs in this appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 09.05.2025
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THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

M.A.C.M.A.No.3169 of 2012

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