IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 843 OF 2010

United India Insurance Co. Ltd.
Mumbai Regional Office II,
Maker Bhavan No.1, 3rd Floor,
Sir. V. T. Marg, Mumbai – 400 020. ..Appellant

Vs.

1. Shri Laxman Hirman Shewale
Age : Major, R/o. Ramabai Ambedkar
Nagar, Jai Mala Sangh, R. No.30/2/4,
Ghatkopar (E), Mumbai – 400 075.

2. Mr. Abdul Hai Gulam Ali Choudhari
Sidhi Dwarka Bldg., Plot No.76,
R/301, Sec. 23, Juhi Nagar, Vashi,
Navi Mumbai ..Respondents

Mr. Amol A. Gatne, for the Appellant.
Mr. T. J. Mendon, for the Respondent No.1.

CORAM : C.V. BHADANG, J.
DATE : 4 October 2021

Judgment :

. This Appeal is taken up for final hearing by consent of parties.

2. The Appellant – Insurance Company is challenging the judgment and award dated 15 February 2010 passed by the Motor

Accident Claims Tribunal, Mumbai ('Tribunal', for short) in Application No.2840/2002. By the impugned award, the Tribunal has awarded a compensation of Rs.2,16,398/- (inclusive of the no fault liability) to the first Respondent – claimant alongwith interest at the rate of 6% per annum from 28 October 2008 (the date on which the first Respondent tendered his evidence) till realisation.

3. The first Respondent – claimant was serving as a Salesman in a Gift Centre known as "Greet and Gift Celebration" at Ghatkopar (West), Mumbai. On 15 September 2002, at about 5.30 p.m. the employer of the first Respondent had asked him to bring a Garland. Therefore, the first Respondent had proceeded to a Floweriest Shop on foot. When the first Respondent reached near Smruti Building on Mehta Road at Ghatkopar (West), Mumbai and while he was walking on a footpath, he was hit by the iron bars which were being unloaded from a Motor Lorry bearing No.MCY-3239. As a result of the same, the first Respondent suffered a head injury. He was admitted in the hospital and had spent Rs.10,000/- on medical treatment. According to the first Respondent, he had also incurred loss of the actual salary for about two to three months as he could not attend to his duties on account of the injuries sustained which comprised of a depressed fracture of left frontal bone with intracerebral hemorrhage. Further according to the first Respondent, as a result of the injuries he had suffered an impaired

vision resulting into permanent partial disability. The concerned vehicle was at the relevant time owned by the second Respondent and was covered by a policy of insurance by the Appellant.

4. The first Respondent filed the Petition before the Tribunal seeking a compensation of Rs.1,50,000/-. The first Respondent examined himself alongwith his employer Mr. Karan Mange and Dr. Ramesh Patankar. The Tribunal by the impugned award has granted compensation as aforesaid.

5. I have heard the learned counsel for the Appellant and the learned counsel for the first Respondent.

6. It is submitted by the learned counsel for the Appellant that the injuries suffered by the first Respondent cannot be said to be arising out of an accident, of the nature specified under sub Section 1 of Section 165 of the Motor Vehicles Act, 1988 ('the Act of 1988', for short). Thus, according to the learned counsel, the injuries sustained by the first Respondent cannot be said to be arising out of the 'use of motor vehicle', within the meaning of sub Section 1 of Section 165 of the Act of 1988.

7. The learned counsel pointed out that the first Respondent was passing by the footpath when the vehicle was stationary and thus by no stretch of imagination, the accidental injury sustained by the first

Respondent on account of being hit by the iron bars which were being unloaded from the vehicle, can be said to be arising out of the 'use of the vehicle'.

8. The learned counsel has placed reliance on the decision of this Court in *Ananda Dattatraya Patankar Vs. Kishore Narayan Patil and Ors.*[1] and the decision of the Supreme Court in *Minu B. Mehta and Anr. Vs. Balkrishna Ramchandra Nayan and Anr.* [2]. It is submitted that the Tribunal was in error in granting compensation when there was no liability which could have arisen having regard to the nature of the accident. Except this, there are no other contentions raised.

9. The learned counsel for the first Respondent, has supported the impugned award. It is submitted that the expression accident arising out of the 'use of the motor vehicle', under sub Section 1 of Section 165 of the Act of 1988 has been consistently interpreted widely. It is submitted that the accident in this case is squarely covered by the said provision. The learned counsel has placed reliance on the decision of the Supreme Court in *Kalim Khan and Ors. Vs. Fimidabee and Ors.*[3] *and New India Assurance Co. Ltd. Vs. Yadu Sambhaji More and Ors.*[4] in order to submit that the expression "use of the vehicle", under certain circumstances can be attracted even when the vehicle is stationary.

1 *2002(5) Bom.C.R. 565*
2 *AIR 1977 Supreme Court 1248(1)*
3 *2018 ACJ 2025*
4 *2011 ACJ 584*

10. I have carefully considered the rival circumstances and the submissions made.

11. The interpretation of the expression arising out of the 'use of the motor vehicle' as envisaged under sub Section 1 of Section 165 of the Act of 1988, have been subject matter of various decisions.

12. In the case of *Yadu Sambhaji More* (supra), there was a collision between a truck and a petrol tanker, in which the petrol tanker had turned turtle. After about 4½ hours of the accident, the tanker exploded and caught fire, resulting into death of 46 persons who had assembled there and were collecting petrol, leaking from the tanker. Before the Tribunal the Insurance Company contended that the explosion and the fire causing death of those persons could not be said to have arisen out of the 'use of the motor vehicle'. The Tribunal accepted the contention and dismissed the claim which award was reversed by the High Court and the matter went to the Supreme Court. The Supreme Court upholding the award held that the accident arose out of the 'use of the motor vehicle'.

13. In a more recent case in *Kalim Khan and others* (supra), a blasting machine was carried on a tractor for digging a well in an agricultural field. During the said operation, a splinter stone flew and hit on the head of a person resulting into his death. The

Tribunal found on the basis of the panchanama that the tractor was standing in the field and the blasting machine was mounted on the tractor and therefore held that the tractor was used for digging of the well, during which the accident occurred resulting into death of the deceased. The Tribunal therefore awarded compensation which was set aside by the High Court holding that the battery was detached from the tractor when it was used to trigger the explosives. In short, the High Court held that the battery not being the part of the vehicle at the time of the explosion, the accident could not be said to be arising out of the use of the vehicle. The Supreme Court found that the vehicle was stationary and the battery was installed on the tractor which was used for trigging the explosives. The Supreme Court therefore held that the accident occurred on account of the use of the vehicle.

14. In my considered view, looking to the facts of the present case and in as much as, the first Respondent suffered the injury in the process of the iron bars being unloaded from the vehicle, the accident can be said to be arising out of the use of the motor vehicle. It is necessary to note that the Supreme Court in the case of *Kalim Khan* has held that in certain circumstances, the expression "use of the vehicle" can be attracted even where the vehicle is stationary.

15. The decision in the case of *Minu B. Mehta* (supra), in my considered view, turned on its own facts which are distinguishable. In that case, the owner of the vehicle had contended that the accident was due to a mechanical defect. The Supreme Court held that it is for the owner to prove that he had taken all necessary precautions and kept the vehicle in a roadworthy condition and that the defect occurred inspite of the reasonable care and caution taken by the owner. It was further held that in order to sustain a plea that the accident was due to a mechanical defect, the owner must raise a plea that the defect was latent and not discoverable by the use of reasonable care.

16. The decision of this Court in *Ananda Patankar* (supra) also turned on its own facts which are distinguishable. In that case, there was a dispute between the Insurance Company and the owner about the policy and the receipt of the insurance premium.

17. I have gone through the impugned award and I do not find that it suffers from any infirmity so as to require interference. The Appeal is without any merit and is accordingly dismissed with no orders as to costs. Award be drawn accordingly.

The amount of Rs.25,000/- deposited before this Court alongwith interest, if any, shall be made over to the Tribunal. The

Tribunal shall pass appropriate orders for payment of the compensation to the first Respondent – claimant.

C.V. BHADANG, J.