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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.246 OF 2021
WITH
INTERIM APPLICATION NO.1407 OF 2021

The New India Assurance Co. Ltd.
Unit No.10, 'A' wing, 1st Floor,
Sita Premises Ltd., Vashi Naka,
Anik-Chembur, Mumbai – 400 074.
Through Mumbai Legal Hub,
41-B, 4th Floor, Maker Tower-E,
Near World Trade Centre, Cuffe Parade,
Mumbai – 400 005. ….Appellant/Applicant
(orig. Insurer)

V/s.

1. Atikurrahaman Lais Mohammad
Age 54 years present, Occ : Not known,

2. Mrs. Aasama Atikurrahaman
Age 48 years present, Occ : Not known,

Laxmi Nagar Society, Near Shankar Deoval,
Mahul Road, Vashi Naka, Chembur,
Mumbai - 400 074.

3. Mohd. Ashraf F. Kapadia(FA stands dismissed by order dt.6.9.23)
Age Adult, Occ : Not known,
Shiv Complex, Near H.P. Petrol Pump,
Rehnal Village, Tal. Bhiwandi,
Thane – 421 302. ….Respondents
(Resp. nos.1 & 2-orig. Claimants,
Resp. no. 3- orig. opposite party)

WITH
INTERIM APPLICATION NO.211 OF 2023
IN
FIRST APPEAL NO.246 OF 2021

1. Atikurrahaman Lais Mohammad
Age 54 years present, Occ : Not known,

2. Mrs. Aasama Atikurrahaman
Age 48 years present, Occ : Not known,

Laxmi Nagar Society, Near Shankar Deoval,
Mahul Road, Vashi Naka, Chembur,
Mumbai - 400 074.

3. Mohd. Ashraf F. Kapadia(FA stands dismissed by order dt.6.9.23)
Age Adult, Occ : Not known,
Shiv Complex, Near H.P. Petrol Pump,
Rehnal Village, Tal. Bhiwandi,
Thane – 421 302. ….Applicants

V/s.

1. The New India Assurance Co. Ltd.
having office at Unit No.10, 'A' wing, 1st Floor,
Sita Premises Ltd., Vashi Naka,
Anik-Chembur,
Mumbai – 400 074.

2. Mohd. Ashraf F. Kapadia
Residing at Shiv Complex,
Near H. P. Petrol Pump,
Rehnal Village, Tal. Bhiwandi,
Thane – 421 302. ….Respondents

Mr. Devendranath S. Joshi a/w Mr. Pradyumna Thakurdesai for the appellants in FA.
Ms. Varsha Chavan for the respondents in FA.

CORAM : JITENDRA JAIN, J.
DATED : 28 July 2026

JUDGMENT :-

1. This appeal is filed by the insurance company challenging an order dated 3 August 2020 passed by the Motor Accident Claims Tribunal, Mumbai ('Tribunal') whereby an amount of Rs.8,26,000/- alongwith interest has been awarded against the owner of the vehicle and the insurance company, as compensation for the accidental death of Shafiq Atikurrahaman, welder who died due to blast while carrying out welding work on tanker.

2. By consent of the parties, the appeal is taken up for final hearing. Admit.

Brief Facts :-

3. On 19 May 2015, a motor tanker came for repairing at the workshop, where the deceased Shafiq Atikurrahaman was working, at Om Sai Servicing Garage, Chembur. The deceased was carrying out welding work on the said tanker when sudden blast occurred, which could have been because of residual gas/fuel in the tank not being removed, resulting in the death of the deceased. An FIR came to be filed against the owner of the garage by the relative of the deceased.

4. The dependents of the deceased filed a claim before the Tribunal seeking compensation, which by the impugned order was awarded. Being aggrieved by the order of the Tribunal, the insurance company has filed present appeal. Before the Tribunal, the owner of the vehicle did not appear.

Submissions of the Appellant Insurance Company :-

5. Mr Joshi, learned counsel for the insurance company submitted that since the vehicle was stationed at the garage for repairing, same cannot be termed as "use" at the time of the incident for imposing liability under Section 147 of the Motor Vehicles Act, 1988 and, therefore, no liability should be imposed. He further submitted that a "private garage" does not fall within the meaning of the phrase "public place" as defined under Section 2 (34) of the Motor Vehicles Act, 1988 ('the Act') and therefore provisions of Section 147 of the Act attracting liability are not applicable. He further submitted that the deceased and the garage owner were negligent and, therefore, the insurance company cannot be made liable. The FIR was filed against garage owner by the relative of the deceased. He further submitted that under Section 166 of the Act, the deceased himself was negligent and, therefore, no claim is maintainable. Mr. Joshi relied upon the decision of the Hon'ble Supreme Court in the case of ***Minu B. Mehta & Anr. v. Balkrishna Ramchandra Nayan & Anr.***[1] and ***Surender Kumar Arora & Anr v. Manoj Bisla & Ors.***[2] in support of his above submission and prayed for quashing of the impugned order.

Submissions of the Respondent Claimants :-

6. Ms. Varsha Chavan, learned counsel for the original claimants submitted that the garage would fall within the meaning of the term "public place" as defined under the Act and since the incident occurred at a public place, the insurance

1 (1977) 2 SCC 441

2 (2012) 4 SCC 552

company is liable though this point was not taken in written statement by the insurance company. She further submitted that when a vehicle is being repaired, it would amount to the vehicle being put to “use”. It is her submission that the phrase “use of the vehicle” would not mean only running of the vehicle. She further submitted that the owner of the motor vehicle is liable since the work is being carried out by the garage owner or the deceased on behalf of the owner. It is her submission that if a third party dies or suffers injury, the insurer becomes liable to pay compensation by virtue of Section 146 of the Motor Vehicles Act, 1988. She relied upon the decision of the Hon’ble Supreme Court in the case of ***Shivaji Dayanu Patil & Anr. vs. Vatschala Uttam More***[3], ***Pandurang Chimaji Agale & Anr. vs. New India Life Insurance Co. Ltd. & Ors.***[4] and ***Guru Govekar V. Filomena f. Lobo & Ors.***[5] and prayed for dismissal of the appeal.

7. I have heard learned counsel for the insurance company and the claimants.

Analysis & Conclusions

8. Following three issues arises for my consideration :-

(i) Whether a vehicle can be said to be in “use” when it is stationed at garage for the purpose of repairing ?

(ii) Whether a garage would fall within the definition of “public place” as defined under Section 2(34) of the Motor Vehicles Act, 1988 ?

(iii) Whether the Tribunal was justified in holding that the driver/owner of the vehicle and/or the owner of the garage were responsible and not the deceased ?

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[3] (1991) 3 SCC 530

[4] 1988 SCC OnLine Bom 29

[5] (1988) 3 SCC 1

Issue (i) - Interpretation of the word "use" :-

9. Section 147(1) of the Act provides that a policy of insurance must comply with the requirements of Chapter XI of the Motor Vehicles Act, 1988. The insurance policy should be issued by an authorised insurer and it should insure a person or classes of persons specified in the policy to the extent specified in sub-section (2) of the Act against **any liability** which may be incurred by him in respect of the death or bodily injury to **any person**, including owner of the goods or his authorised representative or damage to any property of a **third party** caused by or arising out of the **use** of the motor vehicle in a public place. Explanation to Section 147(1) provides by way of clarification that the death or bodily injury to any person shall be deemed to have been caused by or to have arisen out of the use of a vehicle in a public place notwithstanding that the person who is dead or injured was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

10. The object of the Motor Vehicles Act, 1988 is to regulate all the aspects of the vehicles driven on the road, including regulating the provisions relating to compensation to be awarded in case of an accident and providing for certain aspects with regard to stationary vehicle. It is for this purpose that insurance of a motor vehicle against third party risk is compulsory.

11. The phrase "use of the motor vehicle" used in Section 147 cannot be given a restrictive meaning to mean an accident occurring only when the vehicle is moving. The phrase "use of the motor vehicle" would not only include active use of movement but also passive use of the motor vehicle for the purposes of its movement. For example, if a vehicle is moving from place 'A' to place 'B' and it takes a break at a food mall, the fact that the vehicle is parked at a food mall will be considered as use of the motor vehicle. Similarly, if during the movement from place 'A' to place 'B', the tyre of the vehicle is punctured and the vehicle has to be moved to a garage for replacing the tyre or removing the puncture, it will be treated as the vehicle being in use when tyre is being replaced or puncture is removed. Repairs of a motor vehicle is a part and parcel and integral aspects of its movement from one place to another. Therefore, when a vehicle is taken to a workshop or garage for being repaired, in my view, it would amount to use of the motor vehicle. Any narrow interpretation of the phrase "use" cannot be ascribed while dealing with the Motor Vehicles Act, 1988 and more particularly while dealing with the compensation to be awarded on account of death or bodily injury. If the motor vehicle parked at a food mall is moving from place 'A' to place 'B' or being parked at the workshop for repairs, during the course of it's journey from place 'A' to place 'B', it can be said to be in use, merely because the vehicle is taken to a garage and is at garage for repairing, it cannot be said that it is not put to use. Even in such a case, there is a movement of the vehicle from place 'A' to place 'B' and place 'B' being the garage or workshop.

12. Section 190 of the Motor Vehicles Act, 1988 provides for provisions relating to using vehicle in unsafe condition. Sub-section (1) provides that any person who drives a motor vehicle in any public place while the vehicle has any defect, he shall be punishable with fine and imprisonment if as a result of such defect any injury is caused. In the instant case, the owner of the vehicle knew that there was a defect in the tank. If such a vehicle is permitted to be used on road without the defect being removed, then there would be violation of Section 190 of the Motor Vehicles Act, 1988. Therefore, any act by the owner of the vehicle or a driver to take the vehicle to a garage for removing the defect would be in discharge of his obligation cast under Section 190 of the Motor Vehicles Act, 1988 and, therefore, such an act cannot be construed to mean that the vehicle was not in use for the purposes of the Motor Vehicles Act, 1988.

13. Section 126 of the Motor Vehicles Act, 1988 provides for duty of driver or person in charge of a vehicle with regard to stationary vehicles. Section 122 provides for duty of a person leaving vehicle to be abandoned or to remain at rest on any public place which will cause inconvenience to others. Similarly, Section 132 provides for duty of driver to stop and remain stationary for reasonable time in circumstances specified therein. The reference to these provisions are made to support the conclusion drawn by me that even the Act contemplates and regulates vehicles stationed at one particular place and, therefore, it cannot be said that same is not in "use" when the vehicle is stationed at a fixed place. The consistent view of the Courts has been that even if a vehicle is stationary it would amount to "use" for the purposes of the Act. Even when car is parked for years at one place, it depreciates without moving and the insurance company while deciding premium and/or compensation considers depreciation. If that be so, then restrictive interpretation cannot be given to the word "use".

14. This issue whether a vehicle stationed at a garage would amount to use of a motor vehicle had come up for consideration before the Goa Bench of this Court in the case of ***Cholamandalam***

MS General Insurance Co. Ltd v. Priyanka K. Mayekar and others[6]. This decision was brought to the notice of both the parties by the Court.

15. In the above case, the deceased was also a welder who had his own garage. While repairing a Tata Mobile vehicle, there was a loud explosion of the tank fitted to the vehicle. As a result of this explosion, the welder suffered injuries resulting in his death. The Bombay High Court interpreted the phrase "arising out of the use of motor vehicle" in paragraphs 18 to 25 of the said decision which reads as under :-

> *"18. Thus, the crucial expression is "arising out of the use of motor vehicles". The issue of interpretation of this expression is no longer res integra.*
>
> *19. In Amir Basha (supra), the Division Bench of the Madras High Court considered several decisions and made the following observations in paragraph 12 while turning down the insurance company's contentions:*
>
>> *"12. It is clear from the above decisions and in view of the object of the enactments both under the Motor Vehicles Act, 1939 and 1988 the expression "caused by" and "arising out of" have a wider connotation. Though the accident should be connected with the use of motor vehicle, but the said connection need not be direct and immediate. The expression "arising out of use of motor vehicle" as mentioned in Section 92-A of the 1939 Act and Section 165 of 1988 Act enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment. From the expression employed namely "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of motor vehicle", it is clear that the Legislature wanted to enlarge the scope of the word "use" and not to restrict it for denying compensation in deserving cases; accordingly we are of the view that the test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then. We should not forget that these provisions are made in order to help the victims. We are of the view that restrictive interpretation should not be given for the word "use". We are also of the view that the expression "arising out of the use of motor vehicle" has to be given a wider meaning. We are also of the view that "use of motor vehicle" need not necessarily be so intimate and closely direct as to make it "a motor accident" in the sense in which that expression is used in common parlance.*

[6] 2022 SCC OnLine Bom 3789

> *Accordingly, we hold that the death of Absar arose out of the use of motor vehicle, and the claimants/respondents 1 and 2 herein are entitled to compensation for the death of their son Absar."*

20. Amir Basha (supra) was a case where the claimant's son died in a garage where a lorry was being repaired. One of the witnesses deposed that when the deceased Absar was vulcanizing a tube which got punctured, another person was in the process of welding certain parts near a diesel tank. Due to the process of welding by another person, the diesel tank caught fire, thereby the deceased, who was doing work of vulcanizing the tube got involved in the fire accident and sustained fatal injuries. The insurance company had contended that the lorry was stationary and parked in the roadside workshop for doing certain welding work, and the deceased had nothing to do with the vehicle. Therefore, neither the owner nor the insurance company of the lorry was responsible for the accident. Such an accident, the insurance company contended, did not arise out of the use of the motor vehicle.

21. In Shivaji Dayanu Patil (supra), the Hon'ble Supreme Court was concerned with an accident involving a collision between a petrol tanker and a truck. As a result of the collision, the petrol tanker went off the road and fell on its left side at a distance of about 20 feet from the highway. As a result of turning the petrol tanker, the petrol contained in it leaked out and collected nearby. This happened at about 3 a.m. on October 29, 1987. At about 7.15 a.m., an explosion occurred in the petrol tanker, resulting in a fire. A number of persons who had assembled near had sustained burn injuries, and a few succumbed to them. One of them was Deepak Uttam More. His mother filed a claim petition. The question was whether Deepak More had died in the accident from using the motor vehicle.

22. The Hon'ble Supreme Court 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. The petrol 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 it cannot be claimed that after the collision, the use of the tanker had ceased only because it was disabled. The word "use" has a broader connotation to cover the period when the vehicle is not moving and is stationary. The use of a vehicle does not cease because the vehicle has 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 when it was lying on its side after the collision with the truck.

23. The Hon'ble Supreme Court further held that as compared to the expression "caused by", the expression "arising out of" has a broader 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 to award compensation under Section 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 an 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. It aligns with the beneficial object underlying the enactment.*

24. In the above case, the tanker carried petrol, a highly combustible and volatile material. After the collision with the other motor vehicle, the tanker had fallen on one of its sides on sloping ground, resulting in the escape of highly inflammable petrol and the grave risk of explosion and fire from the petrol coming out of the tanker. In these circumstances, it could be said 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, was not unconnected but related events and merely because there was an 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 explosion and fire. Therefore, the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More were due to an accident arising out of the use of the motor vehicle, viz., the petrol tanker.

25. Applying the ratio in the above two decisions to the facts of the present case, it is apparent that Kundan Mayekar died in an accident arising out of the use of a TATA Mobile vehicle bearing registration No. GA-01-Z-1278. As proved by the evidence on record, the facts in the present case are more or less similar to the facts in Amir Basha (supra). Therefore, the nexus between the TATA mobile vehicle in the present case and the accident resulting in Kundan Mayekar's death is much more proximate than the nexus between Deepak More's death and the petrol tanker that had fallen on its left side at a substantial distance from the highway."

(emphasis supplied)

16. In my view, the decision in the case of ***Cholamandalam MS General Insurance Company Ltd. (supra)*** squarely applies to the facts of the present case.

17. In view of above, the submission made by learned counsel for the insurance company that in the instant case, when the vehicle was being repaired, it was not put to use cannot be accepted and such a contention is contrary to decision of the Hon'ble Supreme Court in the case of **Shivaji Dayanu Patil (supra)**, followed by the Goa Bench of this Court and various other Courts.

Issue (ii) - Meaning of the term "public place" : :-

18. The next issue which arises for my consideration is whether a "garage" can be treated as a "public place" under Section 2(34) of the Motor Vehicles Act, 1988. Section 2 (34) defines "public place" to mean a road, street, way or other place whether a thoroughfare or not, to which the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage carriage.

19. In this matter, I am concerned with the first part of the definition viz., "a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access."

20. In the instant case, the accident occurred when the vehicle was being repaired at the workshop. As per the FIR, the accident happened on account of blast because of the work of welding which was being carried out by the deceased.

21. The submission made by the learned counsel for the insurance company that all the public should have a right of access to the place for it to be termed as "public place" cannot be accepted. There is no prohibition on any person to access the garage. Merely because garage is a private property, it cannot be said that public does not have a right of access. The phrase "public" would mean a defined group of people. In the instant case, public would mean people who approaches the garage either for repairing their vehicles or for buying any accessories, etc. The defined group of people owning a vehicle would constitute "public" in the context of Section 2(34) of the Act.

22. I have not been shown any material which would indicate that there was a prohibition on any person from accessing the garage under consideration. The definition itself gives an indication when it uses the phrase “thoroughfare or not”. A thoroughfare is a public road, street etc. that connects one area to another. The definition says thoroughfare or not. Therefore, even if a road etc. is not a public, it would fall within the meaning of the term “public place” thereby including within its ambit even private place having public access. If in a prohibited area, there is an access by the public by paying an entry fee or by seeking permission, then it would be a public place for the purposes of Section 2(34) of the Motor Vehicles Act. Similarly, though garage may be private property, but because it has an access to the public it does not cease to be a public place.

23. The interpretation sought to be canvassed by the learned counsel for the insurance company would defeat the very object of the Motor Vehicles Act, 1988. If such an interpretation is accepted, then many of the provisions which uses the expression “public place” in the Act would become redundant. In my view, such an interpretation, therefore, cannot be accepted.

24. The issue whether a “garage” would fall within the phrase “public place” also came up for consideration before the Goa Bench of this Court in the case of ***Cholamandalam MS General Insurance Company Limited (supra)*** and the Court, after a detailed discussion, has come to a conclusion that a garage is also a “public place” under the Motor Vehicles Act, 1988. The relevant paragraphs 32 to 42 reads as under :

> *“32. Be that as it may, even the issue of the interpretation of the expression "public place" under Section 2(34) is no longer res integra.*
>
> *33. In Pandurang Chimaji Agale v. New India Life Insurance Company a Full Bench of our High Court, in the context of the definition of "public place"*

under Section 2(24) of the M.V. Act, 1939, which definition was identical under Section 2(34) of the M.V. Act, 1988, has held that all places where the members of the public have access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of "public place" under Section 2(24) of the M.V. Act, 1939.

34. Therefore, even a place, the right of use of which is restricted, would be a "public place". Therefore, the observations in paragraphs 8, 9, and 10 from the Full Bench decision are relevant, and the same read as follows:

> *"8. It is in the light of the object of the statute, its aforesaid relevant provisions, and the scheme, that we have to appreciate the true import of the expression "public place" for the purposes of Chapter VIII of the Act. It has further to be remembered that the expression "public place" is a term of art, the same having been defined specifically by Sub-clause (24) of Section 2 of the Act. That definition reads as follows:*
>
> > *'24. 'Public place' means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.'*
> >
> > > *The first thing to remember with regard to the definition is that it is an inclusive one. Secondly, it in terms makes it clear that any road, street, way or other place, whether a thoroughfare or not, is a public place for the purposes of the Act, the only condition being that the public should have a right of access to it. Thirdly, the expression used in the definition is "a right of access" and not "access as of right". Lastly, when it states that any place or stand at which passengers are picked up or sat down by a stage carriage, is a public place, it shows that it is not so much concerned with the "ownership of the place as with its user. Stage carriage is defined in Sub-clause (29) of Section 2 and it means a motor vehicle which is used to carry or adapted to carry more than six persons excluding the driver and which carries passengers : for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. In short, it means a public passenger-carrier. In other wards, by virtue of the last part of the definition, the expression would include any place, including private, where public passenger-carrier picks up or sets down passengers.*
> > >
> > > *The definition of "public place" under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes*

or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation or other purposes.

9. It is also necessary to bear in mind the distinction between the expression "right of access" and "access as of right". The latter expression denotes a place-where the members of public have a right of, its use as members of public and as a matter of right, whether regulated, restricted or not. They cannot, however, be denied the said right except on legal grounds. On the other hand, where there is only a right of access, the owner of the place, if he happens to be a private owner, may deny the access to any member of the public on any ground which he chooses. In other words, in the former case, the right of the public to' use the place is restricted compared to their right to use in the latter case. The definition under the Act uses the expression "right of access" as pointed out earlier. What is, therefore, significant to note is that under the present definition even a place the right to use of which is restricted is a public place. Once this is borne in mind, much of the controversy raised before us around the correct meaning of the expression "public place" loses its edge.

10. If we further bear in mind the overall object of the provisions of Chapter VIII which deals with compulsory insurance of the vehicle to cover risks to third parties and their property, with claims to be filed for recovering compensation, no fault liabilities and liabilities arising out of hit and run accidents, etc. the intention of the legislature is clear. It is to secure compensation to the persons and property which are exposed to' the accidents caused by the vehicles. The very nature of the motor vehicle and its use, mandate these provisions. The motor vehicle in this respect can be likened to a wild animal. Whoever keeps it does so at his risk. As pointed out earlier, some of the restrictions on the use of the vehicle contained in the Act are irrespective of the nature of the place where it is used and irrespective of whether it is plied or kept stationery. The legislature was concerned not so much with the nature of the place where the vehicle causes the accident as where it was likely to do so. Hence all places where the members of public and/or their property are likely to come in contact with the vehicles can legitimately be said to be in its view when the legislature made the relevant provisions for compulsory insurance. It will have, therefore, to be held that all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of "public place" in Section 2(24) of the Act. To hold otherwise would frustrate the very object of the said Chapter and the Act."

35. Following the Full Bench decision in Pandurang Chimaji Agale (supra), the learned Single Judge of Andhra Pradesh High Court in Chinna

Gangappa v. B. Sanjeeva Reddy held that an auto garage, even though privately owned, or a workshop for loading and unloading goods, even though privately owned, would be a place as defined under Section 2(24) of the M.V. Act. 1939. As pointed out earlier, Section 2 (24) of the M.V. Act, 1939, is pari materia to the definition in Section 2 (34) of the M.V. Act, 1988.

36. The learned Single Judge of Madras High Court in National Insurance Co. Ltd. thr. its Manager v. K. Ammaiyappan, following the Full Bench decision of the Bombay High Court in Pandurang Chimaji Agale (supra), held that a repair workshop is a public place.

37. The learned Single Judge of the Delhi High Court in Ramesh Kumar Maini v. United Insurance Co. Ltd., following the decision of the Full Bench of the Bombay High Court in Pandurang Chimaji Agale (supra), held that the expression "public place" will cover all places, including those of private ownership where the public has access, whether free or controlled in any manner whatsoever. Accordingly, the Delhi High Court held that a godown where the accident occurred was a public place because the public members had the right to access the same.

38. A Division Bench of Madhya Pradesh High Court in Rajendra Singh v. Tulsabai has held that the compound of the Diamond Cement Factory to which the public had access and the vehicles were going there for business purposes and where the accident occurred, was definitely a public place' and, therefore the two insurance companies could not escape their liability and were bound to indemnify the insured persons and pay the compensation directly to the applicants. The Division Bench also followed the decision of the Full Bench of the Bombay High Court in Pandurang Chimaji Agale (supra).

39. The Division Bench of the Madhya Pradesh High Court, upon a detailed analysis of several provisions on the subject, observed that almost all the High Courts, including those who held a contrary view earlier, are veering around to the illuminating dictum of Swant, J. (as His Lordship then was) in the Full bench case of the Bombay High Court.

40. Even the Full Bench of the Madras High Court in United India Insurance Co. Ltd. v. Parvathi Devi, following the Full Bench decision of the Bombay High Court in Pandurang Chimaji Agale (supra), held that the expression "public place" will cover all places, including those of private ownership where members of the public have access, whether free or controlled in any manner whatsoever.

41. Another Full bench of the Bombay High Court in Forbes Forbes Campbel And Co. Ltd. v. Vilasrao Deshmukh held that the decision of the Full Bench in Pandurang Agale (supra) clearly applied to the Bombay Dock Area, which has to be held to be a public place within the meaning of Section 2(24) of the 1939 Act.

42. Thus, applying the weight of the precedents to the proven facts, the contentions that the accident in the present case did not occur in a public place, as defined under Section 2(34) of the M.V. Act, will have to be rejected. There is ample evidence on record, which was not even challenged by cross-examination s-examination or otherwise that the accident occurred in the garage "M/s. Mayekar Auto World". This was a place that the public had a right to access. Therefore, even the second point for determination will have to be held against the Appellant-insurance Company."

(emphasis supplied)

25. The issue whether garage constitutes a "public place" also came up for consideration recently before the Andhra Pradesh High Court in the case of ***Manepalli Ammalu and Another v. Kada Hareesh Kumar and others***[7] and the Andhra Pradesh High Court, after a detailed discussion, held that a garage would constitute a "public place" under the Motor Vehicles Act, 1988. The relevant paragraphs 26 to 34 reads as under:-

"26. Section 2 (34) of the Motor Vehicles Act, 1988 defines the public place as follows:

> *"Public place means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carrier;*

27. <u>Access to the public cannot be equated to access to an employee or a retired employee who approaches an office like RTC depot or garage where office is also located.</u>

28. It is the case of the claimants that the office is located in the depot/garage. It is natural for an employee either serving or retire for certain office and administrative purposes to visit the office. There is no denial that the office is situated within the depot or garage. <u>Therefore, the contention that the entry of the deceased into the premises is unauthorized and that he is a trespasser is found not acceptable ex-facie.</u>

29. In a case between The New India Assurance Company Limited v. Devchandbhai Khumansinh Ajanar, the Hon'ble High Court of Gujarat found that if a place is accessible to the public even if privately owned, the claim can be entertained by the tribunal. Observations in para Nos. 8 and 9 of the judgment with reference to Section 2(34) of the Motor Vehicles Act and also another judgment of the Gujarat High Court in a case between

[7] 2025 SCC OnLine AP 2430

United India Insurance Company Limited v. Gujarat Ship Trade Corporation found relevant. They are as follows:

> *8. At the outset, the definition of 'public place' given in Section 2 (34) of the Motor Vehicle Act, 1988 is required to be read, which is as follows:*
>
> > *"public place means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"*
>
> *9. The simple reading of Section 2(34) of the Motor Vehicle Act, 1988 would imply that if public have a right of access though on private land, it could be public place within the meaning of Section 2 (34) of the Motor Vehicle Act, 1988. The issue is no more res integra as this Court in case of United India Insurance Company Limited v. Gujarat Ship Trade Corporation, (1997) 3 Gau LR 2560, addressed this issue. Relevant paras thereof are as under:*
>
> > *"12. It would be interesting to consider as to whether in the light of the special circumstances obtainable from the evidence on record could the accident be said to have occurred in a 'public place' or not. Before factual scenario put again into focus it would be advisable to refer the statutory provisions of Section 2(34) of the new Act which prescribes and provides as to what is a 'public place'. Its corresponding section of old Act is Section 2(24), which reads as under 'Public place' means a road, street, way or other place, whether a thorough-fare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.*
> >
> > *13. It would be very well seen from the aforesaid provisions that even user of the private place where public have access is also included in the definition of the 'public place'. It, therefore, need not necessarily be a public property. Even in case of private place where public have access without restrictions or even limited with pass, etc., it could be characterised as a public place in view of the clear definition supplied in Section 2(34) of the new Act.*
> >
> > *14. ****
> >
> > *15. It would be very well visualised from the aforesaid provisions that in order to hold the insurer liable for compensation one of the requirements and conditions is vehicular accident must have occurred in a 'public place'. Broadly speaking, when bodily injury to any passenger of public service vehicle or when damage is caused to a third party arising out of use of the vehicle in the 'public place'*

> *governs the field arising out of the use of the vehicle in a 'public place'. That means there must be involvement of the vehicle which is defined under the new Act.*
>
> *16. Therefore, it can safely be concluded that there must be user of the vehicle because of which injury to a person or damage to the goods has been caused in a 'public place'. The expression 'public place' provided under Section 2(34) of the new Act is of vital importance and wide amplitude. It is an inclusive definition Therefore, definition of a 'public place' under the new Act would include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes or badges or on payment of fee. This is a settled principle of law. The use may be restricted generally or to particular purpose or purposes. What is paramountly significant is the place ought to have access to take members of public and be available for their use, enjoyment, avocation or any other purpose."*

30. The New India Assurance Company Limited v. Devchandbhai Khumansinh Ajanar (1 supra) was a case of a minor son of the claimants was sleeping by covering a plastic cover in an open place of the factory and while reversing a tractor in the premises the accident has occurred and minor son of the claimants died. The defense was similar to that of the present case that the place is not a public place and within the four corners of the compound of the factory which is the private place. In the said context, the above observations are made by the Hon'ble High Court of Gujarat.

31. Similarly in a case between K. Hanumantha Rao v. National Aeronautical Laboratory, the Hon'ble High Court of Karnataka held that a tribunal in terms of Motor Vehicles Act, 1939 had jurisdiction to adjudicate claims for compensation in respect of accidents, regardless whether they are occurred in public or private places as long as the tribunals jurisdiction extends to the area where the accident takes place.

32. It was the case where this accident took place within the private premises of National Aeronautic Laboratory, Kodihalli, Bangalore and it is not a public place. Addressing the said situation, Hon'ble High Court of Karnataka found that the observations of the learned MACT that it had no jurisdiction as the place of accident is not a public place cannot be upheld vide para No. 3 observed as under:

> *(3) THE incident in question happened on 5-8-1968. The accidents claims Tribunals are constituted by virtue of the provisions of S. 110 of the Motor Vehicles Act, 1939. S. 110 (1) as i, t stood prior to its amendment by 2-3-1970 reads as follows:*

> *"A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as claims Tribunal) 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 of, or bodily injury to, persons arising out of the use of motor vehicles."*
>
> *a reading of the above provision makes it plain that it empowers the State government to constitute one or more Motor Accidents Claims Tribunals by issuing a notification in the Official Gazette and prescribing the area or areas over which the Tribunals jurisdiction to adjudicate upon compensation in respect of accidents involving the death of, or would have bodily injuries to persons arising out of the use of Motor Vehicles. It is also plain that the said section by itself does not place any restrictions in regard to places by characterising places either as public or as private places. Hence it is necessary to make a reference to the notification issued by the State Government while constituting the Motor Accidents Claims tribunal at Bangalore. The First Additional District Judge, Bangalore, was appointed as Member of the said Tribunal by such a notification issued on 24-2-1968. A reference to this notification shows that the jurisdiction of the Tribunal extended over the whole of Bangalore District. The notification has not made any distinction between private places and public places in Bangalore District. A result of reading of the provisions of this notification and S. 110 of the Motor Vehicles Act, 1939, would clearly be that the State Government by exercising its powers under S. 110 of the act, constituted a Motor Accidents Claims Tribunal and appointed the First additional District Judge as Member and fixed Bangalore District as the area over which the Tribunal had jurisdiction to adjudicte upon for claims of compensation in respect of accidents involving the death of, or bodily injury to persons arising out of the use of motor vehicles. We have therefore no hesitation in holding that the conclusion of the Tribunal that it had no jurisdiction in view of the fact that the accident in question had taken place not in a public place but in the National Aeronautic Laboratory, kodihalli, Bangalore, cannot be upheld. The learned Member has nowhere in the order passed by him made it clear as to why he was under the impression that the Tribunal had jurisdiction only in regard to claims arising out of accidents in public places.*

33. Further, the Hon'ble High Court of Rajasthan in a case between United India Insurance Company Limited v. Smt. Roop Kanwar, while answering whether a motor garage is a public place answered the same affirmatively that it is also a public place. While referring to the definition of public place *in terms of Section 2(24) of the Act of 1939 in para No. 15, the High Court of Rajasthan made the following observations:*

> *15. There is yet another aspect of the matter. Admittedly the accident took place in the workshop of Kasim Khan, PW-3. It was public place within the meaning of section 2(24) of the Act of 1939 as public had a right of access in it. Any person could go inside it. His brother Kalu Khan has categorically stated in his cross-examination that any person could come in the Workshop for repairs of his vehicle. No suggestions was put in the cross-examination of Kasim Khan that it was a private place and not a public place. It has been observed in Pandarang v. New India Life Insurance Company Ltd. (supras) paras 8, 10 and 11 as under:*
>
> *"Para 8*
> *It is in the light of the object of the statute, its aforesaid relevant provisions and the schema, that we have to appreciate the true import of the expression "public place" for the purposes of Chapter VIII of the Act. It has further to be remembered that the expression "public place" is a term of art, the same having been defined specifically by sub-cl. (24), of S. 2 of the Act. Such definition reads as follows:*
>
> > *"(24) public place means a road, street, way or other place, whether a thorough fare or not, to which the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage carriage;"*
>
> *"The first thing to remember with regard to the definition is that it is an inclusive one. Secondly it in terms makes it clear that any road, street way or other place, whether a thorough fare or not, is a public place for the purposes of the Act, the only condition being that the public should have a right of access to it. Thirdly, the expression used in the definition is "a right of access" and not "access as of right". Lastly, when it states that any place or stand at which passengers are picked up or set down by a stage carriage, is a public place, it shows that it is not so much concerned with the ownership of the place as with its user. Stage carriage is defined in sub-cl.(29) of S. 2 and it means a motor vehicle which is used to carry or adapted to carry more than six persons excluding the driver and which carries passengers for hire or reward at separate fares paid by or for individual passangers, either for the whole journey or for stages of the journey. In short, it means a public passenger-carrier. In other words, by virtue of the last part of the definition, the expression would include any place, including private, where public passenger-carrier picks up or sets down passengers.*
>
> *The definition of "public place" under the Act is, therefore, wide enough to include any place which members of public use and to*

which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation other purpose.

Para 10:
If we further bear in mind the overall object of the provisions of Chapter VIII which deals with compulsory insurance of the vehicle to cover risks to third parties and their property, with claims to be filed for recovering compensation, no fault liabilities and liabilities arising out of hit and run accidents, etc. the intention of the legislature is clear. It is to secure compensation to the persons and property which are exposed to the accidents caused by the vehicles. The very nature of the motor vehicle and its use, mandate these provisions. The motor vehicle in this respect can be likened to a wild animal. Whoever keeps it does so at his risk. As pointed out earlier, some of the restrictions on the use of the vehicle contained in the Act are irrespective of the nature of the place where it is used and irrespective of whether it is plied or kept stationary. The legislature was concerned not so much with the nature of the place where the vehicle causes the accident as where it was likely to do so. Hence all places where the members of public and/or their property are likely to come in contact with the vehicles can legitimately be said to be in its view when the legislature made the relevant provisions for compulsory insurance. It will have, therefore, to be held that_all places, where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of "public place" in S. 2 (24) of the Act. To hold otherwise would frustrate the very object of the said Chapter and the Act.

Para 11:
Although dictionary meaning of the expression is hardly of any use to us, it will be instructive to refer to it. In Strouds Judicial Dictionary, Fifth Edition, page 2094, public place has been defined as follows:

> *"A public place is a place to which the public can and do have access; it doesnt matter whether they come at the invitation of the occupier or merely with his permission, or whether some payment or the performance of some formality is required before access can be had…"*

This definition is taken from the decision in R. v. Kane, [1965] 1 All ER 705, and is a reproduction of only a part of it given there. The other part reads as follows:-

"but a place such as the club in the present case, would be a private

place, if there was a real restriction of access to members and their guests and that any other members of the public who got in was in reality a trespasser."

In this case what fell for consideration was whether for the purposes of common law offeace of affray in a public place, the Stage and Press Club where the offence took place was a public place. The other definitions of public place given in the dictionary are with reference to the provisions of the Vagrancy Act of 1824. They are hardly of any relevance to us.

In Blacks Law Dictionary; Fifth Edition, page 1107, public place has been defined as follows:

> *"A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighbouring public (e.g. a park or public bench). Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and fro."*
>
> *Neither the Act of 1923 nor the above-quoted endorsement No. 16 of the Policy Ex.A-19 requires that the accident should have taken place in a public place. Thus the said contention of the learned counsel for the appellant is also devoid of force.*

34. It is also relevant to note the observations of the High Court of Orissa in a case between Nakula Swain v. Ravi Suresh Ku. Gupta, wherein it is found that the public place under Motor Vehicles Act should not be narrowly considered and it includes the places which is the vehicle have access and it was a case of deceased working as a coolie under the respondent while sitting on road inside the factory premises, a vehicle suddenly moved backward and dashed the deceased. It was a case of accident occurring inside the factory premises. Relevant observations are made in para No. 6 which are as follows:

> *6. This Court in the case of M.K. Bhaumik (supra) referring to various decisions of different High Courts has come to hold that the definition of 'public place' u/s 2(34) of the M.V. Act is very wide and the private place used with permission or without permission would amount to a public place. This Court further observed that the term 'public place' cannot be given a restricted meaning, inasmuch as, it is not to be taken as a place where public have uncontrolled access at all times. 'public place' for the purpose of M.V. Act has to be understood with reference to the places to which a vehicle has access."*
>
> *(emphasis supplied)*

26. The issue of interpretation of "public place" also came up for consideration before the Gujarat High Court in the case of ***The New India Assurance Co. Ltd. vs. Devchandbhai Khumansinh Ajanar & Ors.***[8]***.*** The issue arose before the Court as to whether an accident which took place within four walls of a ceramic factory, which is a private property can be considered as a public place. The Gujarat High Court, after referring to Section 2(34) of the Act and relying upon its decision in the case of ***United India Insurance Company Limited vs.Gujarat Ship Trading Corporation***[9]***,*** rejected the contention of the insurance company that an accident within the factory premises cannot be considered as a "public place".

27. The Rajasthan High Court in the case of ***United India Insurance Co. Ltd. vs. Smt Roop Kanwar***[10]***,*** also took the view that a garage is a "public place". Similar views on identical facts have been echoed by Chhattisgarh High Court in the case of ***Oriental Insurance Co. Ltd. vs. Abdul Rashid & Ors.***[11] and Punjab and Haryana High Court in the case of ***National Insurance Co. Ltd. vs. Mithu Singh & Ors.***[12].

28. Though in the written statement no specific plea is taken by the insurance company on the issue of "public place", in the impugned order submissions have been canvassed on this and, therefore, without going into technical objection of whether it can be raised before me, I have adjudicated the same.

29. In my view, based on the above analysis, the contention of the insurance company that a garage is not a "public place" under Section 2 (34) of the Motor Vehicles Act, 1988 cannot be accepted.

8 First Appeal No. 1225 of 2020 decided on 10.10.2024

9 (1997) 3 GLR 2560

10 1990 SCC OnLine Raj 30

11 2013 SCC OnLine Chh. 274

12 2014 SCC OnLine P&H 25142

Issue (iii) - Negligence of Owner/Driver/Garage Owner :-

30. The third issue which arises for my consideration is whether the deceased can be held to be negligent. The Act does not provide for any provisions to determine this issue but same has been evolved by judicial process. The claimant led the evidence of the father of the deceased, in which the negligence was attributed to the driver of the motor tanker for leaving the gas/fuel in the tank. This evidence of the father of the deceased was not accepted by the Tribunal on the ground that the father was not an eyewitness to the incident. However, in paragraph 11 of the impugned order, the Tribunal independently based on the documentary evidence before it came to the finding that it was the duty of the driver as well as the garage owner to empty the tank before undertaking any welding work and since, both of them did not take the necessary precaution, the accident took place. The evidence led by the claimant, though rejected by the Tribunal, but the Tribunal independently came to the same conclusion that it was the driver as well as the garage owner who were responsible for the accident.

31. It is important to note that the insurance company did not lead any evidence in this matter. In my view, the insurance company should have led the evidence of the vehicle owner and the driver of the vehicle for dislodging the evidence of the claimant. The initial onus of discharging the burden of proof was satisfied by the claimant by filing the affidavit of its witness. Though, this evidence was discarded, the Tribunal independently also came to the same conclusion. The insurance company has failed to lead any evidence in support of its submission that the deceased was negligent and that the driver of the vehicle had informed the deceased to empty the tank. Probably, the Insurance Company was under a belief that since father was not an eyewitness, claimant has not proved its case and, therefore, no evidence was led.

32. Section 146 of the Motor Vehicles Act mandates insurance against third party risk. Section 147 provides for compliance of requirements of Chapter XI at the time of issuance of policy. Section 147(1)(b)(i) provides for indemnification against any liability which may be incurred by the person taking the insurance policy in respect of the death or bodily injury to **any person**. In my view, the phrase "any person" would include deceased in the instant case. Under the common law, the vehicle owner would have been liable to pay compensation to the deceased and, therefore, since the present contract is a contract of indemnification, the liability on the vehicle owner is required to be indemnified by the Insurance Company. The Insurance Company has not led any evidence to show that there was any breach of terms and conditions of the policy nor any policy has been produced in support of its submission that they are not liable to compensate the deceased.

33. In my view, findings in paragraph 11 of the Tribunal's order that the driver and the garage owner are responsible and not the deceased, cannot be faulted with.

34. When the vehicle is handed over to a repairer, the relationship between them is that a bailor and bailee. As per Section 150 of the Indian Contract Act, 1872 it is the duty of the bailor (vehicle owner/driver) to inform bailee (garage owner) that the contents of the tank has been emptied. In the instant case, the Insurance Company has not led evidence of the vehicle owner to show that such a disclosure was made. Therefore, the negligence is on the part of the vehicle owner/driver. Section 151 of the Contract Act provides that the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would under similar circumstance take of his own goods. In this case, the garage owner is a bailee and he ought to have taken the same care as that of bailor, as if the vehicle belonged to him. As a consequence, bailor is vicariously liable for the acts of the bailee.

35. Since the insurance company has not proved that the vehicle owner informed the garage owner about emptying of the tank, therefore, garage owner cannot be made liable, but certainly the vehicle owner can. Alternatively, if the vehicle owner had informed the garage owner about emptying the tanker, then it is the garage owner who is responsible and, consequently, the vicarious liability for negligence of the garage owner would be on the vehicle owner. Therefore, even on this count, the liability would fall upon the bailor, that is the vehicle owner. In my view, by applying the principles of bailor and bailee, the vicarious liability, assuming the garage owner is negligent, liability can be imposed upon the vehicle owner and since the vehicle is insured by the insurance company, it is the duty of the insurance company to make good the compensation awarded by the Tribunal.

36. The learned counsel for the insurance company has relied upon the decision of the Hon'ble Supreme Court in the case of ***Minu B. Mehta (supra)*** and ***Surender Kumar Arora (supra),*** in support of the proposition that the claimant should prove the negligence before any claim is awarded. There is no dispute on this proposition, but in the instant case, same is not applicable because the claimants have led the evidence to show the negligence of the driver. Therefore, the onus shifted on the insurance company to dislodge the same. However, the Tribunal did not accept the evidence of the claimant but arrived at the same finding which the witness was canvassing. Therefore, in the facts of this case, the decisions relied upon by the learned counsel for the insurance company are not applicable.

37. Merely because FIR is registered only against garage owner and not against the vehicle owner and, therefore, insurance company is not liable, cannot be accepted.

38. This issue was also considered by the Goa Bench of this Court in the case of ***Cholamandalam MS General Insurance Co. Ltd. (supra)*** and the relevant paragraphs 43 to 45 of the judgment reads as under :-

> *"43. The third point for determination also will have to be answered against the Appellant-Insurace Company. The deceased, Kundan Mayekar, was neither the owner of the insured vehicle nor was he the insurer. Therefore, it is not understood why the Appellant-Insurance Company contends that Kundan Mayekar was not a third party.*
>
> *44. In Faqir Chand (supra), relied upon by Mr Vaze, the learned Single Judge of the Jammu and Kashmir High Court has held that other than contracting parties to the insurance policy, the expression "third party" would include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject-matter of the insurance policy.*
>
> *45. Every insured takes out an insurance policy against a third-party risk and enters into a contract with an insurer only with the motive, intention and purpose of covering the*

> *risks which may arise from claims lodged against him by a third party. By agreeing to issue the insurance policy, the insurer undertakes to insure the insured and indemnify him against all risks and concerning all claims lodged against him by third parties. Narrowing the concept, scope and ambit of a third party, and therefore, excluding the passengers in the vehicle from its operation and purview, would not only defeat the very purpose of taking out the insurance policy but the very object of the Motor Vehicles Act which makes it a mandatory requirement of law that all vehicles/owners of vehicles must be compulsorily insured against third party risks."*
>
> *(emphasis supplied)*

39. The relationship between the owner of the vehicle and the repairer was also examined in the context of Motor Vehicles Act, 1939 by the Hon'ble Supreme Court in the case of ***Guru Govekar (supra)*** and the Hon'ble Supreme Court in paragraphs 9 and 13 observed as under :-

> *"When the owner of a motor vehicle entrusts his vehicle to a repairer to carry out repairs he is in fact allowing the repairer to use his vehicle in that connection. It is also implicit in the said transaction that unless there is any contract to the contrary the owner of the vehicle also causes or allows any servant of the repairer who is engaged in the work of repairs to use the motor vehicle for the purpose of or in connection with the work of repairs and when such work of repair is being carried out in a public place if on account of the negligence of either the repairer or his employee, who is engaged in connection with the work of repair, a third party dies or suffers any injury either to his person or property, the insurer becomes liable to pay the compensation by virtue of provisions of sections 94 and 95 of the Act. Once the insurer has issued a certificate of insurance in accordance with sub-section (4) of section 95 the insurer has to satisfy any decree which a person receiving injuries from the use of the vehicle insured obtained against any person insured by the policy."*
>
> *(emphasis supplied)*

40. This very same issue, on identical facts before me, came for consideration before the Karnataka High Court in the case of

Oriental Insurance Company Limited vs. Mrs. Parvathi [13] and all the contentions raised by the Insurance Company before me were considered and rejected by the Karnataka High Court.

41. Very similar issue also arose before the Uttaranchal High Court in the case of ***Oriental Insurance Co. Ltd. vs. Banu Begum & Anr.***[14], relevant paragraphs 19 and 20 reads as under :-

> *19. It is also relevant to mention that it is the case of the parties that the accident had occurred while the tanker was being used for carrying the explosive and the explosion took place in the tanker when it was stationed to carry out the repair. Meaning thereby the tanker was stationed while it was in use. Even if the tanker is empty the gases of the explosive remain inside the tanker. The escape of the gases contained in the tanker may cause the mischief. As such the vehicle was standing there and the principle of strict liability arises in such circumstances. The owner can be held liable for the wrongs even though there was no negligence on the part of the owner and the driver.*
>
> *20. In view of the above discussion made in the foregoing paras, the contentions raised by the learned counsel for the appellant are misconceived and rejected outright. We are of the view that the tanker while it was parked for welding it was the duty of the owner and the driver to check the vehicle as to whether there are some explosive or not inside the tanker. In case it was empty, it was the duty to see as to whether there were gases inside the tanker which may cause explosion in the tanker before getting the work of welding. The explosion in the tanker is the consequence of the impact of welding and the gases. We, accordingly, hold that the death of the deceased Mohd. Idrees had occurred due to accident arising out of the use of motor vehicle and the Motor Accidents Claims Tribunal has jurisdiction to entertain the claim petition for compensation.*
>
> *(emphasis supplied)*

42. Therefore, in my view, the deceased cannot be held to be negligent and no fault can be attributed to findings of the Tribunal making owner/garage owner negligent, therefore, insurance company cannot be absolved.

43. In view of above, the appeal of the Insurance Company is required to be dismissed.

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13 First Appeal No. 2676 of 2016 decided on 3 July 2025

14 2005 SCC OnLine Utt 47

44. Statutory deposit of Rs.25,000/- alongwith interest to be transferred to the concerned Tribunal and the parties are at liberty to make an application for refund of the same. The claimants are entitled to the decretal amount alongwith interest.

45. Appeal of the insurance company is dismissed. Interim Application does not survive and is disposed of accordingly.

[JITENDRA JAIN, J.]