IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1158 of 2013

Kalpana Murmu & Ors.

VERSUS

The Oriental Insurance Co. Ltd. & Anr.

For the Appellants:	Ms. Sima Ghosh, Adv. Ms. A. Kayal, Adv.
For the Respondents:	Mr. P.K. Pahari, Adv.

Last Heard on: October 08, 2026

Judgment on: November 19, 2026

Biswaroop Chowdhury,J:

The appellants before this Court were claimants in a case under Section 163A of the Motor Vehicles Act 1988 and are aggrieved by the Judgment and Award dated 29th March 2012 passed by Learned Additional District Judge Fast Track 1st Court Berhampur Murshidabad in MAC Case No. 537 of 2010.

The case of the claimants/appellant before the Learned Trial Court may be summed up thus:-

On 01-01-2010 Sunil Murmu since deceased and other labourers were returning to Ugrabhatpara by a tractor being no. WB-57/3707 loaded with Khar (paddy Stick) as a Khalasi. He was seated in the tractor (cabin) besides the driver. The said tractor reached near at Jiakharda more with high speed and the driver of the offending tractor could not follow the high voltere electric line over the road. As a result the said tractor touched the electric line as a result goods caught fire. As such the driver and other labourers quickly jumped the tractor. The victim Sunil Khalasi of the vehicle got serious burn injury over his body. Local people shifted the victim to Berhampore N.G. Hospital where he died on 2-1-2010. The accident took place due to negligent driving by driver of vehicle no-WB-57/3707.

Pursuant to filing of the case notice was issued to the opposite parties. Opposite party vehicle owner did not contest the case. Opposite party Insurance Company contested the case by filing written statement. ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence and upon hearing the Learned Advocates was pleased to dismiss the claim case by observing as follows:-

'Having considered view to submission of both the sides and taking into consideration the evidence as could be adduced by PWs I find that fire was caught due to touching of overhead electric wire allegedly lower down on road. The trailer which was fitted with tractor was carrying the heap of straw. It further appears that tractor was used for carrying of different types of goods on

hire. The observation of Hon'ble Apex Court as reported in (2008) 1 WBLR (SC) is that tractor is meant to be used for agricultural purpose. So, tractor fitted with trailer cannot be considered as goods carriage. Moreover the insurer and owner of tractor are not made party in this case.

The nature of accident does not arise out of use of motor vehicle. The cause of accident is otherwise.

Considering the entire facts and circumstances, I hold that the remedy of victim lies elsewhere not under this Act and as such the prayer stands stands rejected.

Hence ORDERED that the MV Case No. 537/2010 be and the same is dismissed on contest against the OP. Insurance Company and ex-parte against the owners.'

The appellants/claimants being aggrieved by the Judgment and Award passed by the Learned Trial Judge have come up with the instant appeal.

Heard Learned Advocate for the appellants/claimants and Learned Advocate for the respondent Oriental Insurance Co. Ltd. Perused the materials on record.

Learned Advocate for the appellants submits that the Khalasi died in accident as reflected in charge sheet thus the learned Trial Judge erred in rejecting the claim case.

Learned Advocate further submits that although father and son both are tractor owners but the son being one of the owner was made a party thus the Learned Trial Judge erred in dismissing the claim case for not making father as party.

Learned Advocate also submits that there is no evidence that tractor was carrying different types of goods thus the order passed by Learned Trial Judge is bad in law. Learned Advocate relies upon the following Judicial decisions:-

Royal Sundaram Alliance Insurance Company Limited VS Smt. Hannamma and ors.

Special Leave petition

(Civil) No. 2135 of 2023.

(Supreme Court of India).

Jahura Sewa and ors VS New India Assurance Company Ltd.

FMA-2328 of 2004.

Learned Advocate for the Respondent Insurance Company submits that there was violation of Policy condition thus the claimants/appellants are not entitled to the compensation.

Learned Advocate relies upon the following Judicial decisions:-

United India Insurance Co. Ltd. VS Suresh KK and another 2008 ACJ. 1741.

United India Insurance Co. Ltd. VS Serjeraw and others.

2008 ACJ. 254.

Before proceeding to decide the material in issue at the outset it is necessary to decide as to whether, the accident causing death of the victim took place due to use of motor vehicle and the provision contained in Section 163A of the Motor Vehicles Act 1988.

Section 163A of the Motor Vehicles Act 1988 provides as follows:-

S-163A-Special provisions as to payment of compensation on structured formula basis-1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation as indicated in the second schedule to the legal heirs or the victim as the case may be.

Explanation-For the purposes of this sub-section 'permanent disability' shall have the same meaning and extent as in the Workmen's compensation Act 1923 (8 of 1923).

2) In any claim for compensation under sub-section (1) the claimant shall not be required to plead or establish that the death or permanent disablement

in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned as of any other person.

3) The Central Government may keeping in view of the cost of living by notification in the official Gazette from time to time amend the second schedule.

In the instant case the claimants by oral evidence have been able to establish that the vehicle in which the victim was travelling caught fire, due to negligence of the driver of the offending tractor no WB-57/3707. Such evidence is also corroborated by the charge-sheet submitted by the Police Authority against driver of the said vehicle. Thus accident causing death due to use of motor vehicle is established.

Now with regard to the observation of the Learned Judge about owner of trailer not being made party it is to be remembered that the trailer is being pulled by the tractor, thus it is the duty of the tractor driver to take abundant caution to pull the tractor. Any accident caused due to negligence of tractor driver has to be inferred as accident caused due to use of tractor.

In the case of Royal Sundaram Alliance Insurance Company Limited VS Smt. Hannamma and ors. (supra) the Hon'ble Supreme Court observed as follows:-

‘11. Therefore the undisputed position is that the trailer was being pulled by/attached to the tractor and then the trailer on which the deceased was present turned turtle/upturned, resulting in his death. From the above it is clear that the tractor which was insured was the reason for the accident. It is not the case that only because of some fault on the part of the trailer stand-alone, the accident happened. To explain, we may give an example that had the trailer been stationary at a place and due to some reason, it overturned or mishap happened, then without the trailer being specifically insured the Appellant would not be liable to pay, but here the main cause of the accident was the tractor which was pulling/driving/moving the trailer and in such sequence of events, the trailer upturned. Thus the accident was caused by the tractor as during the course of being driven/pulled by the tractor accident occurred.

13. Thus the liability of the tractor/its insurer extended to the accident caused by the tractor resulting in the death of the deceased through the trailer. This being the position in the present case, the principles emanating from the decisions where the courts have held that the trailer has to be separately registered with the insurance company to make it liable, would not be applicable. To that extent the facts in the present case are clearly distinguishable from the ones cited by learned counsel for the appellant. The legislation ie., the MV Act being beneficial and welfare oriented in nature [Ningamma VS United India Insurance Co. Ltd. (2009) 13 SCC-710; K. Ramya V National Insurance Co. Ltd, 2022 SCC Online S.C. 1338 and Shivaheela V

Divisional Manager United India Insurance Co. Ltd. 2025 SCC Online S.S. 563] and ultimately the root cause of the accident being the tractor which was insured this crucial fact cannot be lost sight of. For further clarification, we might illustrate, if an insured vehicle hits another vehicle which in turn hits a third vehicle then for the entire chain of accidents, the liability would pass on to the vehicle which was the root cause of the accident because it is the result of the action in the same chain of events which cannot be segregated or compartmentalized. Moreover this Court is duty-bound to be mindful of the ground realities of our nation and cannot let practicality be overshadowed by technicality.'

Thus considering the judicial decision and the facts of the case this Court does not find the case non-maintainable due to non-impleading of owner and insurer of trailer.

With regard to observation of the Learned Trial Judge that the tractor was used for different types of goods for hire, no plea was taken in the written statement and no specific issue was framed in this regard about carrying different types of goods and violating policy condition. In absence of issue and evidence of violation of policy condition it is not open for the courts to make any observation with regard to such aspect. Moreover even if there is violation of policy condition the remedy of Insurance Company is to pay the third party compensation and recover the same from the vehicle owner.

Now the observation made by the Learned Trial Judge that both the owners of offending vehicle not impleaded it is to be remembered that non-impleading of all the joint owners of a vehicle is not fatal. Moreover in the instant case both father and son are joint owners and the son P.W. 3 Shyamal Mondal did not contest the case but on the other hand supported the case of the claimants/appellants. As the vehicle is insured and the Insurance Company has liberty to take defence available to vehicle owner in the event insurance company is of the view that there is collusion between vehicle owner and claimant, necessary evidence may be adduced by Insurance Company and power to add parties can be exercised by Court suo-moto at any stage which is not done in this case. Motor Vehicle claim legislation being a beneficial legislation should not fail for non-impleading one of the joint owners of an offending vehicle, especially when the owners are father and son and the owner impleaded does not oppose the case of the claimants.

In the facts and circumstances this Court is of the view that the Judgment and Award passed by the Learned Trial Court cannot be sustained and the same should be set aside.

Now with regard to quantum of compensation although the claimants have claimed compensation of Rs. 400,000/- and have adduced evidence in that regard but considering the fact that the provision of the Motor Vehicles Act 1988 with regard to no-fault liability have undergone certain amendments and as per Section 164 of the Motor Vehicles Act 1988 the compensation payble in

case of death is Rs. 5 lakh the Motor Vehicle claim legislation being beneficial legislation the claimants should be paid compensation as per amended provision.

Hence this appeal FMA-1158 of 2013 stands allowed. Judgment and Award dated 29th March 2012 passed by Learned Additional District Judge Fast Track 1st Court Berhampur Murshidabad in MAC Case No-537 of 2010 is set aside. The appellants/claimants are entitled to compensation of Rs. 500,000/- from respondent no-1 Oriental Insurance Co. Ltd. The respondent no-1 shall deposit Rs. 5 lakh alongwith interest @6% p.a. from date of filing claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this Order. The claimants/respondents will be entitled to withdraw compensation upon compliance of necessary formalities, and on paying deficit Court fees.

The withdrawal shall be in equal shares.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)