A NEW INDIA ASSURANCE COMPANY LTD.

v.

YADU SAMBHAJI MORE & ORS.

(Civil Appeal No. 3744 of 2005)

JANUARY 07, 2011

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[AFTAB ALAM AND R.M. LODHA, JJ.]

Motor Vehicles Act, 1939 – ss. 110A and 92A – Claim for no-fault compensation u/s 92A – Allowed by the Supreme C *Court holding that the fire and explosion of the petrol tanker resulting in the death of victim was due to accident arising out of the use of the motor vehicle, the petrol tanker – Applications u/s. 110A – Dismissed by Claims Tribunal, however allowed by the High Court holding that the order of* D *the Supreme Court u/s 92A was conclusive on the issue – On appeal held: On the basis of the evidences led by the opposite party, no new points were raised before the Claims Tribunal that can be said to have not been raised before the Supreme Court u/s 92A – Decision rendered by the Supreme* E *Court on an application u/s 92A was completely binding on the Claims Tribunal – Claims Tribunal could not come to any finding inconsistent with the decision of the Supreme Court.*

There was a collision involving the petrol tanker and the other truck resulting in leakage from the tanker. Few F **hours later, there was a fire and explosion resulting in the death of 46 persons, who had assembled at the accident site. The heirs and legal representatives of the victims filed claim petitions for compensation under Section 110A of the Motor Vehicles Act, 1939 against the owner of the** G **petrol tanker and the appellant, the insurer; and for no-fault compensation under Section 92A of the Act. The Claims Tribunal dismissed all the claim petitions filed under Section 92A of the Act on the ground that the fire and the explosion could not be said to be accident**

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arising out of the use of the petrol tanker and there was a time gap of about four hours. The appeals were filed before the High Court. One 'VU' whose son died in the accident also filed an appeal. The Single Judge of the High Court set aside the order passed by the Claims Tribunal. The Division Bench of the High Court upheld the order passed by the Single Judge. Aggrieved, the owner of the tanker and the insurance company filed SLP and the same was dismissed. The judgment was reported as **Shivaji Dayanu Patil & Anr.* vs. *Vatschala Uttam More* where it was held that the fire and explosion of the petrol tanker in which son of 'VU' lost his life could be said to have resulted from an accident arising out of the use of the motor vehicle, petrol tanker, thus, allowed the claim of no-fault compensation by and/or on behalf of the victims. As regards the applications filed under Section 110A of the Act, the Claims Tribunal dismissed all applications. The High Court allowed the appeal holding that the **Shivaji Dayanu Patil's* case was conclusive on the issue that the death of the victim, caused by the fire and explosion of the petrol tanker, had resulted from an accident arising out of the use of the motor vehicle, namely the petrol tanker. However, the High Court on a prayer made by the appellant, granted them certificate to appeal to this Court. Therefore, the appellant filed the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1 On the basis of the evidences later on adduced before the Tribunal in the main proceeding under Section 110A of the Motor Vehicles Act, 1939, it might be possible for the Claims Tribunal to arrive at a finding at variance with the finding recorded by a superior court on the same issue on an application under Section 92A of the Act. But the variant finding by the Tribunal must be based on some material facts coming to light

A **from the evidences led before it that were not available before the superior court while dealing with the proceeding under Section 92A of the Act. However, in the instant case, as correctly noted by the High Court, the position is entirely different. [Para 13] [168-G-H; 169-A-B]**

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1.2 The evidences of the OWs adduced before the Claims Tribunal, in particular the depositions of the owner of the petrol tanker, who was examined himself as OW1 and the driver of the ill-fated petrol tanker who was
C **examined as OW2 are examined and the judgment of the Tribunal is perused. In the evidences of the OWs, there was no new material fact that wasn't already before this Court in *_Shivaji Dayanu Patil,_ and on the basis of the evidences led by the opposite party, no new points were raised before the Claims Tribunal that can be said to have**
D **not been raised before this Court in *_Shivaji Dayanu Patil._ [Para 15] [171-B-C]**

1.3 In the facts and circumstances of the instant case, the decision rendered in *_Shivaji Dayanu Patil_ was
E **completely binding on the Claims Tribunal and it was not open to the Claims Tribunal to come to any finding inconsistent with the said decision of this Court. [Para 16] [172-A-B]**

**Shivaji Dayanu Patil and Anr. vs. Vatschala Uttam More*
F **(1991) 3 SCC 530 – Relied on.**

Case Law Reference:

(1991) 3 SCC 530	**Relied on**	**Para 4**

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3744 of 2005.

From the Judgment and Order dated 28.04.2005 of the High Court of Judicature at Bombay in Civil Application No.
H 1583 of 2005 in First Appeal No. 149 of 1999.

Atul Nanda, (AC) , Ramesh Chandra Mishra, Ashok Kumar Singh, Sapam Biswajit Mietei, Surender Dutt Sharma, Punam Kumari and Dr. Meera Agarwal for the appearing parties.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. This is an appeal under Article 133 of the Constitution of India read with Order XV Rule 1 of the Supreme Court Rules,1966 on a certificate granted by the Bombay High Court under Article 134A(b) of the Constitution. The appellant is the insurance company and it seeks to assail the judgment and order passed by the High Court in an appeal from a motor accident claim case. In order to properly appreciate the issue in regard to which the High Court has granted the certificate to appeal, it would be useful to take note of some basic facts of the case.

2. In the early hours of October 29, 1987 a petrol tanker bearing registration no.MXL7461, was proceeding on National Highway 4, coming from the Pune side and going towards Bangalore. As it reached near village Kavathe, in the district of Satara, Maharashtra, a truck, bearing registration no.MEH4197, laden with onions, was coming from the opposite direction. At the point where the two vehicles crossed each other, there was a pile of rubble on the left side of the road. As the two vehicles crossed each other, the rear right side of the petrol tanker was hit by the rear left side of the truck. As a result of the impact, the petrol tanker was thrown off the road and it came to rest on its left side/ cleaner's side on the kutcha ground, about 5 feet below the road. As a result of the collision and the falling down of the petrol tanker on its side, petrol started leaking from the tanker. The tanker driver was unable to stop the leak even though he tried to tighten the lid. The accident took place at around 3:15am. Shortly after the accident, another tanker, coming from the Bombay side passed by. In that tanker, apart from the driver, there was also an officer of the Indian Oil Company. Both of them assured the driver of

A the fallen down tanker that they would report the accident at the police station and asked him to wait near the place of the accident. Later on, yet another tanker from Sangli arrived at the spot and then the cleaner of the ill-fated tanker and the owner of the Sangli tanker together went to village Kavathe in search B of a telephone to inform the tanker owner about the accident. After they came back from the village all of them, the driver and the cleaner of the tanker that had met with accident and the owner, the driver and the cleaner of the tanker coming from Sangli waited near the accident site. At daybreak, the local C people started collecting near the fallen down tanker and some of them brought cans and tried to collect the petrol leaking out from the tanker. The driver of the tanker tried to stop them from collecting petrol or even going near the tanker, explaining to them that doing so would be risky and dangerous. No one, D however, listened to him and he was even manhandled. In the melee, the petrol caught fire and there was a big explosion in which 46 persons lost their lives.

3. The heirs and legal representatives of those people who died at the accident site filed claim petitions for compensation E under section 110A of the Motor Vehicles Act, 1939 before the MACT, Satara, against the owner of the petrol tanker and its insurer, the present appellant. In all the cases, claims were also made for payment of Rs.15,000/- as no fault compensation under section 92A of the Act. The owner of the tanker and the F insurer (the respondents before the Tribunal) contested the claim petitions filed by the applicants under section 92A of the Act and questioned the jurisdiction of the Claims Tribunal to entertain such petitions on the ground that the fire and the explosion causing the death of those who had assembled at G the accident site could not be said to be an accident arising out of the use of a motor vehicle. The Claims Tribunal upheld the objection raised by the insurer and the owner of the petrol tanker, and by a common order dated December 2, 1989, dismissed all the claim petitions filed under section 92A of the H Act on the ground that the fire and the explosion could not be

said to be accident arising out of the use of the petrol tanker and hence, the provisions of section 92A of the Act were not attracted. The Claims Tribunal pointed out that there was a time gap of about 4 hours between the tanker meeting with the road accident and the fire and explosion of the tanker and there was absolutely no connection between the road accident and the fire accident that took place about 4 hours later. The Claims Ttribunal also observed that the local people were trying to steal petrol from the petrol tanker and the fire and the explosion were the result of their attempt to steal the petrol leaking out from the tanker. In other words, it was the people who had assembled at the accident site and some of whom eventually died as a result of it who were responsible for causing the fire and explosion accident and the later accident had no causal connection with the earlier road accident of the tanker. The fire and the explosion could not be said to be an accident arising out of the use of the tanker. Against the order of the Claims Tribunal passed on December 2, 1989, appeals were filed before the High Court. One such appeal was filed by Vatschala Uttam More, whose son Deepak Uttam More was one of the persons who died as a result of injuries caused by the fire and explosion of the petrol tanker. A learned single judge of the High Court allowed the appeal and by judgment dated February 5, 1990, reversed the order passed by the Claims Tribunal. Against the decision of the single judge, the owner of the petrol tanker and the insurance company filed a Letters Patent Appeal which was dismissed by a division bench of the High Court by judgment dated August 16, 1990.

4. The owner of the petrol tanker and the insurance company then brought the matter to this court in SLP no.14822 of 1990 challenging the judgment and order of the High Court passed on August 16, 1990. The SLP was dismissed by this court by judgment and order passed on July 17, 1991. In this judgment, reported as *Shivaji Dayanu Patil & Anr.* vs. *Vatschala Uttam More*, (1991) 3 SCC 530 the Court considered at length, the questions whether the fire and

A explosion of the petrol tanker in which Deepak Uttam More lost his life could be said to have resulted from an accident arising out of the use of a motor vehicle, namely the petrol tanker. The court answered the question in the affirmative, that is to say, in favor of the claimant and against the insurer.

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5. The judgment of this Court, thus, put an end to the objections raised by the owner and the insurer of the petrol tanker against the claim of no fault compensation by and/or on behalf of the victims of the fire and explosion accident.

C 6. But next came the turn of the main applications filed under section 110A of the Act. There were altogether 44 claim applications in which, case no.168 of 1988 was treated as the lead case. In the main claim cases too, the owner and the insurer of the tanker *inter alia* raised the same objections as D taken earlier against the claim of no fault compensation. In view of the pleadings of the parties, the Claims Tribunal framed five issues in which issue no.3, being relevant for the present, was as follows:

E "3. Whether sustaining of injuries was (*sic*) arising out of use of the petrol tanker and was the result of negligence on the part of the petrol tanker driver?"

7. On the basis of the evidences led before it, the Claims Tribunal answered the issue in the negative and as a F consequence dismissed all the claim cases by its judgment and order dated July 31, 1997.

8. Against the judgment and order passed by the Claims Tribunal, the applicant of MACP no.168 of 1988, preferred an G appeal before the High Court (being First Appeal no.149 of 1999). (The other claimants whose claims were similarly dismissed by the Claims Tribunal are also said to have preferred their respective appeals before the High Court which are pending awaiting the result of the present appeal before this Court).

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9. Before the High Court it was contended on behalf of the claimants that the question whether the death of the victims resulted from an accident arising out of the use of the petrol tanker was concluded by the decision of this Court in *Shivaji Dayanu Patil* and any finding recorded by the Claims Tribunal contrary to the decision of this Court was completely illegal and untenable. On the other hand, on behalf of the insurer and the owner of the petrol tanker, it was argued that the decision of this Court in *Shivaji Dayanu Patil* was rendered on a claim for no-fault compensation under section 92A of the Act. It was, thus, a judgment against an interlocutory order, before any evidences were recorded in the proceeding and, therefore, the decision in *Shivaji Dayanu Patil* cannot be taken as binding and it was open to the Claims Tribunal or the High Court to come to a different finding on the basis of the evidences adduced in course of the main proceeding. It was further argued, on behalf of the insurer and the owner of the petrol tanker that an order under section 92A is, in nature, an interim order that is passed without following the formal procedure of recording evidence. The decision of this Court in *Shivaji Dayanu Patil* had not decided the issue finally and conclusively and, hence, the claimants could not draw any benefit from it in the main proceeding under section 110A of the Act based on the principle of fault or negligence of the driver of the vehicle. The High Court did not accept the arguments advanced on behalf of the owner and the insurer of the petrol tanker, but agreed with the claimants that the decision of this Court in *Shivaji Dayanu Patil* was conclusive on the issue that the death of the victim, caused by the fire and explosion of the petrol tanker, had resulted from an accident arising out of the use of the motor vehicle, namely, the petrol tanker and it was not open to the Claims Tribunal to take a contrary view. It, accordingly, allowed the appeal and by judgment and order dated March 24, 2005, set aside the judgment of the Claims Tribunal and allowed the claim petition with costs.

10. Though, having held against the insurer, the High Court,

A on a prayer made before it, granted certificate to appeal to this Court by order dated April 28, 2005, in the following terms:

> "1. Heard advocates for the appellant and respondents. The issue involved that is for the purpose of this leave to
B go to the Supreme Court is, whether the order of the Supreme Court under section 92A was for all purposes an interim order or it concluded and decided the question as to whether the vehicle i.e. the tanker was in use when exploded. Though, I have held against the respondents, looking to the question involved, certificate as prayed, is
C granted. No stay to the order of payment. Certified copy expedited."

11. Mr. Ramesh Chandra Mishra appearing on behalf of the appellant advanced the same arguments before us as were
D advanced before the High Court in support of the judgment passed by the Claims Tribunal. Learned counsel submitted that the decision of this Court in *Shivaji Dayanu Patil* was rendered on an application under section 92A of the Act and, therefore, any finding recorded in that decision would not be binding on
E the Claims Tribunal in the main proceeding under section 110A of the Act that was to be decided on the basis of the evidences adduced before the Tribunal.

12. On hearing Mr. Atul Nanda, the *amicus curiae* and Mr. Ashok Kumar Singh, counsel appearing on behalf of the
F respondent, we are unable to accept the submissions made by Mr. Ramesh Chandra Mishra and we are in complete agreement with the view taken by the High Court.

13. In a given case, on the basis of the evidences later on
G adduced before it in the main proceeding under section 110A of the Act, it may be possible for the Claims Tribunal to arrive at a finding at variance with the finding recorded by a superior court on the same issue on an application under section 92A of the Act. But the variant finding by the tribunal must be based
H on some material facts coming to light from the evidences led

before it that were not available before the superior court while dealing with the proceeding under section 92A of the Act. In this case, however, as correctly noted by the High Court, the position is entirely different. It is true that the case *Shivaji Dayanu Patil* arose from the claim for no-fault compensation under section 92A but all the material facts were already before the court and all the contentions being raised now were considered at length by this Court in that case. In *Shivaji Dayanu Patil* the Court took note of the relevant facts in paragraphs 2 and 3 of the judgment. In paragraph 4 of the judgment, the Court noted the three limbs of argument advanced by Mr. G.L. Sanghi, learned counsel appearing for the owner of the petrol tanker in support of the plea that the explosion and fire in the petrol tanker could not be said to be an accident arising out of the use of a motor vehicle. Paragraph 4 of the judgment reads as under:

> "4. Shri G.L. Sanghi, the learned Counsel appearing for the petitioners, has urged that in the instant case, it cannot be said that the explosion and fire in the petrol tanker which occurred at about 7.15 A.M., i.e., nearly four and half hours after the collision involving the petrol tanker and the other truck, was an accident arising out of the use of a motor vehicle and therefore, the claim petition filed by the respondent could not be entertained under Section 92-A of the Act. Shri Sanghi has made a three-fold submission in this regard. In the first place, he has submitted that the petrol tanker was not a motor vehicle as defined in Section 2(18) of the Act at the time when the explosion and fire took place because at that time the petrol tanker was lying turtle and was not capable of movement on the road. The second submission of Shri Sanghi is that since before the explosion and fire the petrol tanker was lying immobile it could not be said that the petrol tanker, even if it be assumed that it was a motor vehicle, was in use as a motor vehicle at the time of the explosion and fire. Thirdly, it has been submitted by Shri Sanghi that even if it is found

A that the petrol tanker was in use as a motor vehicle at the time of the explosion and fire, there was no causal relationship between the collision which took place between the petrol tanker and the truck at about 3 A.M. and the explosion and fire in the petrol tanker which took
B place about four and half hours later and it cannot, therefore, be said that explosion and fire in the petrol tanker was an accident arising out of the use of a motor vehicle."

14. After having considered each of the 3 limbs of Mr. Sanghi's arguments and having rejected all of them, the Court,
C in paragraph 37 of the judgment, held and observed as follows:

"37. Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle? In our view, in the facts and circumstances of the
D present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on
E the sloping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the
F tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely because there was interval of about four to four and half hours between the said collision
G and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to

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an accident arising out of the use of the motor vehicle viz. the petrol tanker No. MKL 7461."

15. We have examined the evidences of the OWs adduced before the Claims Tribunal, in particular the depositions of Shivaji Patil, the owner of the petrol tanker, who examined himself as OW1 and Dhondirama Mali, the driver of the ill-fated petrol tanker who was examined as OW2. We have also gone through the judgment of the Tribunal. In the evidences of the OWs, there was no new material fact that wasn't already before this Court in *Shivaji Dayanu Patil.* And on the basis of the evidences led by the opposite party, no new points were raised before the Claims Tribunal, that can be said to have not been raised before this Court in *Shivaji Dayanu Patil.* The High Court was, therefore, perfectly justified in observing in paragraph 26 of the judgment coming under appeal as follows:

"... But whether the vehicle was in use or not was a question before the Supreme Court and even after evidence that aspect has not changed. Time at which the accident occurred, viz. catching the fire by the petrol has remained the same. The circumstances preceding this particular point have also remained the same. The manner in which the petrol tanker came near the spot and how it was hit by a vehicle or truck coming from opposite direction also remained the same even after evidence and therefore when facts which were before the Supreme Court have not at all changed inspite of the full trial and evidence, the judgment of the Supreme Court has to be accepted and taken as a concluded judgment so far as the issue as to whether the vehicle was "in use" or "arising out of the use of the motor vehicle", fully and concluding. Secondly, questions before the Supreme Court was about the interpretation of the words "arising out of use of motor vehicle". The situation namely occurring explosion to the petrol tanker has not changed so far as this particular aspect is concerned...."

A 16. In light of the discussions made above, it must be held that in the facts and circumstances of the present case, the decision rendered in *Shivaji Dayanu Patil* was completely binding on the Claims Tribunal and it was not open to the Claims Tribunal to come to any finding inconsistent with the B aforesaid decision of this Court. The issue framed by the High Court is answered accordingly. There is no merit in the appeal and it is, accordingly, dismissed with costs.

N.J. Appeal dismissed.