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2026:DHC:9208

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on : 25th September 2026***
Pronounced on : 15th October 2026
Uploaded on : 16th October 2026

\# **CNR No. DLHC010336292023**

\+ MAC.APP. 402/2023

ROHTASH KUMAR .....Appellant

Through: Mr. Shafiq Khan, Mr. Vikasdeep Sharma, Mr. Mukesh Kumar, Mr. Abhishek Salwan & Ms. Tanya Sharma, Advocates.

versus

SANGEETA VERMA & ORS. .....Respondents

Through: Mr. Manoj Kumar, Advocate for Respondent nos. 1 to 4.
Mr. Gaganmeet Singh Sachdeva, Standing Counsel for MCD.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed by the driver of Municipal Corporation of Delhi ('***MCD***') Truck bearing No. DL-lGC-1424 (TATA) ('*offending vehicle'*) challenging the judgment dated 25th January 2023 passed by Motor Accident Claims Tribunal, South West District, Dwarka Courts ['***MACT/Tribunal***'], in MACT No.747/2016.

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2. The accident took place on 18th December 2014, resulting in death of *Sujeet Kumar*. The claim was filed by *Sangeeta Verma* (wife of deceased) and other legal heirs of deceased *Sujeet Kumar*, who was 26 years old at the time of the accident and was employed in private job as a '*service technician*'. On that day, at about 09:30 a.m., *Sujeet Kumar* was going towards Dwarka on his motorcycle. When he reached near Shiksha Bharti School, Dwarka, the offending vehicle, driven by appellant, hit the motorcycle from behind due to which he sustained fatal injuries. The appellant fled from the spot. *Sujeet Kumar* was taken to Rockland Hospital, Sector 12, Dwarka where he was declared *brought dead*.

3. FIR No.834/2014 was registered at PS Dwarka (South). The MACT concluded that *Sujeet Kumar* died as a result of the rash and negligent driving of the offending vehicle by the appellant/driver. Compensation was awarded at *Rs.22,05,000/-* along with interest at the rate of *9%* per annum.

4. The appellant/driver has challenged the apportionment of liability, which was fastened jointly and severally upon the driver and the owner of the offending vehicle, *i.e.* the Municipal Corporation of Delhi ('***MCD***').

5. *Mr. Shafiq Khan*, counsel for appellant, seeks to argue against the liability fastened upon appellant and stated that liability to pay entire compensation ought to have been fastened on the MCD, being employer of appellant and the offending vehicle was being driven during the course of employment. He relies upon Section 146(2) of the Motor Vehicles Act, 1988 ('***MV Act***'), read with the principles of vicarious liability, and also upon the decision of a Single Judge of the Rajasthan

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High Court in ***State of Rajasthan v. Smt. Shekhu & Ors.***, 2004 SCC OnLine Raj 131 where this aspect was discussed in detail.

6. Section 146 MV Act, on which counsel for appellant places reliance, reads as under:

> "*146. Necessity for insurance against third party risks.—(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:*
> *Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).*
> *Explanation.—For the purposes of this sub-section, a person driving a motor vehicle merely as a paid employee, while there is in relation to the use of the vehicle no such policy in force as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.*
> *(2) The provisions of sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for purposes not connected with any commercial enterprise.*
> *(3) The appropriate Government may, by order, exempt from the operation of sub-section (1), any vehicle owned by any of the following authorities, namely:—*
> > *(a) the Central Government or a State Government, if the vehicle is used for purposes connected with any commercial enterprise;*
> > *(b) any local authority;*
> > *(c) any State Transport Undertaking:*

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> *Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in such manner as may be prescribed by appropriate Government.*
>
> *Explanation.—For the purposes of this sub-section, "appropriate Government" means the Central Government or a State Government, as the case may be, and—*
>
> *(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;*
>
> *(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;*
>
> *(iii) in relation to any other State Transport Undertaking or any local authority, means that Government which has control over that undertaking or authority.*"
>
> (emphasis supplied)

7. *Mr. Shafiq Khan*, essentially argues that as per Section 146 (2) of the MV Act, the necessity for insurance against third party, does not apply for any vehicle owned by the Central Government or State Government and used for purposes not connected with any commercial enterprise. He further contends that Section 146(3) of the MV Act permits the exemption of vehicles owned by local authorities, provided that no such exemption is granted unless a fund has been established and is maintained by the authority in the prescribed manner.

8. He therefore argues that, since the offending vehicle was owned by the MCD, a local authority, it falls within the ambit of this provision. Although the vehicle was uninsured, the liability is covered by a fund

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that the MCD was required to maintain.

9. This aspect is not disputed by *Mr. Gaganmeet Singh Sachdeva*, Standing Counsel for MCD. However, counsel for the MCD submits that the MCD should, at most, be liable to pay *50%* of the compensation, with the remaining *50%* payable by the driver, whose negligence caused the accident.

10. On the issue of vicarious liability, counsel for appellant, relies on the decision of a Single Judge of the High Court of Rajasthan in ***State of Rajasthan v. Smt. Shekhu & Ors*** (*supra*). In the said case, the deceased had passed away in an accident while going on a bicycle, having been hit by a jeep that belonged to the District Collector, Barmer. The plea was raised by the State that they were not liable for the tortious act committed by the driver at the time of the accident as the jeep was not being used for government work.

11. The Tribunal concluded that the State had failed to prove that the jeep was not being used for government work and therefore, the State appealed before the High Court. The Court considered the aspect of '*vicarious liability'*, in principle, in motor accident cases and what was meant by '*course of employment*', as also the '*doctrine of sovereign immunity'*. The Court noted as under:

> "*VICARIOUS LIABILITY, ITS MEANING*
>
> *9. "Vicarious liability" means that one person takes or supplies the place of another so far as liability is concerned. This phrase means the liability of a person for the tort of another in which he had no part. A master is jointly and severally liable for any tort committed by his servant which acting in the course of his employment.*
>
> *CONCEPT OF VICARIOUS LIABILITY*

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10. It is settled and undisputed principle of the law of Torts that master is answerable for every such wrong of his servant as is committed in the course of his service, though no express command or privity of the master be proved and the wrongful act may not be for the master's benefit. In fact, there is a catena of authority even for the proposition that although the particular act which gives the cause of action may not be authorised, still, if the act is done in course of employment which is authorised, the master is liable. This doctrine of liability of the master for the acts of his servant is based on the maxim respondent superior, which means "let the principal be liable" and it puts the master in the same position as if he had done the act himself. It also derives validity from the maxim qui facit per alium facit per se, which means 'he who does an act through another is deemed in law to do it himself.'

...

12. Even when the owner of the motor vehicle is involved in an accident is not directly negligent, still he becomes liable to pay the compensation to the claimants if they show that the accident has been caused due to the negligence of the driver or some other servant of the owner. Such liability is called vicarious liability where under common law the master becomes liable for the negligent actions of his servants carried out in the course of their normal duties.

13. Thus, it can be said that:

> *i) An owner of a car would be liable in damages for an accident caused by his servant in the course of his employment.*
>
> *ii) He would also be liable if the effective cause of the accident was that the driver in the course of his employment committed a breach of his duty in either not preventing another person from driving the car or neglecting to see that the said person drove it properly.*

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17. The Hon'ble Supreme Court in Pushpabai v. Ranjit Ginning & Pressing Co. (5), has approved the statement of Lord Lenning which somewhat expanded and liberalised the idea that the owner is not only liable for the negligence of the driver if that driver is his servant acting in the course of the employment but also when the driver is with the owner's consent, driving the car on the owner's business or for the owner's purposes. Whatever might be the law on this subject in earlier days, both the concepts of "scope of employment" and the law as to obligations towards trespassers have undergone radical changes. The Hon'ble Supreme Court observed in Pushpabai v. Ranjit Ginning & Pressing Co. Pvt. Ltd. (supra).

"Before we conclude, we would like to point out that the recent trend in law is to make the master liable for acts which do not strictly fall within the term 'in the course of employment' as ordinarily understood."

18. Keeping in view the above proposition of law, the matter can be concluded in the following manner:

> *i) What emerges, therefore, is that the act of the driver viewed in the background and as part of all the surrounding circumstances, cannot be isolated from the course of employment or the course of the master's work.*
> *ii) Even a careless act or mistake of a servant in the course of employment fastens liability on the master. This apart, when a servant does an act which he is only conditionally authorised to do, without or beyond the conditions, the master or employer is liable for the wrongful act. The mere fact that the driver had consumed liquor against rules contrary to the terms of contract would not exempt the master from liability.*
> *iii) Thus, principle of vicarious liability is applicable in motor accident cases.*

...

22. Thus, it can be said that the Hon'ble Supreme

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Court made the position clear that there was no justification, in principle or in public interest, that the State should not be held liable vicariously for the tortious act of its servant.

23. The Hon'ble Supreme Court in the case of Pushpa Thakur v. Union (9), has held that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act are concerned. That apart, after the amending Act 100 of 1956, by which s. 110A of the Motor Vehicles Act, 1939, was inserted, the distinction of sovereign and non-sovereign acts of the State no longer existed as all owners of vehicles were brought within the scope of that section. Sec. 166 of the new Act of 1988 reproduces Sec. 110A of the old Act. Whether the State is bound by the provisions of the Motor Vehicles Act is no longer res integra.

...

26. Thus, it can be said that now sovereignty lies with the people and no-one whatsoever may be can say that he is immuned from the liability and thus, suit for damages for negligence of officers of the State in discharging the statutory duties is maintainable.

...

28. The Hon'ble Supreme Court in the case of State of Maharashtra v. Kanchanmala Vijay Singh Shirke (12), has observed that if the vehicle was used in connection with the affairs of the State and for official purpose, the State cannot escape its vicarious liability to pay compensation to the heirs of the victim on the ground that it had never authorised the clerk to drive the vehicle.

29. In view of the above proposition of law, the maxim "lex non protest preceare" has no place today and now sovereignty vests in the people and from this point of view, the State is liable for the act done by its employees and there exists no distinction between sovereign and non-sovereign acts and like ordinary citizen, the State would be liable for the act done by its employees."

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12. Applying these principles, the High Court concluded that since the jeep in question was being driven by the driver under the employment of the District Collector at Barmer and the jeep belonged to the District Collector, the State would be considered liable and the State cannot plead for any immunity.

13. Single Judge of this Court in ***M.C.D v. Raj Kishore Tiwari***, 2008 SCC OnLine Del 882, in relation to an accident resulting in the death one lady namely *Prabha Tiwari*, hit by a scavenging van, also considered this issue. In this regard the Court noted as under:

> "*8. The contention of the counsel for the appellant that said Karamveer was not an employee of the MCD and therefore, the MCD is not vicariously liable to pay the compensation amount, appears to be totally misconceived and untenable, more particularly when the Tribunal has held the said Karamveer equally liable to pay the compensation amount, along with the appellant MCD. It is not in dispute that at the relevant time scavenging van was under the control of the employee of the MCD i.e., Mr. Satinder Kumar who was the driver of the said van along with one helper Mr. Ravi. They were assigned the job of removing sludge from the septic tank and then to discharge the same in the nearby running ganda nala and therefore, even if the plea of the appellant is accepted, there was a clear neglect and carelessness on the part of the said two employees otherwise nobody could dare to attempt stealing the said heavy van such as scavenging van in the presence of the employees of the MCD. Although it has been pleaded that the complaint was lodged with the police on the intervening night of 24/25-3-2005 with the concerned police station, Shalimar Bagh about somebody's having driven away the vehicle but such a lodging of the complaint cannot absolve the employees of the MCD and the MCD, being the employer, from their acts of negligence in not taking*

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proper care to protect and safeguard their vehicle. The Hon'ble Supreme Court in the judgment reported in II (2000) ACC 291 : (AIR 2000 SC 1930), Rita Devi v. New India Assurance Co. Ltd., had gone to the extent of holding the insurance company liable for compensation for a death which arose on account of murder at the hands of the thief who committed the murder while achieving the object of stealing the autorickshaw. Para 16 of the said judgment is referred as under:

> *"In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the Trial Court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle."*

…

10. Primarily, a person can only be held responsible for the consequences of his own action. But in certain circumstances, by reason of the particular legal relationship with the wrongdoer, a person may be held liable for the wrongful acts of another person. Such a liability, which is shown as vicarious liability in the law of torts, arises when there is relationship of master and servant or principal and agent between the person held liable and the person who has committed the wrongful acts. In order that a master may be held vicariously liable for the wrongful act of his servant, it is, however, necessary that the wrongful act of the servant must fall within the course of the servant's employment. Similarly, the principal can be held to be vicariously liable for the wrongful act of the agent provided that the wrongful act falls within the scope of his agency. In the instant case, the driver was assigned the job of removing sludge and it was in the course of

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> *the employment of MCD that the accident occurred whatsoever be the reason, thus, the MCD is liable for the accident as much as the driver*."
>
> (emphasis supplied)

14. In ***State of Maharashtra v. Kanchanmala Vijaysing Shirke,*** (1995) 5 SCC 659, the Supreme Court was dealing with a jeep belonging to the State Government having dashed against a scooter driven by the victim. Liability by the Tribunal was placed on the clerk who was driving the vehicle. The High Court held that the jeep was being driven on official duty, even though driven by the clerk, under authority of the driver, who was designated to do so.

15. The Supreme Court held that the driver of the vehicle had been fully authorized to drive the jeep for a purpose connected to the affairs of the State and allowed another employee of the State, the clerk, who was also going to official duty, to drive the jeep. It was thus established that the negligent act was "*in the course of employment*" and the State should be liable. Relevant paragraphs are extracted as under.

> "*8. The learned counsel appearing for the appellants took a stand that in the facts and circumstances of the present case, the State could not be held to be vicariously liable to pay the compensation for the acts of the respondent who was just a clerk under the State Government and was neither authorised nor required to drive the jeep in question. The jeep had been put in custody of the driver who alone was entitled to drive the same. As the respondent had forcibly snatched the keys from the driver and had caused the accident, the said respondent only should have been held to be liable for his act; his act could not bind the State because it could not be held that he was driving the jeep in the course of his employment so as to saddle the liability to pay compensation on the State Government. As a first*

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impression, the argument looks attractive, but on proper analysis and evaluation, according to us, it cannot be accepted. As already mentioned above, the High Court has examined the materials on record for purpose of recording the finding that the jeep was on official duty, to bring the employees of the State Government to the office from their residences after they had their dinner. The respondent was a clerk in the said office and was required to be present in the office that night. The High Court has rejected the case of the State that the said respondent had snatched the keys from the driver. It has been found that the respondent was driving the vehicle with the consent and under the authority of the driver of the jeep. Nothing has been brought on the record to show that any instruction had been issued to the driver not to hand over the vehicle to any other employee of the State Government while on official duty. As such it has to be examined whether in this background, it is open to the State Government to take a stand that the State Government shall not be vicariously liable for the act of the respondent.

9. The question of payment of compensation for motor accidents has assumed great importance during the last few decades. The road accidents have touched a new height in India as well as in other parts of the world. Traditionally, before the court directed payment of tort compensation, the claimant had to establish the fault of the person causing injury or damage. But of late, it shall appear from different judicial pronouncements that the fault is being read as because of someone's negligence or carelessness. Same is the approach and attitude of the courts while judging the vicarious liability of the employer for negligence of the employee. Negligence is the omission to do something which a reasonable man is expected to do or a prudent man is expected to do. Whether in the facts and circumstances of a particular case, the person causing injury to the other was negligent or not has to be

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examined on the materials produced before the court. It is the rule that an employer, though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. In some case, it can be found that an employee was doing an authorised act in an unauthorised but not a prohibited way. The employer shall be liable for such act, because such employee was acting within the scope of his employment and in so acting did something negligent or wrongful. A master is liable even for acts which he has not authorised provided they are so connected with acts which he has been so authorised. On the other hand, if the act of the servant is not even remotely connected within the scope of employment and is an independent act, the master shall not be responsible because the servant is not acting in the course of his employment but has gone outside. In Salmond's Law of Torts (Twentieth Edn.) at p. 458 it has been said:

> *"On the other hand it has been held that a servant who is authorised to drive a motor vehicle, and who permits an unauthorised person to drive it in his place, may yet be acting within the scope of his employment. The act of permitting another to drive may be a mode, albeit an improper one, of doing the authorised work. The master may even be responsible if the servant impliedly, and not expressly, permits an unauthorised person to drive the vehicle, as where he leaves it unattended in such a manner that it is reasonably foreseeable that the third party will attempt to drive it, at least if the driver retains notional control of the vehicle."*

(emphasis supplied)

16. The Court also considered the scope of Section 146 of the MV Act and the exemptions from compulsory insurance available to vehicles belonging to the Central or State Governments or local authorities. It

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observed that courts must exercise greater caution in determining whether such entities may be held vicariously liable for acts committed by their employees in the course of employment. In this regard the Court stated as under:

> "***16.*** *In view of sub-section (1) of Section 94 of the Motor Vehicles Act, 1939 (Section 146 of the Motor Vehicles Act, 1988) no person can use or allow any other person to use a motor vehicle in a public place, unless there is in force relation to the vehicle by that person, a policy of insurance complying with the requirements of Chapter VIII. In view of sub-section (2) of Section 94 [sub-section (2) of Section 146 of Motor Vehicles Act, 1988], the said provision is not applicable to any vehicle owned by the Central or State Government and used for government purposes. Sub-section (3) vests power in the appropriate Government to exempt from the operation of sub-section (1) of Section 94 any vehicle even owned by any local authority or any transport undertaking. Section 94 of the old Act as well as Section 146 of the new Act requires that a policy of insurance must provide insurance against any liability to third parties incurred by the person using the vehicle. But there is no such requirement so far the vehicles owned by the Central or State Government are concerned and if the exemptions are granted from operation of sub-section (1) of Section 94 it is not incumbent even on the part of any local authority or any State transport undertaking to take out insurance policy providing insurance against any liability to third parties incurred by the person using the vehicle. In this background, according to us, the courts while judging the liability of the Central or State Government or local authorities or transport undertakings, which have been exempted from the provision of sub-section (1) of Section 94, have to be more cautious, while recording a finding as to whether in the facts and circumstances of a*

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> *particular case the Central or the State Government or the local authority or the transport undertaking in question can be held vicariously liable for any act of its employee in the course of employment. As a result of commercial and industrial growth, even motor accidents are on steep rise. For no fault or any contributory negligence of the victims of such accidents, the families are deprived of their breadwinners. The jurisprudence of compensation for motor accidents must develop towards liberal approach, because of mounting highway accidents.*"

17. Yet another decision of the Supreme Court in ***State of Rajasthan v. Vidhyawati And Another*** (1962) SCC OnLine SC 144 where a Constitution Bench considered the extent of the government's vicarious liability for tortious acts committed by its employees in the course of employment. The defendant was a temporary State employee working as a driver on probation. He was driving a government jeep and had been sent to the workshop for necessary repairs. On the way, he knocked down one person walking on the footpath, which resulted in grievous injuries. The State disputed its liability. The Supreme Court held as follows:

> "*15. Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such, as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of East India Company, the sovereign has been held liable to be sued*

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> *in tort or in contract, and the common law immunity never operated in India. Now that we have, by our Constitution, established a Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in public interest, that the State should not be held liable vicariously for the tortious act of its servant. This Court has deliberately departed from the common law rule that a civil servant cannot maintain a suit against the Crown. In the case of State of Bihar v. Abdul Majid this Court has recognised the right of a government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favour of the Crown, based on common law in the United Kingdom, has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause of action in this case arose after the coming into effect of the Constitution, in our opinion, it would be only recognising the old established rule, going back to more than 100 years at least, if we uphold the various liability of the State. Article 300 of the Constitution itself has saved the right of Parliament or the legislature of a State to enact such law as it may think fit and proper in this behalf. But so long as the legislature has not expressed its intention to the contrary, it must be held that the law is what it has been ever since the days of East India Company.*"
>
> (emphasis supplied)

18. In ***Kamla Bai v. State of M.P.,*** 2002 SCC OnLine MP 553, in a writ petition an issue was raised that the State Road Transport Corporation is maintaining an account, mandated under Section 146 of the Motor Vehicles Act for payment of compensation to victims of

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accidents caused by their vehicles. While deliberating on this, the Court made important observations, which are noted under:

> "***10.*** *Before adverting to rival submissions, it is relevant to notice the provision of section 146 of Motor Vehicles Act, 1988. Section 146 of the New Act corresponds to section 94 of the old Act of 1939. Section 146 provides that no persons shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there, is in force relation to the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of the Chapter IX. Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991. Under clause (c) of sub-section (3) of section 146 it is open to the appropriate Government to exempt from the operation of sub-section (1) any vehicle owned by State Transport Undertaking. However, this power is subject to a rider as per proviso to sub-section (3) of section 146 that no such order shall be made in relation to any such authority unless fund has been established and is maintained by that authority to meet any liability which that authority or any person in its employment may incur to third parties. Sub-sections (1) and (3) of Section 146 are relevant and they are quoted below:*
>
> > *"146. Necessity for insurance against third party risk. (1) No persons shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force relation to the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.*
> > *Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods,*

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there shall also be a policy of insurance under the Public Liability Insurance Act, 1991.
(2) xxxxxx
(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely,-

> *(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;*
> *(b) any local authority;*
> *(c) any State transport undertaking:*

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties."

11. *The above quoted provision of section 146 of the Act has the public policy behind it. Number of vehicles on the road has increased phenomenally leading to increase in road accidents. The provision is to provide sufficient means to compensate the persons afflicted and to avoid hardship. In England case Law of Torts have been recognized in the shape of Road Traffic Act 1930, the third parties' Rights against Insurer Act 1930 and the Road Traffic Act 1934. A system of compulsory insurance was enacted by Road Traffic Act 1930. Its object was to reduce the number of cases where judgment for personal injury obtained against a motor was not met owing to lack of means of defence in the running down action and his failure to insure against such a liability. This is how compulsory insurance was introduced to cover the liability which the owner of the vehicle may incur. The said principle*

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has found statutory recognition u/s 146 of the Act so that third parties who suffer on account of user of motor vehicle would be able to get damage for the injuries suffered and for their ability to get the damage will not be depend on the financial condition of the driver of the vehicle or user causing of injuries. The Apex Court in New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani), held that object of corresponding old section 94 was to enable a third party to recover whatever sum he is in law entitled despite the ability of the owner or driver to pay. Same is the law laid down by the Full Bench of this Court in Mangilal v. Parasram.

13. *Statutory obligation is cast under section 146 on every owner to get insurance done and in case of an exemption granted under sub-section (3) similar object is fulfilled by establishment of fund which is required to be maintained by that authority to meet any liability of authority or any person in its employment may incur to third parties. Until unless a fund is established and maintained to honour the claim vehicle cannot be plied, sub-section (1) of section 146 makes insurance against third party risk compulsory, but, in case of vehicles which are owned inter alia by the State Transport undertaking the appropriate Government is authorized to exempt them from this provision, but, obligation is cast to establish and maintain land for meeting any liability arising out of use of any vehicle. Section 196 of the Motor Vehicles Act, 1988 makes driving of uninsured vehicle an offence punishable with imprisonment which may extend to 3 months or fine which may extend to Rs. 1000/- or with both. Section 196 runs as under:*

> *'196. Driving uninsured vehicle.- Whoever drives a motor vehicle or cause or allows a motor vehicle to be driven in contravention of the provisions of Section 146 shall be punishable with imprisonment which may extend to three months, or with fine*

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which may extend to one thousand rupees, or with both."

14. *In the backdrop of aforesaid statutory mandate, it is incumbent upon the State Transport Undertaking to establish and maintain the "fund" in order to satisfy the claims arising out of use of its motor vehicles to third parties.*

19. *Learned counsel for the petitioners submitted that since the awards have not been honoured for years together and simply "Fund" has been established and is not being maintained, as such vehicles plied by MPSRTC be not allowed to ply until unless the vehicle is insured with the insurance company and exemption should be held to be inoperative as it is conditional on such "fund" being established and maintained, in my opinion, MPSRTC has been granted exemption by the State Government, on the condition of establishing and maintaining the account which is also otherwise statutorily prescribed as per proviso to sub-section (3) of section 146, a duty is cast on MPSRTC to maintain the account in such maimer that it is able to satisfy the awards when they are passed in a reasonable time. In case of failure to maintain such "Fund" day is not away when Court may be compelled to say that its vehicle should be insured before they are driven at a public place. However, such extreme step is not necessary to be adopted as fund has been created and State Government has authorized the MPSRTC to recover Re. 1 per passenger as contribution towards fund, the duty is cast on MPSRTC if the fund is falling short to contribute such amount as may be necessary to meet deficit in the fund and to make the payment of awards which have attained finality in a reasonable time which is coextensive liability a condition to enjoy exemption from insurance. The amount of fund which is realized has to be spent only towards the permissible items as such fund is created under the statutory mandate of section 146(3).*"

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19. In ***Bajaj Allianz General Insurance Co.Pvt. Ltd. v. Union of India***, decision dated 03rd August 2021, in W.P. (Civil) 534/2020, the Supreme Court noted as under:

> "*One additional aspect which has been brought to our notice is that the vehicles of the State Corporations which run public transport are not insured because of exemption provided and, as a result thereof, compensation is not paid for long period of time as most of these Corporations are running in losses. In fact, there are numerous illustrations where the vehicles had to be attached for coercive recovery from the Corporations to make payments to the claimants. Learned ASG would examine the possibility of either withdrawing the exemption or for a mechanism to ensure that sufficient fund pool is available with these Corporations for meeting their liabilities towards the claimants.*"

(emphasis supplied)

20. MCD's counsel relied upon the following decisions:

a. ***Urmiila v. Sushma & Ors.***, 2019:DHC:1627 where the issue of vicarious liability has been considered in the context of transfer of offending vehicle and therefore, it would not apply to the present case.

b. ***Mohd. Sabuddin v. Mohd. Zakir***., 2024:DHC:7799 where the Court was dealing with extent of liability and determined on possession and control of the vehicle in terms of the registered owner, fastened the liability jointly and severely on the driver. However, these are not facts related to a State or a government vehicle therefore, the decision does not apply.

c. The Supreme Court in ***Oriental Insurance Co. Ltd. v.***

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Meena Variyal, (2007) 5 SCC 428 dealt with issues of determination of negligence stating that when the vehicle is met with an accident, the primary liability is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability that is indemnified by the Insurance Company.

Reliance on this principle would work against the MCD for the reason that the vehicle was not insured and the MCD has the responsibility to be the overall benefactor of their vehicles which are operating government service. The MCD itself steps into the shoes of an insurer. Even if, the driver was negligent, the owner becomes vicariously liable and therefore MCD has to be satisfied the award.

d. In ***T.O. Anthony v. Karvarnan***, (2008) 3 SCC 748 reliance was placed on the aspect of composite negligence and contributory negligence discussed by the Supreme Court, leading to joint and several liability. However, this aspect will not apply, since this is a case where neither composite negligence nor contributory negligence comes into play. It is merely an accident caused by the MCD vehicle driven by the appellant and the simple issue which needs to be considered is of vicarious liability and the satisfaction of that liability.

21. Having considered these decisions, the Court is of the clear view that as stated by the Supreme Court in ***Meena Variyal*** (*supra*), the

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vehicle being driven by the employee of an owner meets an accident, the primary liability is that of the driver. Once the driver is found liable, however, the vehicle owner becomes vicariously liable to pay compensation, and that liability is ordinarily indemnified by the insurance company.

22. In the present appeal, negligence is not in dispute. It is also undisputed that the appellant, *Rohtash Kumar*, was an MCD employee and that the vehicle was owned by the Assistant Commissioner, DEMS HQ, Najafgarh Zone of the South Delhi Municipal Corporation ('***SDMC***'), which has since been integrated into the unified MCD. In these circumstances, the MCD's vicarious liability as owner of the vehicle cannot be displaced or questioned.

23. In any event, the MACT held the driver and owner jointly and severally liable to pay compensation. The only question in the present appeal is whether the appellant-driver should remain liable merely because the vehicle was uninsured. However, lack of insurance of the MCD vehicle is covered under the ambit of Section 146 (3)(b) of the MV Act.

24. It is not disputed that the vehicle was being driven during the course of employment.

25. The appellant, *Rohtash Kumar*, testified as **RW-1**, had stated very categorically in his evidence by way of affidavit that he was detailed to drive the vehicle which belonged to the SDMC department, after making necessary entry in the Movement Register of the vehicles kept in the office. In his cross examination he stated that post the accident, he had reported it to the department on the same day i.e. 18th December 2014 at

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10:30 p.m. There was no cross examination by the MCD in this regard.

26. In the evidence by way of affidavit filed on behalf of respondent no.2, SDMC (now MCD), it was admitted that the vehicle was not insured and as per Section 146(2) of the MV Act, the vehicles owned by the Government Department were exempted from insurance against third party risk. It was further stated that "*under the above background, the vehicle was valid to be used for all official purposes at the date of the incident.*" It was further stated that the Corporation had complied with all necessary documentation/ fitness of the vehicle before it was used for official purposes. There was nothing further which had been stated in terms of denying either the fact that the appellant was their employee or that he had taken the vehicle out as part of official duty or that the MCD was not the owner of the vehicle.

27. The issue therefore ultimately turns on vicarious liability and the MCD's obligation to meet that liability, given the exemption from compulsory insurance. The jurisprudence governing motor accident claims is rooted in the MV Act, which is a beneficial piece of legislation. Every aspect, interpretation and application has to be seen from that lens. Mandatory insurance for third party liability was provided for that very reason in Section 146 (1) of the Act. The exemption under Section 146 (2) was for government vehicles, was not to leave a claimant high and dry and without any compensation for having been injured or died as a result of an accident with a government vehicle. Quite to the contrary, the mandate that a fund would be established, effectively transfers the responsibility of shoring up the liability from an insurance company to the organization itself.

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28. The aforesaid interpretation is further fortified by the scheme of the *Central Motor Vehicles Rules, 1989* ('***CMV Rules***'). Rule 148 thereof provides for the maintenance of records of motor vehicles owned by authorities falling within the ambit of sub-section (2) of Section 146 of the MV Act, as well as vehicles exempted under sub-section (3) thereof, in respect of which a policy of insurance has not been obtained. The Rule also contemplates the maintenance of records of certificates issued in respect of such vehicles and the persons to whom such certificates have been issued. More significantly, Rule 151 of the CMV Rules expressly requires every authority referred to in sub-section (3) of Section 146 of the MV Act to establish a fund for meeting liabilities arising from the use of its motor vehicles, including liabilities incurred towards third parties by the authority or any person in its employment. Rules 152 to 158 further prescribe a detailed mechanism for the constitution, replenishment, investment and administration of such fund, including restrictions on its withdrawal and compliance with directions issued by the Central or State Government, as the case may be, concerning the settlement of claims. The statutory framework thus envisages that exemption from compulsory insurance is accompanied by an institutional mechanism for meeting third-party liabilities arising from the use of such vehicles.

29. The aforesaid provisions must be read harmoniously with the beneficial object of the MV Act, particularly the statutory requirement of insurance against third-party risks and the corresponding obligation of an exempted authority to make provision for liabilities arising from the use of its vehicles. The exemption contemplated under Section 146 cannot be

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construed as conferring immunity upon the owner of a vehicle from satisfying a compensation award, nor can the absence of an insurance policy, by itself, result in the burden of compensation being shifted to the driver alone, where the requirements for fastening vicarious liability upon the owner stand established.

30. In the present case, the offending vehicle belonged to the MCD, the appellant was its employee, and the vehicle was being driven in the course of his employment. The MCD has also acknowledged that the vehicle was not insured and that it was being used for official purposes. Consequently, the statutory scheme governing exempted vehicles reinforces the conclusion that the MCD cannot rely upon the absence of an insurance policy to avoid its obligation to satisfy the compensation awarded to the claimants. Any failure to establish or adequately maintain the fund contemplated under the applicable statutory provisions cannot, in itself, be permitted to defeat the rights of third-party victims or their legal representatives.

31. Therefore, any vehicle belonging to /owned by Central or State government or local authority, which takes the benefit of the exemption under Section 146 of MV Act, cannot wash its hands away from the liability to pay compensation to a claimant, who has been injured or died as a result of an accident involving a vehicle maintained by them. Even if the fund is not maintained for any reason or is not being established, that cannot be to the disadvantage of the claimant who has suffered on account of the accident.

32. The MCD's submission that the driver should pay *50%* of the compensation is inconsistent with the principle of vicarious liability and

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the requirement that such liability be met through insurance or a fund established by the authority under Section 146 (2) of MV Act and the *Central Motor Vehicle Rules*.

33. If the mandate for establishing a fund is not carried out, it cannot frustrate the object of the legislation. It is the bounden duty of MCD to establish and maintain an adequately funded pool to satisfy compensation awards. This is a statutory duty and cannot be easily diluted or ignored. In no circumstances can an injured claimant, or the legal representatives of a deceased victim, be left without compensation for the harm suffered in an accident involving a vehicle owned by a government entity.

34. In a welfare state, the obligation of the State and its authorities, particularly government authorities, to ensure that compensation is paid, fully and promptly, is all the more compelling.

35. The appeal is therefore allowed.

36. The compensation awarded by the MACT shall be paid in full by the MCD.

37. The execution proceedings against the appellant shall not proceed and will be set aside. The MCD shall pay the compensation, together with accrued interest, to the claimants within four weeks. If any amount of compensation has already been paid, the balance amount shall be paid within the time stipulated above.

38. The MCD shall remain at liberty to take such action against the appellant, the driver of the offending vehicle, as may be permissible under its applicable service and conduct rules.

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39. Appeal is disposed of in above terms. Pending application if any, is rendered infructuous.

40. Judgment be uploaded on the website of this Court.

ANISH DAYAL
(JUDGE)

OCTOBER 15, 2026/sm/*zb*