
(1995) 12 AP CK 0084
In the Andhra Pradesh High Court
Case No : L.P.A. No. 83 of 1989

Andhra Pradesh State Road Transport Corporation	APPELLANT
Vs	
K. Chandra Reddy alias K. Chandrasekhara Reddy and Another	RESPONDENT

Date of Decision : 11-12-1995

Acts Referred:

Limitation Act, 1963 — Article 91
Motor Vehicles Act, 1939 — Section 110, 110(1), 110A(1), 110F
Andhra Pradesh Motor Vehicles Rules, 1964 — Rule 533

Citation : (1996) 3 ALT 1029

Hon'ble Judges : S. Dasaratharama Reddi, J;Lingaraja Rath, J

Bench : Division Bench

Advocate : P. Gangarami Reddy, for the Appellant; None appeared, for the Respondent

Final Decision : Dismissed

Judgement

S. Dasaratharama Reddi, J.—The short question that arises in this L.P.A. is whether the Civil Court has jurisdiction to entertain a suit filed for claim of compensation for damage to a vehicle as a result of an accident. On 28-6-1976, there was a collision between the bus of the Andhra Pradesh State Road Transport Corporation (for short "the R.T.C.") which is the plaintiff and appellant herein, and the bus belonging to the first respondent and as a result, the bus of the R.T.C. which was stationary was damaged. Alleging that accident occurred as a result of negligent driving of the bus of the first respondent, the R.T.C. filed suit in the Court of Additional District Judge, Nellore, claiming Rs. 47,428/- towards damages. The learned District Judge partly decreed the suit awarding Rs. 12,759/- only with interest at 6% per annum with a direction that liability of the Insurance Company which is second respondent herein is limited to Rs. 2,000/-. Against this judgment, the owner of the private bus filed appeal A.S. No. 159 of 1982 raising various contentions including the contention that the Civil Court has no jurisdiction to entertain the suit. The learned single Judge held that the Civil

Court has no jurisdiction u/s 110 read with Section 110-A of the Motor Vehicles Act, 1939 (briefly referred to as "the Act"). Allowing the appeal the learned Judge also observed that it is open to the R.T.C. to approach the Motor Accidents Claims Tribunal within four weeks from the date of judgment and that various other contentions raised regarding merits of the claim may be canvassed before the Tribunal. Being aggrieved by this the R.T.C. has preferred this appeal.

2. Sri P. Gangarami Reddy, learned Standing Counsel for the R.T.C. contends that Clause 1 (sic. Sub-section (1)) (aa) in Section 110-A of the Act was introduced by Act 47 of 1978 with effect from 16-1-1979 enabling an application for compensation to be filed by owner of the property and hence in respect of accidents that took place before 16-1-1979 as in the present case, the Tribunal has no jurisdiction to entertain the claim regarding damages to the property and consequently the Civil Court has jurisdiction u/s 9 of the Code of Civil Procedure. He further contends that though even before the said amendment, Section 110, which deals with the constitution of the Tribunals, refers to adjudication by Tribunal of claims in respect of damages to property of a third-party, as Section 110-A of the Act was amended only on 16-1-1979, the Civil Court had jurisdiction.

3. Section 110(1) and 110-A(1) omitting Explanation which is not relevant read as follows:-

"Section 110. Claims Tribunals: (1) - A State Government, may by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as Claims Tribunals) 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 or damages to any property of a third party so arising or both: (amended by Act 56 of 1969)

Provided that where such claim includes a claim for compensation in respect of damages to property exceeding rupees two thousand, the claimant may, at his option, refer the claim to a civil Court for adjudication and where a reference is so made, the Claims Tribunal shall have no jurisdiction to entertain any question, relating to such claim. (amended by Act 56 of 1969)

Explanation:- For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation u/s 92-A".

"Section 110-A Application for compensation - (1): An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 100 may be made-

(a) by the person who has sustained the injury; or

(aa) by the owner of the property, (added by Act 47/1978) or

(b) where death has resulted from the accident, by all or any of the legal representatives of the deceased, or

(c) by any agent duly authorised by the person injured or all or any of the representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application."

As can be seen from the above extract, before the Amendment Act 56 of 1969, Section 110 did not provide for filing claim petition for claiming damages to property of third party. Though by the Amendment Act 56 of 1969 this was provided, Section 110-A of the Act was not amended. This gave rise to conflict of judicial opinion as to whether "injury" in Section 110-A(a) refers only to bodily injury or includes injury to property. A Division Bench of this Court in L.P.A. No. 43 of 1981 dated 6-3-1987, following the decisions in *The Deputy General Manager and Divi. Controller, Karnataka State Road Transport Corporation, Hubli Vs. Jyoti Constructions, Mangalore and Another*, and *Haryana State Vs. Pusa Ram and Others*, , disagreeing with the decision of Orissa High Court in *Central Road Transport Corporation Ltd. Vs. Orissa State Commercial Transport Corporation and Others*, and overruling *Vamana Raju v. A.P.S.R.T.C.* 1983 (2) ALT 111 held that the Amendment Act 47 of 1978 introducing Clause (aa) in Section 110-A(1) is only clarificatory in nature and that even before the amendment, the Tribunal has jurisdiction to entertain claims for damages to property of third party. Prior to this decision in C.C.C.A. No. 36 of 1978: *The General Manager, A.P.S.R.T.C., Musheerabad, Hyderabad v. D. Neelappa and Ors.* 1986(2) ALT 65 (P. Kodandaramaiah, J.) following *Vamana Raju v. APSRTC* 1983 (2) ALT 111 held that the Tribunal had no jurisdiction in respect of claims for damages to property as a result of accident that took place before 16-1-1979. Another learned Judge K. Ramaswamy, J. (as he then was) in A.S. No. 690 of 1981 dated 3-3-1988 took the same view. But the decision of the Division Bench was not brought to the notice of the learned Judge. We agree, with respect, with the decision of Division Bench of this Court in L.P.A. No. 43 of 1981 and in view of this, we hold that the decisions of this Court in C.C.C.A. No. 36 of 1978 (Kodandaramaiah, J.) and A.S. No. 690 of 1981 (K. Ramaswamy, J.) are no longer good law.

4. But, Sri Gangarami Reddy, learned Standing Counsel for the R.T.C., contends that the decision of the Division Bench in L.P.A. No. 43 of 1981 is only to the effect that the Tribunal had jurisdiction and it cannot be construed to mean that the Civil Court had no jurisdiction and that in view of the proviso to Section 110 of the Act, the claimant has got option to approach either Civil Court or the Tribunal. We are not able to agree with his submission. When once it is held that the Tribunal has jurisdiction u/s 110-F of the Act, the jurisdiction of the Civil Court is automatically ousted. What the proviso to Section 110 contemplates is

only that where the claim of damages to property exceeds Rs. 2,000/-, the claimant can ask the Tribunal to refer the claim to Civil Court for adjudication. The words used are "refer the claim to a Civil Court for adjudication". Reference to Civil Court is not same as filing suit in Civil Court. For example, Under Sections 18 and 30 of the Land Acquisition Act, the Collector has to refer the claim to the Civil Court for determination of the market value and eligible claimants. Of course, the wording in Section 110 proviso is different from Section 18 of the Land Acquisition Act, which says that any persons interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court. But the words "reference is so made" found in the proviso indicate that the Tribunal has to make such a reference. If the Legislature intended that the claimant can straight-away file a suit in the Civil Court it would have used the words "may file suit in the Civil Court". Thus the Legislature contemplated that the claimant can opt to get the matter decided by Civil Court by making reference to it through the Tribunal. It is also to be seen that if the claimant has to file directly suit he has to pay higher Court fee than what he could have paid in the Tribunal. Further the period of limitation also is different. For example, in the instant case the appellant had paid Court fee of Rs. 2,326/- on Rs. 47,428/- whereas, if it had filed O.P. before the Tribunal the fee would have been Rs. 119/- under Rule 533 of the A.P. Motor Vehicles Rules, 1964. Similarly, the period of limitation will be different. For suit, the limitation is 3 years, under Article 91 of Schedule to Limitation Act whereas u/s 110-A the limitation is six months.

5. The Division Bench of Orissa High Court in C.R.T. Corporation Ltd. v. O.S.C.T. Corporation (3 supra) at para 8 held:-

"The next question which arises for consideration is whether in view of the Proviso to Sub-section (1) of Section 110, the claim for compensation being more than Rs. 2,000/-, a suit in the Civil Court is maintainable or not. The Proviso says that where the claim for compensation in respect of damage to property exceeds Rs. 2,000/-, the claimant may at his option, refer the claim to a Civil Court for adjudication and in case a reference is so made, the Claims Tribunal shall have no jurisdiction to entertain any question relating to such claim. The expression "refer the claim to a Civil Court" cannot be equated with "file a suit in Civil Court". The meaning of the Proviso, therefore, is that the application even where damage to property exceeds Rs. 2,000/- has to be initially filed before the Tribunal and then on an application being made, the matter has to be referred to the Civil Court. This provision being a beneficial provision has been designedly made so that a claimant in respect of damage to property exceeding Rs. 2,000/- can get the claim adjudicated by the Civil Court on payment of much less Court-fee which is payable before the Tribunal. In this view of the matter, in accordance with the Proviso to Sub-section (1) of Section 110 of the Act, in our opinion, a claim for compensation in respect of damage to property alone even exceeding Rs. 2,000/- has to be made initially before the Tribunal and the claimant can get the matter referred to the Civil Court for

adjudication at his option. This procedure has not been adopted in the present case and, therefore, straightway filing of a suit in the Civil Court to adjudicate upon the lis (sic). The Civil Court gets jurisdiction only when the matter is so referred to it under Proviso to Sub-section (1) of Section 110 of the Act."

6. We agree with respect with the decision of Orissa High Court on this point.

7. But the single Judges of Gujarat, Rajasthan and Jammu and Kashmir High Courts have taken contrary view. In *New India Assu. Co. Ltd. v. Gujarat Electricity Board* 1987 ACJ 953 disagreeing with the judgment of the Orissa High Court in *C.R.T. Corporation Ltd. v. O.S.C.T. Corporation* (3 supra) the Single Judge held:-

"Mr. Mehta submits that expression "refer the claim to the Civil Court" cannot be equated with "file a suit in the Civil Court" and he places reliance on the judgment of the Orissa High Court in the case of *Central Road Transport Corporation Ltd. Vs. Orissa State Commercial Transport Corporation and Others*, . It is true that in the said case the said view is taken by the Orissa High Court. However, as stated earlier, it is clear from the Proviso that option is given to the claimant for referring the matter to the Civil Court for adjudication of his claim and that the Tribunal has not been empowered to refer the matter to the Civil Court. These two things are very clear indications to suggest that it is for the claimant to refer his claim to the Civil Court. When there is no mode prescribed for referring his claim to the Civil Court for adjudication the normal mode is to file a suit. Merely because it is expressed that "refer the claim to the Civil Court" does not mean that the legislature has intended that reference should be made by the Tribunal to the Civil Court. The words "where the reference is so made the Claims Tribunal shall have no jurisdiction to entertain any question relating to such claim" makes it clear that reference is so made means that when claimant exercises option by referring his claim to the Civil Court and when such reference is made "either by filing a suit or otherwise" the Tribunal shall not have jurisdiction to entertain any question relating to such claim. The words "entertain" indicates that the Tribunal has nothing to do with the referring of the claim to the Civil Court which is purely within the option of the claimant. In that view of the matter, I with respect to the Orissa High Court, do not agree with the view that the words "refer the claim to the Civil Court" cannot be equated to the words "to file a suit in the Civil Court". In above view of the matter, I do not find any merit in the contentions raised by Mr. Mehta. Hence, the revision application is summarily rejected."

The judgment proceeded mainly on the basis that there is no mode prescribed for referring the claim to the Civil Court for adjudication. Earlier in paragraph 6 the learned Single Judge observed that there is no provision in the entire Motor Vehicles Act empowering the Claims Tribunal to refer the case to the Civil Court. With due respect we are unable to agree. Whether the Tribunal has to refer the case to the Civil Court is itself in question and, while interpreting the Section it cannot be assumed that there is no provision in the entire Act empowering the

Tribunal to refer the matter to the Civil Court.

8. The next decision is of Rajasthan High Court in *Jagdish Goods Trans. Co. v. United Insurance Co. Ltd.* 1988 ACJ 187. In para 5 it is held:-

"It will not be out of place here to mention that the proviso gives the right to the claimant at his option to refer the claim to Civil Court for adjudication. Thus, the substantive right is vested in the claimant to choose the forum where the claim should be adjudicated. This right is not vested in the Court and the claimant may compel the Tribunal to proceed with the case and may exercise the powers vested in him. Thus, the substantive right of seeking a redressor remedy by way of adjudication in selecting the forum and process of the Court is vested in the claimant himself. This point has not been discussed by the Orissa High Court (*supra*) in its judgment referred above. Apart from that what meaning should be given to the word "refer" need interpretation by this Court in the context in which it has been used in Section 110 of the Act. A party has a right to refer the claim. The distinction should be drawn while interpreting the word "refer" as used in proviso to Section 110(1) of the Motor Vehicles Act, referred above. Section 110(1) proviso of the Act does not provide that the Tribunal shall refer the case to the Civil Court at the request of the party. It only provides that the claimants shall refer the case to the Civil Court. The word "refer" as used in Webster's Dictionary, Third Edition, means to submit or entrust oneself for aid or advice. Thus, the claimant by presenting the suit submits the claim for the aid, advice and adjudication, to the Civil Court and for that purpose it can be equated with a right of presentation for adjudication of the claim. The word "refer" connotes that the party is submitting to the jurisdiction for a particular purpose and this goes to show that the claimant has a vested right to refer the case to the Civil Court and this option has been given to the claimant only. By implication this means that the claimant should choose the forum and if he chooses the forum of the Civil Court it means to refer a case by the claimant to the Civil Court for adjudication which is his right."

9. The learned Single Judge has not considered that the proviso uses the words "reference is so made". If it is to be interpreted that the claimant can file a civil suit, the words "reference is so made" will not be appropriate.

10. The next decision is of Jammu and Kashmir High Court in *National Insurance Co. Ltd. v. Union of India* 1989 ACJ 307. In this case Orissa decision was not noticed and the learned Judge held that "refer" is synonymous with "prefer" or "apply" and that the claimant can straightaway file civil suit. What effect is to be given to the words "reference is so made" occurring in the latter portion of the proviso was not discussed in this judgment also.

11. No doubt, giving option to get the matter decided by the civil Court either by directly filing civil suit or by reference through Tribunal, leads to multiple proceedings sometimes leading to conflicting decisions. For example, where in an accident, a person is injured, and another person's property worth more than

Rs. 2,000/-is damaged, the claim for bodily injury will be adjudicated by the Tribunal, while at the option of the owner of the property Civil Court may decide the issue. There may be conflicting decisions regarding the cause of accident and consequent liability of the owner and the Insurance Company. Perhaps to avoid this anomaly, this proviso was deleted in the new Motor Vehicles Act, 1988.

12. In view of the above discussion, we hold that under the proviso to Section 110(1) the claimant has to first approach the Tribunal and then ask it to refer the matter to the Civil Court if it so chooses and cannot directly file civil suit. Accordingly, we confirm the order of the learned Single Judge and hold that the suit is not maintainable and dismiss the appeal with costs.