

(1981) 08 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : F.A.O. (M.A.C.) No. 24 of 1972

Bhola Ram and Another	Vs	APPELLANT
State of Himachal Pradesh and Another		RESPONDENT

Date of Decision : 04-08-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110A, 110B

Citation : (1982) ACJ 99 : AIR 1982 HP 11 : (1981) ShimLC 403

Hon'ble Judges : T.R. Handa, J

Bench : Single Bench

Advocate : A.K. Goel, for the Appellant; Bhawani Singh, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Handa, J.—This appeal u/s 110-D of the Motor Vehicles Act, (here inafter called the Act) is directed against the judgment/award dated 7-7-1972 delivered by the Motor Accident Claims Tribunal, dismissing the claim petition of the appellants made u/s 110-A of the Act.

2. The facts and circumstances giving rise to this appeal may be briefly sketched like this. On 28-8-70 a truck bearing registration No. HIM 4135 was proceeding from Tatapani towards Simla. This truck was loaded with apple-boxes. Some of the apple boxes loaded on this truck belonged to Shri Prabhu Dayal (now deceased) and he was also travelling in the truck. This truck belonged to the Himachal Government Transport and at the relevant time was being driven by one Gian Singh, an employee of the Himachal Government Transport. When this truck reached near the place known as Ganasidhar, it fell down into a deep khud and was smashed. As a result of such accident, both, Shri Gian Singh driver of the truck and the said Shri Prabhu Dayal died on the spot.

3. Shri Prabhu Dayal deceased was a young man of 39 years. He was a bachelor. He was survived only by his three brothers two of whom are the present appellants. -The appellants then filed a claim petition u/s 110-A of the Act before

the Claims Tribunal claiming a sum of Rs. 50,000/- as compensation on account of the death of Shri Prabhu Dayal who according to the appellants was then having a monthly income of Rs. 1,000/-. The contention of the appellants was that the accident had occurred due to the negligence of Himachal Government Transport, the respondent.

4. The claim petition of the appellants was resisted by the respondents. While admitting the factum of accident the respondent denied if the same had occurred on account of any negligence on the part of its driver. The respondent further disputed the correctness of the quantum of compensation as claimed in the petition and also challenged the locus standi of the appellants to claim the same.

5. On the pleas of the parties, the following issues were struck by the learned Tribunal.

1. Whether the accident occurred due to rash and negligent act of respondent ?
2. To what compensation are the petitioners entitled to and against whom?
3. Whether the petition for compensation by brothers of the deceased is not competent?
4. Relief.

6. The learned Tribunal found that the accident could not be attributed to any negligent or rash act on the part of the truck driver. In the view of the Tribunal the cause of the accident was the surging of a portion of the road which was projecting on wooden ballies and which wooden ballies gave way under the weight of the truck. The learned Tribunal further found that the appellants had locus standi to maintain the claim petition. In view of its findings on Issue No. 1, however, and without recording any findings on Issue No. 2, the learned Tribunal dismissed the appellants' petition.-

7. The case of the appellants as pleaded in the claim petition was that the vehicle had fallen in the khud due to the negligence of the Himachal Government Transport. The main question for consideration which, therefore, arises in this appeal is whether the accident in question had occurred on account of any negligence on the part of the respondent or the truck driver. The only eye-witness to this occurrence is RW 4 Shri Balak Ram who was deputed as conductor with the ill-fated truck and was travelling in that truck at the time of the accident in question. As per version of this witness, the truck was moving at a moderate speed of 15-16 K.M. per hour at the time of the accident. His further version was that as the truck was passing through a narrow site, the rear wheel of the truck stepped on the dunga as a result of which the vehicle tilted and fell down in the khud. The dunga, according to the witness, was on the khud side. He further stated that on that portion of the road the wooden bailies were also broken. Thus, according to the version of this witness, the truck fell down into the khud as a result of the collapse of the dunga. The witness himself also went down into the khud but was fortunate enough to survive. In his cross-

examination, the witness stated that the dunga could be seen from a distance but none could say that it was weak enough or could not stand the weight of a truck and that it would fall down.

8. Besides the evidence of the eye-witness named above, we have on record the evidence of certain other witnesses who happened to visit the spot of the accident on 30th Aug., 1970. The most important witness on this point, however, is Shri Atam Dev Arora, Rule W. 5 the then Service Manager of Himachal Government Transport. He was a member of the Accident Enquiry Committee constituted to hold an enquiry into the cause of the accident in question. The other members of this Committee were the District Magistrate, the District Superintendent of Police, Magistrate First Class, Theog, the Regional Manager, Himachal Government Transport. Ex. RW-I/A is a true copy of the report made by this Enquiry Committee and to which this witness is a signatory. In the language of this report, the cause of the accident was "from the spot inspection of the road and ill-fated vehicle we are of the view that this accident took place due to the sagging of the road portion projected on wooden logs which slipped under the weight of "the vehicle and narrowness of the road at this point". While in the witness box this witness deposed that the accident had occurred due to bad road condition as the road was narrow and there was false projection of wooden baulies which gave way as a result of which the truck had rolled down in the khud. In his cross-examination, this witness stated that he had seen pieces of three broken baulies on the spot and the rest of the baulies were intact. Another witness examined in this connection is Shri Kamala Kant, RW 3, an employee of the H.G.T. who also attributed the accident due to the giving way of the road on the spot. Even Bhola Ram appellant who visited the spot on 30-8-1970 admits to have found the bridge on the spot broken. By "bridge" he obviously meant the false projection supported by wooden baulies.

9. The only possible conclusion that can be drawn from the evidence adduced on the record by either side, therefore, is that the truck in question fell down into the khud resulting in the death of the deceased as the portion of the road on the site of the accident which comprised of false projection and which was supported on wooden logs, gave way under the weight of the truck. The question that next arises is whether in these circumstances, the driver of the truck can be fixed with the responsibility for the accident or to put in other words whether it can be said that the truck driver in taking the vehicle on the projected portion of the road displayed any negligence.

10. It is true that the projected portion of the road on the site of the accident was weak and defective and, therefore, unworthy of traffic or else it would not have yielded under the weight of the truck. It is, however, equally true that whatever defect in that projected portion was, the same was latent and not patent. "Negligence" means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person

guided by similar considerations would not do. Ordinarily any reasonable and prudent driver while plying his vehicle on a public road would have reason to assume that the public road if the same has been made open to the traffic, is traffic worthy unless, of course, there is displayed some signal/warning about the defective condition of a particular portion of the road or such defect is visible or can be discovered by exercise of a reasonable care or is made known to him in some other manner. In the circumstances of the instant case when the latent defect in the projected portion of the road could not have been discovered in spite of a reasonable care and when there was no indication or information available with the truck driver with respect to such defect, the driver in my view was perfectly justified in turning rather believing that the entire width of the road was traffic worthy and in case, therefore, he plied his truck partly on the projected portion, he cannot be said to have displayed any negligence by so doing. I must, therefore, endorse the findings of the learned Tribunal that the accident in question could not be attributed to the negligence of the truck driver. I would also endorse the conclusion drawn by the learned Tribunal that the accident had happened on account of giving way of false projection of the road which was supported on wooden logs.

11. The alternative submission made on behalf of the appellants was that even if it be taken that the accident has resulted on account of sagging of the road, the respondent who was the owner of the road and responsible for its maintenance must be held liable for the compensation claimed inasmuch as the accident was on account of negligence on the part of the respondent in maintaining the roads. The respondent being the owner of the road and responsible for its maintenance, may be liable in tort for such a claim but the question that would arise is whether such a claim was maintainable before the Claims Tribunal u/s 110-A of the Act. It was argued that the claim of the appellants is a claim for compensation in respect of an accident involving the death of a person arising out of the use of a motor vehicle within the meaning of Section 110 of the Act and hence such a claim is within the jurisdiction of the Claims Tribunal. The argument though it looks attractive at the first sight cannot bear scrutiny. On a consideration of the scheme of the Act and the context in which Section 110 appears, I am of the view that the jurisdiction of the Claims Tribunal appointed u/s 110 of the Act is restricted to entertaining claims and giving awards only against the insurers, owners and drivers of the vehicles involved in the accidents and not against any other person. A close scrutiny of the provisions of Sections 110 to 110-B of the Act would lend ample support to this view.

12. Section 110 empowers the State Government to appoint the Claims Tribunal 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 and to define the local limits of their jurisdiction. Section 110-A enumerates the persons who are competent to apply for grant of such compensation to such Tribunals. This section further provides that an application for compensation of

the type mentioned above shall be made in such form and shall contain such particulars as may be prescribed. It also provides for the period of limitation within which an application for compensation can be made before the Tribunal and further empowers the Tribunal to condone the delay if sufficient cause is shown. Section 110-B which is important from the point of view for the issue in hand, requires the Tribunal to hear the parties, hold an enquiry into the claim and to make its award determining the amount of compensation which appears to it to be just. After the Tribunal makes its award so determining the amount of compensation, it is further required to specify the person or persons to whom the compensation shall be paid. The Tribunal is then required to specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. It may be noted that the jurisdiction of the Tribunal in the matter of choice of persons who can be made liable for payment of the amount of compensation determined in its award is not unrestricted. The only persons who can be made liable for payment of the amount of the award as determined by the Tribunal are: (i) the insurer, (ii) the owner and (iii) the driver of the vehicle involved in the accident. As a corollary to this provision it can be safely said that the Claims Tribunal has no jurisdiction to make its award against any person other than the insurer, owner or driver of the vehicle involved in the accident. In the instant case, it is just a co-incidence that the respondent, the State of Himachal Pradesh was the owner of the vehicle involved in the accident as also the owner of the road on account of sagging of which the accident had occurred. It could certainly be made liable for payment of compensation in its former capacity, that is as owner of the vehicle involved in the accident if the circumstances so warranted, but certainly in its capacity as owner of the road, no award against the respondent could be made u/s 110-B of the Act. In other words the Claims Tribunal had no jurisdiction to make any award against the respondent in its capacity as owner of the road and for its negligence to maintain the same. The proper forum for such a claim was the Civil Court and not the Claims Tribunal.

13. In the result this appeal fails and is dismissed but with no order as to costs.