(1986) 03 OHC CK 0018

In the Orissa High Court

Case No : Misc. Appeal No. 8 of 1983

G. Krishna Rao — APPELLANT

Vs

Chalasani Pooranchandra Rao and Another — RESPONDENT

Date of Decision : 18-03-1986

Acts Referred:

Evidence Act, 1872 — Section 114
Motor Vehicles Act, 1939 — Section 110, 110A, 110D, 110F, 95(2)

Citation : (1986) 2 ACC 386 : (1988) ACJ 194 : AIR 1987 Ori 18 : (1989) 65 CompCas 515 : (1986) 1 OLR 554

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : A.K. Padhi, for the Appellant; P. Roy, (for No. 2) and C.A. Rao, (for No. 1), for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—This is an appeal u/s 110-D of the Motor Vehicles Act, 1939 (for short ''the Act'') by the claimant.

2. On 24-7-1978, the truck of the claimant bearing registration No. AAP 8739 while standing another truck bearing registration No. AAP 5758 came from the opposite direction and dashed against it causing damages. The claimant filed an application u/s 110-A of the Act claiming damages of Rs. 27,000/- from the owner and the insurer of the truck (AAP 5758) which caused the accident.

3. Now it is clear from the evidence of P. W. 1 relied upon by the Tribunal that the truck bearing No. AAP 8739 was standing when the other truck came and dashed against it straight. No material is furnished by the owner of the truck giving the circumstances under which his truck caused the accident. It can safely be concluded that the driver of the moving truck was negligent resulting in the damages to the truck.

4. The tribunal has rejected the claim on two grounds. One of the grounds is that

the claim is for Rs. 27,000/- and in view of the limitation of the insurer''s claim to Rs. 2,000/-under Section 95(2) of the Act, the application u/s 110-A would not be maintainable before it The Tribunal is clearly in error in coming to such a conclusion, Section 110 gives'' jurisdiction to the Claims Tribunal constituted under the Act to adjudicate upon claims for compensation in respect of damages to any property of a third party. There is no dispute that while making the claim u/s 110-A of the Act against the owner and the insurer of the other truck the claimant is a third party. Therefore, the Tribunal was competent to adjudicate upon his claim. The proviso to S. 110 gives the option to the claimant to move the Civil Court where the claim for compensation in respect of damage to his property exceeds Rs. 2,000/-. Normally u/s 110-F, no Civil Court would have jurisdiction to entertain a claim in respect of which claims can be entertained by a Claims Tribunal constituted under the Act. The proviso to Section 110 is an exception to the bar of jurisdiction of the Civil Court at the choice of the claimant. The Tribunal who has, jurisdiction to adjudicate upon the claim has no jurisdiction to refuse to consider the application only on the ground that the claim is more than Rs. 2,000/- when the claimant does not exercise his option u/ s 110, Proviso. A bare reading of Section 110 and Section 110-F would make the position clear. They read as follows :

"110-- Claims Tribunals.

(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accident 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 :

Provided that, where such claim includes a claim for compensation in respect of damage 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.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointed as a member of a Claims Tribunal unless he-

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a Judge of the High Court.

(4) Where two or more Claims Tribunals are constituted for any area, the State

Government may, by general or special order, regulate the distribution of business among them."

" 110-F. Bar of jurisdiction of Civil Courts.

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court."

On the analysis above, the refusal to entertain the application of claimant for more than Rs. 2,000/- by the Tribunal being erroneous is set aside.

5. The next ground on which the Tribunal rejected the claim application of the claimant is that the claimant has already been compensated by his insurer under a comprehensive policy of insurance. It is true that compensation determined cannot be doubly realised. The amount received under the comprehensive policy will be taken into consideration while determining the compensation payable by the owner and insurer of the vehicle causing the accident. Whether the full amount of compensation or a portion of it has been paid will depend upon the term of the policy. Merely because some amount has been paid by its own insurer would not be a ground to refuse to entertain the claim. The findings is, therefore, vacated.

6. Mr. P. Roy, the learned counsel for the insurer, submitted that in view of Section 95(2) of the Act its liability in the maximum shall be to the extent of Rs. 2,000/- only. Whether it would be Rs. 2,000/- or more would depend upon the terms of the insurance policy which is not in the record. Mr. Roy will prove the terms of the policy for limiting the liability of the insurer to Rs. 2,000/- only before the Tribunal. Non-production of the policy has always been held to be a circumstance to draw adverse inference against the insurer.

7. In the result, the appeal is allowed, the impugned order is set aside and the matter is remitted back to the Tribunal for further enquiry to determine the just compensation u/s 110-B of the Act in the light of the discussion made above. The owner of the vehicle (AAP 5758), the claimant and the insurer have appeared in this Court. They are directed to appear before the Tribunal on 15th April, 1986, on which date the Tribunal shall fix a date of enquiry. There shall be no order for costs.