
(1987) 07 KL CK 0075
In the High Court Of Kerala

General Manager, Kerala State Road Transport Corporation	APPELLANT
Vs	
Saradamma	RESPONDENT

Date of Decision : 03-07-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110A

Citation : (1988) 1 ACC 255 : (1987) ACJ 926 : (1986) 2 ILR (Ker) 660

Hon'ble Judges : John Mathew, J;Bala Krishnan, J

Bench : Division Bench

Judgement

John Mathew, J.—The 1st respondent in Motor Accidents Claim No, 224 of 1981 before the M.A.C.T., Manjeri, namely, the Kerala State Road Transport Corporation, is the appellant. The respondent is the petitioner in the said claim. She is the proprietress of Ramanadkara Transport and the owner of bus No KLM 765. Bus No. KRT 6024 owned by the appellant and driven by the 2nd respondent before the Tribunal, dashed against the respondent's bus in front of Munniyoor Panchayat office. The respondent's bus was extensively damaged. A claim was filed before the Tribunal u/s 110-A of the Motor Vehicles Act, 1939 as amended by Act 56 of 1969 for compensation under the following heads:

Loss of collection from 22-2-1979 to 10-4-1979 Rs. 38,400 Amount of spare parts and repair Rs. 25,918 charges. Total: Rs. 64,318

Under column 28 of the claim petition, among other things, it was stated as follows:

The applicant's bus had to be garaged for repairs till 10-4-1979. The bus was put on road only on 12-4-1979. The repairer's bill came to Rs. 49,918/- including cost of spare parts. The insurer has sanctioned only an amount of Rs. 24,000/-. The applicant had to bear Rs. 25,918/- from her pocket towards repair charges. She lost an amount of Rs. 38,400/- being loss of collection from 22-2-1979 to 10-4-1979 at the rate of Rs. 800/- per day. The accident occurred solely due to the rashness and negligence of the 2nd respondent in driving the

K.S.R.T.C. bus. The 1st respondent is liable for the act of the 2nd respondent. The respondents are jointly and severally liable to compensate the applicant for the loss sustained by her due to the accident.

2. By separate written statements filed by respondent Nos. 1 and 2, they denied the allegation that the driver of the respondent's bus was negligent. It was contended that the driver of the petitioner's bus drove the vehicle without reducing its speed, although the width of the road at the site of the accident was not sufficient for two buses to pass. It was contended that the 2nd respondent driver of the Corporation bus slowed down and applied the brake so as to facilitate the private bus to pass on without touching the K.S.R.T.C. bus. Due to the negligence of the driver of the private bus the accident occurred for which he is fully responsible. They also contended that they cannot admit the claim on account of loss of earning or for repair charges.

3. The Tribunal held that the respondent was entitled to get an additional amount of Rs. 6,600/- towards cost of materials and repair charges. The Tribunal also found that the daily profit to the bus was Rs. 400/- and on that basis awarded Rs. 18,400/- as the loss of profit for 46 days. In this appeal the 1st respondent Corporation is challenging this award. They have raised an additional ground in the memorandum of appeal raising the contention that u/s 110 of the Motor Vehicles Act compensation can be awarded only for death or bodily injury to any person arising out of the use of the motor vehicle or damages to any property of the third party so arising or both and so the award of compensation under the head of loss of collection is without jurisdiction and illegal.

4. The driver of the respondent's bus was examined as PW 1 and the conductor was examined as PW 4. They have stated that PW 1 had just started the bus after alighting passengers and it was at that time the K.S.R.T.C. bus came at a high speed and hit their bus on the right side in front. This version is fully supported by the independent evidence of PW 2, who was a passenger in the private bus. It has also come out in evidence that the road is straight and wide and two buses can conveniently pass side by side, at the place of accident. However, the version of the 2nd respondent, who was examined as RW 1 was that the road at the place of accident is narrow and he had applied brakes and tried to stop the bus and it was at that time that the private bus dashed against the K S R.T.C bus. After examining the evidence and circumstances, the Tribunal held that the accident occurred due to the negligent and rash driving of the driver of the K S R.T.C. bus. The evidence in this regard was correctly appreciated by the Tribunal and we do not think that there is any scope for interference on the finding of negligence entered by the Tribunal.

5. Out of the two heads of claim for compensation, one is cost of materials and repair charges. PW 1 who assessed the loss prepared survey report marked as Exhs. X-1 and X-2. PW 1 estimated the labour charges for repair at Rs. 9,830/-, but allowed a deduction of 10 per cent as discount and fixed the labour charges at Rs. 8,892/-. The value of materials to be replaced was estimated at Rs.

11,549/-. However, he deducted 50 percent depreciation. It may be pointed out that the vehicle was a 1972 model vehicle and so the respondent was not entitled to get the full value of the spare parts under the terms of the policy of insurance. The net compensation recommended was Rs. 24,005.44. Damages to bumper, headlights, mudguard, paint work and tires were not allowed by the insurance company and those damages were not included in Exhs. X-1 and X-2, The Tribunal relied on Exhs. X-1 and X-2 and the evidence of PW 1 regarding the loss sustained by the respondent and the probable expense for repairing her bus. The insurer paid an amount of Rs. 24,000/- on the basis of the estimate. After considering the evidence the Tribunal allowed a further amount of 6,600/- towards costs of materials and repair charges. We think that this portion of the award is quite fair and reasonable and, therefore, it is only to be confirmed.

6. The second head of the claim for compensation is on account of the loss of collections for the period during which the bus was under repairs. In order to establish this claim the respondent herein produced Exhs. A-1 to A-5 which are the collection sheets for her bus 5 days preceding the accident, namely, from 17th to 21st of February, 1979. These collection sheets were proved by PW 4 the conductor who prepared those sheets. On the basis of those sheets the Tribunal found that the gross collection exceeded Rs. 900/- per day and net collection varied between Rs. 600/- and Rs. 700/-. The bus was in the garage from 22-2-1979 to 10-4-1979 and according to PW 5 the bus was in the garage for 46 days. After deducting expenses of Rs. 200/- the Tribunal estimated that the respondent would have got a profit of Rs. 500/-per day by running the bus. It was on that basis that the Tribunal awarded Rs. 400/- x46, namely Rs. 18,400/- as compensation.

7. We do not think that the respondent produced the best evidence in support of this head of claim. She could have produced her account books relating to this period for the previous year. She could have produced the account books for the year in which the accident occurred. She could have produced other records showing her income for one year. The trip sheets for 5 days and the oral evidence of the conductor of the bus to prove those sheets ought not to have been accepted by the Tribunal, when better evidence could have easily been produced by the respondent. She ought to have proved that 46 days were absolutely essential to do the repairs and that the bus could not be repaired earlier.

8. Apart from this, it is necessary to examine whether the Tribunal has jurisdiction to award compensation for loss of collection from a bus which was involved in an accident.

9. Motor Accidents Claims Tribunals are constituted u/s 110 of the Motor Vehicles Act, 1939 which is as follows:

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:

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.

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." (Sub-sections 2, 3 and 4 omitted)

10. It is true that jurisdiction of the civil court is ousted as soon as the Claims Tribunal is constituted. In *New India Assurance Co. Ltd. v. Shanti Misra* 1976 ACJ 128 (SC), the Supreme Court held that by the introduction of Section 110-A onwards, there is only a change of procedural law and not of substantive law. In this case the Supreme Court also held as follows.

6... The underlying principle of the change of law brought about by the amendment in the year 1956 was to enable the claimants to have a cheap remedy of approaching the Claims Tribunal on payment of a nominal court fee whereas a large amount of ad valorem court fee was required to be paid in civil court.

11. Petition u/s 110-A can be filed only for claiming compensation under the different heads specified and where the owner or driver of the motor vehicle or the insurer as the case may be, are liable. The proper forum for adjudicating other claims and claims against strangers, is the civil court. In *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, , Hidayatullah, J. (as he then was) observed as follows:

With the growth of civilisation and the problems of modern life, a large number of administrative Tribunals have come into existence. These Tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary courts of civil judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to courts, but are not courts.

12. In *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, , Gajendragadkar, CJ. has distinguished between courts and Tribunals as follows:

It would be noticed that Article 136(1) refers to a Tribunal as distinguished from

a court. The expression "court" in the context denotes a Tribunal constituted by the State as a part of the ordinary hierarchy of courts which are invested with the State's inherent judicial powers. A sovereign State discharges legislative, executive and judicial functions and can legitimately claim corresponding powers which are described as legislative, executive and judicial power. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary courts which have been constituted under its relevant provisions. The Constitution recognised a hierarchy of courts and to their adjudication are normally entrusted all disputes between citizens and citizens as well as between the citizens and the State. These courts can be described as ordinary courts of civil judicature. They are governed by their prescribed rules or procedure and they deal with questions of fact and law raised before them by adopting a process which is described as judicial process. The powers which these courts exercise are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions.

13. In *Khairunnissa A.K. Saddiki v. Municipal Corporation, Bombay* 1966 ACJ 37 (Bom), it is said

The Tribunal is not a court, and its constitution is not governed by any legislation applicable to civil courts. The proceeding itself has to be commenced by an application in the prescribed form, and the resultant order is not even called a decree. Section 110-C of the Motor Vehicles Act provides for the procedure and it shows that the Tribunal is entitled to follow such summary procedure as it may think fit, subject to the rules that may have been made. It is also provided by Section 110-E that the amount due under the award shall be recovered through the Collector as arrears of revenue. Section 110-F expressly bars the jurisdiction of civil courts in places where Claims Tribunals have been constituted. The State, by reason of the powers conferred upon it by Section 111 of the Act, framed rules of procedure for the Tribunals, and it is only where no specific rules exist that the Tribunals are enabled to follow the provisions of the Civil Procedure Code. It is, therefore, impossible to hold that the Tribunal is a court.

14. u/s 110 of the Motor Vehicles Act, the jurisdiction of the Claims Tribunals is confined to (1) claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, and/or (2) damages to any property of a third party so arising. In other words, the Tribunal has jurisdiction, apart from its power to adjudicate upon claims for compensation in respect of death or personal injury to persons, only to adjudicate upon claims for compensation in respect of accidents involving "damages to any property" of a third party. Therefore, it has to be examined whether loss of income from a bus which was involved in an accident can be termed as "damages to any property" coming within the ambit of Section 110.

15. The word "damages" means the pecuniary compensation recoverable by a person, who has sustained an injury through the wrongful act or omission of

another. Often a distinction is drawn between damages and compensation. Damages is used for recovering the pecuniary recompense awarded in reparation for a loss or injury caused by a wrongful act or omission. The word "compensation" is used in relation to a wrongful act which caused the injury. The word compensation is not ordinarily used as equivalent for damages. (See *Cooper v. Firth Brown Ltd.* 1963 (2) All ER 31. Damages are of two kinds, general and special. General damages are non-pecuniary losses which cannot be calculated in terms of money like pain and suffering, loss of amenities of life and loss of expectation of life. Special damages are damages which can be computed in terms of money or which can be specifically proved, like the expenses for medical treatment or loss of earnings. Loss of income from a bus which was involved in an accident may come under the head "special damages" for the reason that the petitioner lost this income as a result of the accident. We think that in appropriate cases if the loss of income from the bus is the direct result of the accident, the owner of the bus may be entitled to claim such loss as special damages. But then the question is whether the forum for claiming such compensation is the Motor Accidents Claims Tribunal. The Tribunal is constituted u/s 110 of the Motor Vehicles Act with specified powers. It may also be noticed that by the proviso to Sub-section (1) of Section 110, liberty is given to the claimant to move the civil court for adjudication of any claim for compensation in respect of damage to property exceeding Rs. 2,000/-. Obviously, the intention of the legislature was to provide for quick disposal of motor accidents claims by the Tribunals. If large amounts are claimed as damage to property such claims may have to be tried in detail. Provision to refer such cases to civil courts is made for this reason. If this is the case in respect of claim for "damage to property" itself, it is only reasonable to hold that claim for damages which may result from the accident, even though it cannot be termed as "damage to property", have to be decided only by a civil court and not by the Tribunal. Such an interpretation is in accordance with the general tenor of the provisions of the Motor Vehicles Act as well as the principle that the phrases and sentences in a statute are to be construed literally and in accordance with the rules of grammar. According to us, the language of the section is plain and admits of only one meaning, namely, that the power conferred on the Tribunal is restricted to deciding claims of damage "to" property. The meaning of the word "to" which is the preposition used, as per the Concise Oxford Dictionary, is "in the direction of Definition of a preposition is the following: "A preposition is a word placed before a noun or pronoun to show in what relation the person or thing denoted by it stands in regard to something else." (English Grammar and Composition by Wren & Martin, 75th Edn , page 182). In this view also the interpretation placed by us, namely, that the direct damage to property alone is taken by the words "damage to property" seems to be justified. If there is any claim for damages suffered by the owner of motor vehicle which was involved in an accident, apart from the claim for damages to the vehicle itself, it will thus have to be preferred before a civil court since the Motor Accidents Claims Tribunal has no jurisdiction to consider such a claim.

16. In this view we are not examining the correctness of the award of Rs. 18,400/- awarded by the Tribunal as loss of profit suffered by the respondent.

17. In the result, the judgment and award passed by the Tribunal awarding Rs 18,400/- as loss of profits from the bus is set aside. The award granting Rs. 6,600/- as cost of materials and repair charges is confirmed. Appeal is disposed of as above. There will be no order as to costs.