(2000) 02 KL CK 0043

In the High Court Of Kerala

Case No : M.F.A. No. 800 of 1992

General Manager, Kerala State Road Transport Corporation, Thiruvananthapuram — APPELLANT

Vs

United India Insurance Co. Ltd., Kottayam and Others — RESPONDENT

Date of Decision : 25-02-2000

Acts Referred:
Motor Vehicles Act, 1939 — Section 110F

Citation : AIR 2000 Ker 326

Hon'ble Judges : R. Rajendra Babu, J;K.K. Usha, J

Bench : Division Bench

Advocate : V. Bhaskara Menon, for the Appellant; P.V. Jyothi Prasad, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Babu, J.—This appeal is at the instance of the 1st respondent, the General Manager, K.S.R.T.C., Trivandram, in O.P. (MV) 339/1985 before the M.A.C.T., Alappuzha. The United India Insurance Co. filed the O.P. claiming an amount of Rs. 15603.71 from the appellant towards compensation. The tribunal allowed the claim. Aggrieved by the above order, the K.S.R.T.C. has come up in appeal.

2. On 17-12-1982 there occurred a motor traffic accident at the national highway at Thuravoor, in Cherthala taluk. A K.S.R.T.C. Fast Passenger bus bearing No. N-656 collided with a Bajaj Matador Tempo Van bearing No. KLY 5266 causing extensive damage to the van. It was alleged that the accident was solely due to the rash and negligent driving of the K.S.R.T.C. bus by its driver. It was alleged that the police registered a case, preferred a charge sheet against the driver of the K.S.R.T.C. Bus and later he was convicted and sentenced by the Judicial First Class Magistrate''s Court, Cherthala. The van was insured with the United India Insurance Company and the policy was a comprehensive one. The owner of the tempo van preferred a claim before the insurer and the damage caused to the

tempo van was assessed and an amount of Rs. 1,5103,71 was paid to the insured (the owner of the van) by the insurance company. The insurance company obtained a letter of subrogation from the owner of the van, the 3rd respondent authorising the insurer to realise the amount from the driver and owner of the offending vehicle and, on the basis of the same, the Insurance company preferred a claim before the tribunal against the owner of the offending vehicle, the K.S.R.T.C. The above claim was allowed by the tribunal and the above award is under challenge.

3. The respondents even though notice was served on them, did not appear. The learned counsel for the appellant was heard. It was argued that a claim for damages at the instance of the insurer was not maintainable before a tribunal as the tribunal had no jurisdiction conferred u/s 110 of the Motor Vehicles Act to decide a claim made by an insurer and the remedy open to the insurer was only to file a civil suit against the owner of the offending vehicle. It was further argued that the claims tribunal had jurisdiction to grant compensation to the claims as envisaged u/s 110 of the Motor Vehicles Act and a claim by an insurer on the basis of a letter of subrogation issued by the insured is not contemplated u/s 110 of the Motor Vehicles Act and such a claim cannot be decided by a claims tribunal. In the present case the insurer had already paid the amount due to the insured as a result of the damage sustained to the insured''s vehicle in the accident in terms of the policy. The owner of the vehicle viz. the insured had issued a letter of subrogation authorising the insurer to recover the amount from the owner and the driver of the offending vehicle and on the basis of that letter of subrogation, the insurer of the van filed the O.P. before the claims tribunal against the owner and driver of the offending vehicle as well as the owner of the Insured van.

4. The claims tribunals have been constituted u/s 110 of the Motor Vehicles Act which reads :

"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 both.

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.

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 92A."

Under Section 110 of the Motor Vehicles Act, the jurisdiction of the Claims Tribunal is confined to claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of the motor vehicle or damage to any property of a third party so arising. Apart from the power to adjudicate upon claims for compensation in respect of death or personal injury to persons, the tribunal can adjudicate upon claims for compensation in respect of accidents involving damage to any property of a third party. The jurisdiction of the civil courts relating to the claims of compensation which has to be adjudicated by claims tribunals has been taken away by Section 110F of the Motor Vehicles Act. But as per the proviso to Sub-section (1) of Section 110, the claimant was given an option to move the Civil Court for adjudication of any claim for compensation in respect of damage to the property exceeding Rs. 2000. The Intention of the legislature to have such a provision was to provide for quick disposal of such small claims before the motor accidents claims tribunal whereas the claim for higher amount had to be moved before a Civil Court at the option of the claimant. Thus some restriction on the jurisdiction of the tribunal had been imposed in respect of claims of damage to properly of third parties. The question whether or not the Claims Tribunal had the Jurisdiction to award compensation for the loss of revenue on account of the deprivation of the use of the vehicle for the period of time when the vehicle had been garaged as a result of a motor traffic accident was considered by a Division Bench of this Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. K.P. Saradamma, . There it was held :

"The direct damage to property alone is taken by the words ''damage to the property''. 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 damage 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 entertain such claim."

The same view has been adopted by this Court in K.S.R.T.C. v. Bhaskaran (1991) 2 KLT 643. There it was held :

"By enacting Section 110 the Parliament never intended to confer Jurisdiction on the Claims Tribunal to determine the damages falling under the head ''consequential pecuniary losses'' suffered by a person in relation to torts concerning property. The Claims Tribunal has jurisdiction, apart from its power to adjudicate upon the claims for compensation in respect of death or personal injury to persons, to adjudicate upon claims for compensation in respect of basic pecuniary losses in relation to torts concerning property also. The Claims Tribunal therefore, cannot be said to have jurisdiction to adjudicate upon the claims falling under the head ''consequential pecuniary losses'' in relation to torts concerning property."

In the case of claims to property loss, the jurisdiction conferred on the claims tribunal u/s 110 was to decide only in respect of damage to the property and the tribunal had no jurisdiction to decide on any other claim in respect of any consequential pecuniary loss suffered due to the accident. The other claims for damages resulting from the accident which cannot be termed as ''damage to the property" has to be claimed before a Civil Court. Thus the power conferred on the tribunal is restricted to deciding claims regarding direct damage to the property alone. The insurance company has now claimed compensation on the basis of a letter of subrogation obtained from the Insured and such a claim is not maintainable before the tribunal as it is not a claim for damage to the property of a third party.

5. The learned counsel for the appellant argued that the tribunal had Jurisdiction to decide claims by third parties and as the insurer was not a third parry, the claim by the insurer was not maintainable. Insurer has to indemnify the insured and pay the compensation to third parties and the insured in terms of the policy . There is no direct ''damage to the property'' so far as the Insurer is concerned. By no stretch of imagination the Insurer of a vehicle can be treated as a third party contemplated under the Motor Vehicles Act. The claims tribunal have jurisdiction to decide on claims by a third party, but had no jurisdiction to decide a claim by an insurance company for damages on the basis of a letter of subrogation for the amount paid to the insured, from the owner of an offending vehicle. On that ground also such a claim is not maintainable before a tribunal. As the tribunal had no jurisdiction to decide such a claim at the instance of the insurance company, the order of the tribunal is liable to be set aside and this appeal to be allowed.

In the result this appeal is allowed. O.P. (MV) 339/85 before the MACT, Alappuzha, shall stand dismissed. No costs.

