

(2006) 09 GUJ CK 0044
In the Gujarat High Court

Case No : First Appeal No's. 1426, 1583, 1584, 1896 and 2025 of 1983

GSRTC

APPELLANT

Vs

Hargovindas R. Modi and Others

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 293, 294, 295, 297, 298
Criminal Procedure Code, 1973 (CrPC) — Section 195
Motor Vehicles Act, 1939 — Section 110F, 111, 111A

Citation : (2007) ACJ 1198 : AIR 2007 Guj 39

Hon'ble Judges : Akshay H. Mehta, J

Bench : Single Bench

Advocate : Maya Desai, for M.D. Pandya, 1 in F.A. Nos. 1583 and 2025 of 1983, Kedar Biniwale, for Rajni Mehta, s 1-4 in F.A. No. 1584 of 1983, D.U. Shah, Deepak Shah and Ranjan D. Shah, 1 in F.A. No. 1896 of 1983 and Nirav Thakkar, 1 in F.A. No. 1426 of 1983, for the Appellant; S.A. Desai, for Defendant(s) 1-2 and Kedar Biniwale, for Rajni H. Mehta, for Defendant 6 in F.A. No. 1583 of 1983 and for Defendant(s) 1-4 in F.A. No. 1896 of 1983 and Maya Desai, for M.D. Pandya, for Defendant 4 in F.A. No. 1584 of 1983 and for Defendant(s) 1-2 in F.A. No. 1426 of 1983, for the Respondent

Judgement

Akshay H. Mehta, J.—This group of five appeals arises from the common judgment passed by the Motor Accident Claims Tribunal, Jamnagar dated 18th August, 1982 in Motor Accident Claims Petition No. 126 of 1980 ["MACP" for short] and its allied matters. The claim petitions were filed, heard and decided under the provisions of Motor Vehicles Act, 1939. Hence, these appeals are also decided in accordance with the said provisions. The proceedings before the Tribunal arose because of the vehicular accident which occurred on 16th June, 1980 around 8:45 a.m. One bus belonging to the Gujarat State Road Transport Corporation bearing registration No. GTE 5271 carrying around 25 passengers was travelling from Dwarka to Okha. When it reached near village Majop, a tanker bearing registration No. GTB 4036 came from the opposite direction and there was a collision between these two vehicles. As a result of this collision,

some of the passengers travelling in S.T. Bus received injuries and one passenger, namely Ramilaben died. The driver of the bus was also injured. The driver sustained injuries including fracture, whereas, extensive damage was caused to the bus. The tanker tumbled down into a ditch and turned turtle. It received extensive damage. Its driver also received injuries. It is the say of one set of claimants/petitioners who occupied the S.T. Bus either as passengers or driver that bus was driven at moderate speed and when it reached village Majop, the driver reduced the speed since he saw a tanker approaching from opposite direction. According to them it was being driven at excessive speed since it was trying to overtake another tanker which was going ahead of it and in the process it dashed with the S.T. Bus. According to them the accident occurred because of the rashness and negligence of the driver of the tanker. The say of the other side which is another set of claimants/petitioners is that it was the driver of the S.T. Bus who drove the vehicle in middle of the road at a high speed and he caused the accident. In short both the sets of claimants/petitioners have tried to throw the blame on each other.

2. So far as the parents of deceased Ramilaben are concerned, they filed MACP No. 126/1980 for claiming compensation of Rs. 60,000=00, which was treated to be the main petition by the Tribunal. Shantaben was passenger in S.T. Bus and she filed MACP No. 127/1981 for claiming compensation of Rs. 9,999=00. Arvindbhai Balubhai Modi was also passenger in S.T. Bus and he filed MACP No. 128/1980 for claiming compensation of Rs. 9,999=00. So far as the owner of the tanker is concerned, namely M/s. Deepak Transport, they filed MACP No. 45/1981 for claiming compensation of Rs. 60,000=00; the driver of the S.T. Bus namely, Arshibhai Jivabhai Prajapati filed MACP No. 122/1981 for claiming compensation of Rs. 50,000=00, whereas driver of the tanker filed MACP No. 122/1981 for claiming compensation of Rs. 7,550=00. All these petitions were consolidated by the Tribunal and as stated above, they were decided and disposed of by common judgment.

3. The Tribunal recorded the evidence in MACP No. 126/1980. At the end of the proceedings, the Tribunal awarded Rs. 2,000=00 to the claimants of MACP No. 126/1980; Rs. 4,500=00 to the claimant of MACP No. 127/1980; Rs. 4,600=00 to the claimant of MACP No. 128/1980; Rs. 13,500=00 to the claimant of MACP No. 45/1981; Rs. 24,000=00 to the claimant of MACP No. 59/1981 and Rs. 6,250=00 to the claimant of MACP No. 122/1981. The claimants of MACP Nos. 126/1981, 127/1981, 45/1981 and 59/1981 have approached this Court and have filed First Appeal No. 1583/1983, 1584/1983, 1896/1983 and 1426/1983 respectively. The S.T. Corporation has filed First Appeal No. 2025/1983. It has filed this appeal to challenge the award made in favour of M/s. Deepak Transport i.e., the claimant of MACP No. 45/1981. It has also filed First Appeal No. 1583/1983 to challenge the award made in favour of the claimants of MACP No. 126/1980. First Appeal No. 1584/1983 is filed by the Insurance Company of the tanker to challenge the award made in favour of the claimants of MACP No. 128/1980.

4. The claimants of MACP No. 126/1980 as stated above, claimed compensation for the death of their daughter Ramilaben who was travelling in the S.T. Bus. It appears that on account of collision between two vehicles, the right side portion of the bus was torn almost up to the seat occupied by the deceased. Because of the sharpness of the tin, the hand of the deceased got completely chopped off and due to excessive bleeding she died. The claimant of MACP No. 127/1980 namely Shantaben widow of Hargovinddas Ramjibhai was also passenger travelling in S.T. Bus. She received injuries on palm, neck, and thigh, whereas another passenger namely Arvindbhai Balubhai Modi claimant of MACP No. 128/1980 received injuries on right and left hand and on the back. The driver of the S.T. Bus sustained fractures on the leg which resulted into shortening of right leg. The Tribunal on the basis of the evidence lead before it, decided the issue of negligence and held that the driver of both the offending vehicles were equally at fault, and because of their negligence the accident occurred. The negligence was held at 50% each. The Tribunal thereafter, assessed compensation, payable to the claimants on the basis of the material produced before it, and awarded the aforesaid amounts to respective claimants.

5. I have perused the record and proceedings of the case, as well as I have heard Ms. Maya Desai learned advocate for the appellants of First Appeal No. 1583/1983 and First Appeal No. 2025/1983 and Mr. Kedar Biniwale learned advocate appearing for appellant in First Appeal No. 1584/1983, Mr. Nirav Thakkar learned advocate appearing for appellant in First Appeal No. 1426/1983 and Mr. D.M.Shah learned advocate for Appellant in F.A. 1896 of 1983. She has submitted that the Tribunal has wrongly held the driver of the S.T. Bus negligent to the extent of 50%. According to her, the entire negligence ought to have been attributed to the driver of the tanker. In support of this submission she has drawn my attention to the panchnama of the scene of the occurrence as well as the photographs that have been produced on record. These submissions have been made in respect of First Appeal No. 1583/1983. Ms. Desai has further contended that considering the material on record the compensation awarded to the parents of the deceased is on higher side. As against that Mr. S.A. Desai learned advocate appearing for the respondents has fully supported the findings given by the Tribunal and has urged that there is no need to disturb the award which is made in favour of the parents of the deceased. Ms. Maya Desai has also made submission in respect of First Appeal No. 2025/1983. She has submitted that the Tribunal has not properly appreciated the material produced by M/s. Deepak Transport, the respondent who is the appellant of First Appeal No. 1426/1983 also, and without any basis, it has awarded Rs. 50,000=00 for damage caused to the tanker. According to her, the documentary evidence in the form of repairing bills is admittedly for Rs. 28,522=00 only. Further, she has challenged the jurisdiction of the Claims Tribunal and has submitted that it is empowered to adjudicate upon claim for damage to the property only up to Rs. 2,000=00 and any claim exceeding this limit has to be referred to the Civil Court. She has, therefore, submitted that award made by the Tribunal for damage to

the tanker is without jurisdiction. She has also advanced legal submission that so far as the claim under the head of loss of income for three months i.e., Rs. 10,000=00 is concerned, the said amount could not have been awarded by the Tribunal because it is a remote consequence of the damage caused to the property and not actual damage to the property of the Third Party. According to her, under the Act, the claimant would be entitled to receive compensation only for the damage to the property and not the monetary loss occasioned due to non use of the vehicle. So far as Mr. Nirav Thakkar learned advocate for the appellant in First Appeal No. 1426/1983 is concerned, he has submitted that the Tribunal has erred in awarding only Rs. 13,500=00 for compensation to the damage caused to the tanker. He has submitted that Rs. 16,000=00 which the claimant has received from its own insurance company for damage of the property could not have been deducted by the Tribunal so as to give benefit to the tortfeasor. It is his submission that it is a collateral benefit which the claimant namely M/s. Deepak Transport was entitled to receive on account of the insurance taken by it against the damage caused to the property by paying premium and even if the benefit is received by the party, the tortfeasor cannot take the advantage thereof and avoid its liability. He has further submitted that the Tribunal has wrongly deducted 25% on the basis of the general rule without stating what that rule was. So far as Mr. Biniwale learned advocate appearing for the appellant in First Appeal No. 1584/1983 is concerned, he has assailed the judgment and award on two counts viz. that the driver of the tanker has been wrongly adjudged negligent by the Tribunal to the extent of 50% and that the compensation awarded to the passengers travelling in the S.T. Bus including the driver is on the higher side.

6. I will first deal with the issue of negligence. The record shows that the S.T. Bus was proceeding from Dwarka to Okha, whereas the tanker was coming from the opposite direction. The collision took place near village Majop. The road at the place of accident is 12 ft., wide as per the details recorded in the panchnama. The photographs which form part of the record show that on both the sides of the roads there are shoulders. The S.T. Bus is standing almost in the middle of the tar road, whereas the tanker is lying upside down in the ditch. Both the vehicles have sustained considerable damage. When this is the position the evidence of both the drivers is required to be seen. I have perused the same. The driver of the S.T. Corporation has been examined as witness No. 4 and his deposition is at Exh. 47. The driver of the tanker has been examined as witness No. 4 and his evidence is at Exh.19. There is no need to detailing their evidence. Suffice it to say that both the drivers have tried to throw the blame on each other. It is the say of the driver of the S.T. Bus that the driver of the tanker was driving tanker rashly and when it tried to overtake the vehicle proceeding ahead of his tanker, the tanker dashed with the S.T. Bus and, therefore, the entire responsibility of the accident was that of the driver of the tanker. As against that the driver of the tanker has deposed that the bus was being driven in the middle of the road at a high speed and in spite of the fact that there were shoulders on

both the sides, the driver of the S.T. Bus did not take the vehicle on the shoulder of the road so as to avoid collision. According to him, the driver of the Bus drove the vehicle rashly and dashed it with the tanker. Anyhow the panchnama and photographs on record show that both the vehicles were at fault. May be the driver of the S.T. Bus was slightly more negligent than the driver of the tanker, but the fact remains that there was ample scope for both the drivers to avoid the accident. They, however, did not do it. It shows the negligence of both the drivers. The Tribunal has held them guilty to the extent of 50% each and I do not propose to disturb that finding.

7. So far as the appeals of S.T. Corporation and insurance company to challenge the award made in favour of the parents of the deceased Ramilaben are concerned, I have perused the discussion of the Tribunal on that aspect. The father of the deceased - Hargovinddas Ramjibhai Modi has given the evidence at Exh. 36. He has stated that the deceased was a divorcee and at the relevant time she was aged 30 years. She was staying with them. The witness owned a grocery shop at Surat and according to him the deceased used to assist him in running the shop. He has further stated that he used to pay her Rs. 300=00 per month. According to him on the death of Ramilaben he engaged a servant to whom he paid Rs. 300=00 per month. He, therefore, claimed Rs. 60,000=00. Considering the fact that the deceased was aged 30 years and she was rendering help to her parents in running the shop, her service in the form of salary could be evaluated at Rs. 300=00 and the Tribunal has not committed any error on that count. Naturally, the deceased would have spent about Rs. 50=00 per month on herself and, therefore, the dependency benefit that has been lost by the parents is to the extent of Rs. 250=00 per month. The Tribunal has applied multiplier of 15 years, may be keeping in view the age of the deceased and not the ages of the parents. But even then, in the facts of the case, the multiplier of 15 is not so high so as to compel this Court to reduce it and that too 26 years after the date of accident. The Tribunal has awarded Rs. 45,000=00 under that head. It has awarded Rs. 5,000=00 as conventional amount and Rs. 2,000=00 has been paid for conveyance and after death ceremony expenses. Thus, it has awarded Rs. 52,000=00. This amount cannot be said to be on higher side and the award made by the Tribunal in respect of these petitioners is just and proper and it is confirmed.

7.1. So far as appeal of the owner of the tanker namely, M/s. Deepak Transport is concerned, the grievance is made that award of Rs. 13,500=00 is obviously inadequate and the compensation is required to be enhanced. The submissions of Mr. Thakkar have been recorded above. Mr. Thakkar is right in making submission that the deduction of Rs. 16,000=00 is wrongly made. This amount has been received by M/s. Deepak Transport from the insurance company with which the tanker was insured against damage to the property. They have paid premium to ensure the coverage. This is a collateral benefit which the insured are entitled to receive for their prudent act. Can the tortfeasor take advantage of such benefit received by the insured? The answer has to be in negative. It is time

and again held by various Courts including this Court that the tortfeasor cannot take advantage of collateral benefit that is made available to the victim. In the instant case, M/s. Deepak Transport has received Rs. 16,000=00 for the damage caused to the tanker. The tortfeasor cannot claim any deduction on that basis from the amount which he is otherwise liable to pay by way of compensation.

7.2. In the decision rendered by the Division Bench of this Court in the case of L.I.C. v. L.R. Of deceased Naranbhai reported in 1972 G.L.R 920, it is held that the amounts received by the claimant on account of the insurance taken by him for his own benefit and with his own money, is a collateral benefit and such benefit could not be deducted from the compensation amount. The co-ordinate Bench of this Court in a recent case viz. Dayaljibhai Manibhai Patel and Ors. v. Erachsha Dhanjisha Variyava in First Appeal No. 402 of 1986 has decided on 28th July, 2006, is as under:

4.1. However, as far as the second contention of the appellant is concerned, I am of the view that the same cannot be accepted inasmuch as since the amount of Rs. 12,000=00 was received from the insurance company by the respondent in lieu of the contract between the parties whereby the respondent used to pay regular premium and the benefit of the said contract cannot be extended to the present appellant.

7.3. Hence the finding of the Tribunal on this issue is erroneous and it is set aside.

8. Ms. Desai has raised contention that as per the provisions of Section 110 of the Act, the Tribunal is empowered to adjudicate upon claim in respect of damage to the property not exceeding Rs. 2,000=00 only. Hence the Tribunal will have no jurisdiction to try such claim. In her submission, this is irrespective of the fact that even by the policy, the insured has received coverage exceeding the statutory limit of Rs. 2,000=00. To make good her contentions she has further submitted that the claim exceeding Rs. 2,000=00 for damage to property can involve complicated factual as well as legal issues and to resolve them, adequate machinery as provided under CPC will be necessary. The question of law raised by Ms. Desai is that the claimant cannot claim compensation for loss of business income due to damage caused to his property in a vehicular accident, in the proceedings filed before the Claims Tribunal constituted u/s 110 of the Act. For that purpose he will have to resort to remedy under common law i.e., by filing Civil suit for damages. In other words, according to her, the Claims Tribunal has no jurisdiction to entertain such claim even if the claim is within statutory limit of Rs. 2,000=00. In support of her submission she has placed reliance on several decisions which deal with both or either of the controversies raised by her. From the point of convenience they are referred to at this juncture.

8.1. The first decision relied on by her is rendered by Judicature of Bombay High Court in the case of Suba Transport Co. and Another Vs. Phiroze Sethane Pvt. Ltd., It appears that though it relates to Section 110 of the Act, it is slightly on

different issue and this is clear from the contents of para 13 of the judgment, which read as under:

13. On fair interpretation of Section 110 of the M.V. Act read with Section 110-a (1)(a) and (1)(aa) it appears that the Tribunal is given authority to adjudicate upon the claims for damages to any property of third party arising out of accident only in respect of the property, put to actual loss by the accident, owned by the claimant. If the property is not put to actual loss or is not owned by the claimant, then in that event the damage to any such property cannot come within the ambit of Section 110 read with Section 110-A(1)(a) and (1)(aa).

8.1.1. Ms. Desai has also placed reliance on the decision rendered by the High Court of Madhya Pradesh in the case of Rajkumar v. Mahendra Singh and Ors. reported in 1985 ACJ 103. In the said case the Madhya Pradesh High Court has considered the question whether the claim for loss of business income resulted from the truck remaining idle, during the repairs, is admissible in the proceedings before the Claims Tribunal. The Madhya Pradesh High Court has decided the question in the negative. It has observed as under:

The Section empowers the State Government to constitute Claims Tribunal for the purpose of adjudicating upon claims for compensation in respect of accidents involving amongst others, "damages to any property" of a third party. In the proviso to Sub-section (1) of Section 110 of the Act, the words used are : "a claim for compensation in respect of damage to property". We are of the opinion that the word "damages" or "damage" used in Section 110 of the Act means injury to any property, involved in the accident, due to the use of the motor vehicle. The use of word "damage" in plural in the body of Section 110(1) and that of singular in the proviso does not make any difference. The Claims Tribunal constituted u/s of the Motor Vehicles Act is empowered only to adjudicate upon claims for compensation in respect of accidents involving "damages to any property" arising out of use of the motor vehicle. Therefore, at best, the claim which can be lodged and adjudicated upon by the Claims Tribunal contemplated by the Section is claim for compensation for damages resulted to the vehicle due to the accident. Usually a claim of such nature is made to recover expenses which may be or might have been incurred for repairs or restoration of the vehicle to its original condition. The "loss of business" on account of vehicle remaining idle during repairs is not a "damage to the property" of the owner, but may be damage or loss to the owner. We do not think that the Claims Tribunal is empowered u/s 110 of the Motor Vehicles Act to entertain such a claim. Claims for compensation on account of the accident involving death or bodily injury to the person as also the damage to any property could always be before a Civil Court being actions in tort. However, in order to provide speedy and cheap remedy to sufferers a special provision has been made empowering the State Government to constitute Claims Tribunal for adjudicating claims for compensation on account of death, bodily injury or damage to property arising from accidents. So far as, a reference to Section 110-F of the Act barring the jurisdiction of the Civil Court is

concerned, we find that it bars the Civil Court to entertain any question relating to 'any claim for compensation which may be adjudicated upon by the Claims Tribunal'. This Section bars the jurisdiction of the Civil Court only in respect of such matters which can be adjudicated upon by the Claims Tribunal. The words 'any claim for compensation' in this Section mean any one of the classes of the claim specified in Section 110(1) of the Act, namely, (1) death, (2) bodily injury and (3) damage to the property. After the amendments made by the Amending Acts No. 56 of 1969 and No. 47 of 1978, as held above by us there cannot be any doubt that a claim simpliciter for damage to the property can be made before the Claims Tribunal. This also confirms our conclusions. A claim for compensation for 'Loss of business' on account of the damaged vehicle remaining idle during its repairs cannot be laid before the Claims Tribunal. A party aggrieved on this count will be free to file a Civil Suit and Section 110-F of the Act does not bar the jurisdiction of the Civil Court.

8.1.2. Ms. Desai has further placed reliance on the decision of the Kerala High Court rendered in the case of General Manager, Kerala State Road Transport Corporation v. Saradamma reported in 1987 ACJ 926. In the said case there was a collision between two buses, resulting into damage to one bus. The damaged bus remained idle for repairs, and during that time, there was loss of business collection and claim for the same was filed. The High Court said that the Claims Tribunal had no jurisdiction to entertain such claim. Relevant passages are quoted below:

10. u/s 110 of the Motor Vehicles Act, the jurisdiction of the Claims Tribunal 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.

11. 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 his 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 damages to property exceeding Rs. 2,000=00. Obviously, the intention of the legislature was to provide for quick disposal of motor accident 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 Vehicle 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. SA 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 152). 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 Accident Claims Tribunal has no jurisdiction to consider such a claim.

8.1.3. She has also placed reliance on the decision of the Gauhati High Court rendered in the case of Smti Helen Ghosh Vs. Shri Babul Roy and Others, In the said case a cow owned by the claimant sustained severe injuries and died after two months on account of negligent act of the driver of the offending vehicle. The claimant claimed Rs. 5,100=00 for the death of the cow. In this case, the argument was that no compensation could be awarded for injury to or death of an animal. The High Court held that word property referred to in the Section would include even the animal owned by the claimant. However, the High Court

held that claim of the claimant was not maintainable before the Claims Tribunal because the claim was of Rs. 5,100=00, whereas the ceiling limit prescribed in the proviso was Rs. 2,000=00. Thus, the decisions referred to above, essentially deal with jurisdiction of the Claims Tribunal in two types of claims in respect of damage to the property viz., (1) The claim is above Rs. 2,000=00 and/or (2) the claim is for the loss arising on account of damaged vehicle remaining idle for repairs and not generating any income. The Courts have held that the Claims Tribunal has no jurisdiction and the only remedy available to the claimant is to approach the Civil Court under common law by filing Civil Suit for damages.

8.1.4. Ms. Desai has lastly drawn my attention to the judgment delivered by the learned Single Judge of this Court dated 28th July, 2006 in First Appeal No. 402 of 1986, wherein the learned Judge has observed as under:

4. Heard learned Counsel for the appellants and have gone through the award of the Tribunal. The Tribunal in the award has observed that the present respondent-original claimant is entitled to Rs. 5,000=00 by way of economic loss suffered by him on account of non-user of the car. However, going through the decision of the Madhya Pradesh High Court in the case of Rajkumar (supra) it is held that a claim for compensation for "Loss of business" on account of the damaged vehicle remaining idle during its repairs cannot be laid before the Claims Tribunal and a party aggrieved on this count will be free to file a Civil Suit and Section 110-F of the Act does not bar the jurisdiction of Civil Court. In that view of the matter, the contention raised by the appellant with regard to Rs. 5,000=00 awarded by the Tribunal under the head of economic loss is required to be accepted and the same has to be interfered with.

9. Before I deal with the decisions it would be necessary to peruse the original as well as amended provisions of the Act.

9.1. Originally, there was no provision in the Act for claiming compensation for the damages to property. It was introduced later on by amendment. To understand the scheme of Act and in particular provisions contained in Chapter VIII constituting Claims Tribunal and prescribing procedure for adjudication of claim petition it will be necessary to see the background in which these provisions have been enacted and for that purpose it is worthwhile to refer to the Statement of Objects and Reasons for amending the Act of 1939 and in particular amending and/or introducing Section 110 to Section 110-F, by taking into consideration the recommendations made by the Road Transport Reorganization Committee, 1959 [commonly known as Masani Committee] and the Motor Vehicles Insurance Committee, 1962-83, on various aspects, such as liberalization of the then existing provisions relating to compensation payable to victims of road accidents, speedy and effective enforcement of the motor vehicle law etc. There were also recommendations for removal of procedural difficulties. In the Bill several matters were included which were not covered by the then existing law one of them being, compulsory insurance for motor vehicles against damage to the property of third parties including public property of the value. In

the Statement of Objects and Reasons, notes on different clauses have been made which are duly published in the Gazette of India Extraordinary Part-II. Relevant portion of Clause 54 reads as under:

Clause 54 sub-clause (a)(i) This amendment requires that a policy of insurance of a motor vehicle under Chapter VIII covers the following additional matters namely,

(1) damage to any property of a third party;

(2) xxx xxx xxx

Sub-clause (a) (ii) xxx xxx xxx

Sub-clause (b) xxx xxx xxx

At present damage to third party property is not covered by a policy of insurance under Chapter VIII. This sub-clause seeks to lay down a limit of Rs. 2,000=00, in respect of damage to any property of a third party, with a view to avoiding the inconvenience, delay or harassment to people of small means.

9.2. In view of the above necessary amendments have been introduced in the Act. Section 110 of the Act, 1939 reads as under:

Section 110: Claims Tribunal (1) : A State Government may by notification in the Official Gazette, constitute one or more Motor Accident Claims Tribunals, [hereinafter referred to as Claims Tribunal] 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 whether 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 appointment 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.

9.3. By virtue of the aforesaid provisions, the State Government is empowered to

constitute a Claims Tribunal, by issuing necessary notification in the Official Gazette, for the purpose of adjudicating upon the claims for compensation in respect of the accident involving the death of, or bodily injury to the persons arising out of the use of motor vehicles or damages to any property of a third party so arising, or both. Proviso to Section 110 of the Act is introduced with effect from 2nd March, 1970. It gives option to the claimant to refer the claim relating to the damage to the property exceeding Rs. 2,000=00 to Civil court and if that option is exercised by the claimant, the Tribunal shall not have any jurisdiction to entertain any question relating to the claim for compensation for damage to the property. Section 110A deals with application for compensation. Relevant portion is as under:

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 110 may be made:

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(2) Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

(3) xxx xxx xxx

9.4. Section 110-B of the Act empowers the Claims Tribunal to make an award after giving opportunity of hearing to parties and holding enquiry into the claim or claims as the case may be.

9.5. The procedure and powers of Claims Tribunal are prescribed in Section 110-C of the Act which is as follows.

Section 110-C : Procedure and powers of Claims Tribunals-(1) In holding any inquiry u/s 110B, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of [Section 195 Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).]

(2-A) Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(i) there is collusion between the person making the claim and the person against whom the claim is made, or

(ii) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all any of the grounds that are available to the person against whom the claim has been made.

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

9.6. Section 111 of the Act empowers the Central Government to make rules for the purpose of carrying into effect the provisions of Chapter VIII. Similarly Section 111-A of the Act empowers the State Government to make rules for the purpose of carrying into effect the provisions of Section 110 to 110-E and in particular, rule relating to matters contained in to Clauses (a) to (e) of the said Section Clause (b) provides for making rules regarding procedure to be followed by a Claims Tribunal in holding inquiry under Chapter VIII. Clause (c) provides that the rules can be framed with regard to powers vested in Civil Court which may be exercised by Claims Tribunal. In pursuance of the said powers, the State of Gujarat has framed rules relating to matters prescribed in Section 111-A of the Act.

9.7. Chapter IX contains rules relating to insurance of motor vehicles against third party risk and accident claims.

* Rule 293 gives the authority to the Claims Tribunal to chose not more than two persons having technical or special knowledge with respect to any matter before the Tribunal for the purpose of assisting the Tribunal in the holding of the enquiry. Such experts shall perform such functions as the Tribunal may direct.

* Rule 294 confers powers on the Claims Tribunal that it may exercise all the powers of the Civil Court save in so far as the same are not inconsistent with the Act or the rules framed thereunder.

* Rules 295, 297 and 298 empower Claims Tribunal to examine the applicant, issue notice to the opposite party and permit appearance of the opposite party and also examination of the opposite party. It also includes grant of permission to opposite party for filing written statement etc.

* Rule 299 deals with framing of issues on the basis of the written statement and the result of any examination of the parties, after ascertaining the material proposition of fact or of law the parties are at variance.

* Rule 300 to Rule 303 empwer the Claims Tribunal to determine the issues, decide the method of recording evidence, to have local inspection, and summary examination.

* Rule 307 empowers the Claims Tribunal to summon the witnesses and Rule 308 permits the Claims Tribunal to exercise its discretion to allow any party to appear before it through a legal practitioner.

9.8. Ordinarily I would not have quoted these provisions extensively, but narration has been made in detail mainly because a serious doubt regarding adequacy and efficacy of machinery as provided under the Act to try large and complicated claims is raised in foregoing decisions. It shows that Section 110 to 110-F of the Act read with rules referred to above formulate complete code and provide for constituting Claims Tribunal, making application for compensation to Claims Tribunal, making award, procedure of making enquiry and also confer various powers upon the Claims Tribunal to effectively deal with and decide the claim. For holding enquiry, and to adjudicate upon the claim, the Claims Tribunal is also empowered to receive evidence, documentary as well as oral, summon witnesses and to make its award on the merits of the material produced before it. This is together with incidental rights of parties such as to effect recovery of the award amount as arrears of revenue, to prefer appeal by the aggrieved person etc. It also bars the jurisdiction of the Civil Court of the matters which can be adjudicated upon by the Claims Tribunal etc. The Legislature has taken due care to see that the object of the enactment is effectively accomplished and keeping that purpose in view provisions have been framed for appointment of a person with sufficient judicial acumen, such as, a person who has been Judge of the High Court or who has been District Judge or who is qualified for appointment as Judge of the High Court, to preside over the Claims Tribunal. He has been clothed with powers not only to adjudicate upon the claims but even shorten the procedure and try the claim in summary way so that speedy and efficacious remedy can be made available to the claimants. Here it is pertinent to note that the Claims Tribunal has also been authorized to chose not more than two persons having technical or special knowledge with respect to any matter before the Tribunal for the purpose of assisting it in holding enquiry. Such provision is not available to the Civil Court, Thus, it is obvious that in many respects the Tribunal has edge over the Civil Court for deciding the claims arising due to vehicular accidents. The Claims Tribunal can very effectively adjudicate upon not only small and simple claim, but even the composite claim involving large amount howsoever, complicated it may be.

9.9. At this juncture, it is also necessary to refer to Section 110-F of the Act, which is introduced with effect from 2nd March, 1970 and reads as under:

Section 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.

9.10. By virtue of this Section the jurisdiction of the Civil Court has been barred

to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. However, limited exception to this has been carved out by adding proviso to Section 110 of the Act which can be exercised only at the option of the claimant and not otherwise.

10. Now in this background, I am required to consider the first contention of Ms. Desai whether the claim for compensation for damage to the property exceeding Rs. 2,000=00 is necessarily to be filed before the Civil Court, in view of the proviso to Section 110 of the Act.

10.1. As stated above proviso gives option only to the claimant to choose the forum and it does not make it mandatory for a claimant to refer the claim exceeding Rs. 2,000=00 for damage to property to Civil Court, nor any option is given to insurance company or the insured to challenge the authority of the Claims Tribunal to adjudicate upon such claim. It does not in any way affect the rights of the parties nor does it cause any prejudice to their respective interests. It is only a matter of selection of forum by the claimant to suit his convenience. For the reasons which I have already discussed the machinery and the procedure for holding enquiry into the claim or claims are as effective and adequate as the Civil Court.

10.1.1. In this context it is necessary to refer to the observations of the learned Single Judge of this court in a decision rendered in the case of The Union of India and Another Vs. The Municipal Corporation of the City of Ahmedabad, , of course while dealing with converse situation which had arisen due to amendment made in the Act, in particular, with respect to proviso to Section 110 and Section 110F of the Act. In the said decision it is observed as under:

It is immaterial whether the claim made by the plaintiff against the defendant is adjudicated upon by the Court of Small Causes, Ahmedabad, or by the Claims Tribunal at Ahmedabad. It is purely a question of forum. Resort to one forum or to another forum for the adjudication of the claim of the plaintiff is not going to produce any effect whatsoever upon the rights of the parties.

In this case damage was caused to the transport vehicle of the Ahmedabad Municipal Corporation.

10.2. Thus option provided to the claimant in the proviso is analogous to provisions of Section 110-AA of the Act wherein the option is given to the claimant to lodge claim either under the Act or under Workmen Compensation Act, but not under both.

10.3. When this is the position, it is difficult to understand that when there is composite claim for bodily injury, or death and damage to the property exceeding Rs. 2,000=00, the claimant will have to file part of the claim i.e., for death or bodily injury before the Claims Tribunal, since Civil Court's jurisdiction is barred and for damage to the property exceeding Rs. 2,000=00, before the Civil Court in the form of suit for damages. It is a matter of common knowledge

that Civil Courts consume considerably long period for disposal of the Civil Suits as compared to the proceedings before the Claims Tribunal. Such course will be against the very object of creating special forum under the Act, namely Claims Tribunal for providing speedy, efficacious remedy and timely adjudication upon the claim petitions. The Claims Tribunal is also empowered to decide and dispose of the petitions summarily. That apart when there are two parallel proceedings arising from a single event, one before the Claims Tribunal and the other before the Civil Court, the possibility of conflicting findings being there cannot be ruled out. The right to receive compensation for damage to the property or for the bodily injury or death, will arise only upon the claimant first establishing the fact that the death or the bodily injury or the damage was caused on account of the tortuous act of the tortfeasor. This finding will have to be given by both the forums on the basis of the evidence that may be adduced before them, which may give ample scope for conflict in the decisions. To avoid such situation the legislature has introduced Section 110F and barred the jurisdiction of Civil Court and by proviso to Section 110 of the Act has given option only to the claimant and not to anyone else. By this the legislature has also sought to avoid the multiplicity of proceedings. It is, therefore, only the claims Tribunal which has jurisdiction to entertain the claim for damage to the property exceeding Rs. 2,000=00 unless the claimant exercises his option to approach Civil Court.

10.3.1 The learned Single Judge of this Court in the decision rendered in the case of Ratan Singh Karsanbhai Nakum v. Isadkhan Gulamkhan reported in 1975 ACJ 456, has observed as under:

This is clear from the phrase "So damages to any property of a third party so arising." This amendment in terms deals with the proposition of Madhya Pradesh High Court that where no death or bodily injury results in an accident arising out of use of motor vehicle and only loss or damage to property occurs the claim is not entertainable by the Tribunal. The Legislature has stepped in to say that such a claim if it involves loss or damage to the property to the extent of rupees two thousand is exclusively triable by the Tribunal. If it involves loss or damage exceeding rupees two thousand it is entertainable by the Civil Court at the option of the claimant, as laid down by the proviso.

10.3.2. Thus the observations of the learned Judge give support to view expressed by me.

10.4. Now I will again revert to the decisions relied upon by Ms. Desai on the issue of jurisdiction of the Claims Tribunal vis-a-vis the proviso. The Kerala High Court in the case of General Manager, K.S.R.T.C (Supra), has observed that if large amounts are claimed as damage to property, such claims may have to be tried in detail. Provision to refer such cases to the Civil Court is made for this reason. With respect I beg to differ with this finding of Kerala High Court solely because in my opinion the machinery evolved under the Act and the Rules, as already discussed above, is adequate and effective enough to deal with any type of claim including large and complicated one.

10.5. Another decision relied upon by Ms. Desai, on this aspect is of Bombay High Court. In the case before it damage was caused to the property of the Maharashtra Electricity Board. The claimant lodged claim only for the loss which was suffered by him because of the cessation of the industrial activity due to want of supply of electricity. The Bombay High Court declined to entertain such claim on the ground that the damaged property was not owned by the claimant. In the present case, the vehicle, which is damaged in the accident is owned by the claimant M/s. Deepak Transport. This decision therefore does not help the Appellant.

10.6. So far the decision of Gauhati High Court in the case of Helen Gosh v. Babul Roy (Supra) is concerned, while considering the question whether cow can be considered property u/s 110 of the Act, passing observation is made that since claim was for Rs. 5,100=00, the Claims Tribunal had no jurisdiction in view of the proviso. No particular reasons have been assigned by the Court. In my opinion, the proviso does not contemplate that whenever there is a claim above Rs. 2,000=00 the claimant necessarily has to go to Civil Court. I, therefore, cannot agree with the view expressed by the Gauhati High Court.

11. So far as second contention of Ms. Desai that for loss of business income due to damage to the property of third party the claims Tribunal has no jurisdiction to entertain any claim is concerned, it can not be accepted for the following reasons.

11.1. As already discussed, by enacting provisions of Section 110 of the Act, the Claims Tribunal is constituted to adjudicate upon the claim for compensation for death of or bodily injury and/or damage to property occurring in a vehicular accident. Thus, the Tribunal is empowered to award compensation in three eventualities occurring due to vehicular accident, namely, (i) death of a person; (ii) bodily injury to a person; and (iii) damages to any property of person/third party. In that view of the matter the questions that arise for my consideration are whether loss of business income can be said to be damage to property and if yes, can any claim in respect thereof be entertained by the Claims Tribunal.

11.2. In second eventuality when the Tribunal is required to award compensation for bodily injury, if one goes strictly as per meaning of the words "Compensation" and "Bodily injury" mentioned in Section 110 of the Act, the Tribunal would be empowered to entertain and adjudicate upon claim and make award for general damages i.e. pain, shock and suffering etc., only, in other words for non pecuniary loss alone. But the different Courts including Apex Court over the years have expanded the scope of Section 110 of the Act and awarded not only the compensation for items covered under the head of general damages but also for items falling under the head of special damages. The Courts have always awarded compensation for actual loss of earnings caused to the person on account of injury, which otherwise he would have earned had he not sustained injuries in the accident. Various aspects have been covered under the head of special damages such as actual loss of income, future loss of income, the amounts spent for treatment and on special diet, transportation expenditure,

amount spent on the attendant and attendant's actual loss of income etc. Thus, even though the Act does not specifically provide for all these items the Courts have by now considered that these are all valid amounts which could be made admissible to the claimants under the Act and the Tribunal has jurisdiction to adjudicate upon such claim.

11.3. In respect of third eventuality i.e., damage to property, in Section 110 of the Act, the words "damages to any property" of third party are used. The plain dictionary meaning of the word "property" is things that are owned by somebody. The word property in the common parlance would not only include the immovable property but also movable property, even the cash amount. Further the word "damage" also means injury. It is also necessary to see the meaning of word "injury" as given in the Webster Dictionary. It means physical harm or damage to a person, property etc. Therefore, it can safely be said that the damage to property is an injury to property. It can be partial or total. When the property is partly damaged it can be restored to its original position by carrying out necessary repair including replacement of the damaged parts or portions. When there is total damage, the property gets completely destroyed and it cannot be restored to its original position. The claimant has to spend money in both the cases i.e., to meet the expenses of repairing and to purchase new property, if so intended. In both the cases, he will be entitled to receive compensation under the Act.

11.4. The controversy is only with regard to loss of income that could have been earned or generated from the use of such property, but the same could not be done because of the fact that for a particular period, the vehicle remained idle for repairing and could not be at the disposal of the owner i.e., the claimant, for its use. Therefore, when the property like transport vehicle generates income in terms of money it is also a property and when that income is lost, it is a loss of property, which in other words can be said to be damage to the property. The loss of business income is a direct and proximate result of the negligent act of the tortfeasor.

11.5. It is now undisputed proposition of law that when the person is not able to go to work because of the injury suffered by him, he is entitled to be compensated for loss of earnings actual as well as future. The same analogy has to be applied, in view of the foregoing discussion, when the vehicle has remained idle for a particular period on account of damage caused to it in a vehicular accident and the loss of earning for that period is required to be compensated. If such loss cannot be compensated then in case of bodily injury also compensation cannot be awarded for Special damages but it can be awarded only for general damages. For recovery of Special damages the claimant will have to take recourse to the Civil Court. Obviously to avoid such situation all the Courts have enlarged the scope of Section 110 of the Act and held that the Claims Tribunal is empowered to award compensation for special damages. In this context it is difficult to envisage whether there can be any different proposition of law when

the loss of business income has been suffered by the third party because of the damage caused to his vehicle in an accident. It is, therefore, to be held that even when there is loss of business income which is damage to the property the claims Tribunal has jurisdiction to entertain claim and to award compensation for such loss. It is also to be kept in view that this is not only a benevolent legislation but it is also meant for providing special and speedy remedy to seek redress for the damages or injury suffered by the victim and in such case, narrow view is not required to be taken. One of the objects of amendment in the Act is liberalization of provisions relating to compensation payable to victims of road accidents.

12. Similar view has been taken by other High Courts also.

12.1. In a decision rendered by Allahabad High Court in the case of *Niranjan Lal v. Ram Swarup* reported in AIR 1952, 449 the Court has held as under:

In a suit for damages for damage caused to plaintiff's motor truck due to negligent act of the defendant the loss suffered by the plaintiff on account of the truck remaining idle for a month because of the accident cannot be said to be remote but as directly referable to the negligent act of the defendant and the plaintiff would be entitled to claim such damages. So also the plaintiff would be entitled to damages on account of depreciation of the truck.

12.1.2. In the case of *Karnataka State Road Transport Corporation Vs. Abdul Majeed*, , the Karnataka High Court has taken a view that the claims Tribunal has jurisdiction to award the compensation for loss of income for the vehicle remaining under repairs, besides compensation for damages to the vehicle. The Karnataka High Court has held as under:

11. It is not disputed that the jurisdiction of the Tribunal to award compensation for personal injury also includes compensation which could be awarded towards loss of income to the person injured as a result of the injury i.e., the period during which the person injured is unable to earn income and that the Courts have been awarding compensation not only for the actual personal injury but also towards future loss of income to the person injured. To this extent the scope of Section 110 is well settled and this position is not controverted by the learned Counsel for the appellant. When this is the position regarding personal injury, it would be incongruous to say that in respect of damages to the property the jurisdiction of the Tribunal is confined to the award of compensation only in so far it relates to the actual damage to the property and does not include the loss of income directly arising out of the damage to the property. It is also well settled position in law that the concept of damage to property includes compensation for loss of use or loss of income directly resulting from damage. On this aspect of the matter, we refer to *Winfield and Jolowicz on Tort*, 11th Edn., at pg. 623, wherein it is stated thus:

In large majority of cases the plaintiff will not only have incurred the cost of repairing his chattel, he will also have been deprived of its use for a period of

time and for this loss, he is entitled to damages whether he used the damaged chattel in a profit earning capacity and whether he has suffered actual pecuniary loss or not.

xxx xxx xxx

There is no reason, therefore, why a person whose motor car is damaged by the negligence of the respondent, should not recover damages for loss of use, even though he only used his car for pleasure purposes and has a second car in his garage."

As far as the present case is concerned, the damages claimed are not in respect of mere loss of use of the green bus, but it is in respect of actual loss of income occasioned by its becoming incapable of being used for a period. In our opinion, by amending Section 110 of the Act, the legislature intended to give relief to persons who had suffered loss as a result of damage to their property as a result of a motor accident and in absence of any express or implied indication to the contrary, the expression "damages to property" must be given the same meaning which it has been assigned in the law of damages which takes in not merely actual damage to the property but also loss on account of its non-availability for use. If the construction suggested by the appellant is accepted, then on the same reasoning, it would have to be held that the jurisdiction of the Tribunal to award compensation for personal injury is limited to the awarding of compensation in respect of bodily injury suffered by the individual and as far as the loss of income during the period when the injured person was unable to earn on account of the injury, the Tribunal has no jurisdiction and the party has to resort to file a Civil Suit for such a relief. It is also pertinent to take note of the fact that u/s 110 the pecuniary jurisdiction of the Tribunal is made unlimited regarding awarding of compensation for damage to property., as is discernible from the proviso therein, which states that in respect of property when its value is more than Rs. 2,000=00 at the option of the claimant he may seek a reference to the civil court and when the matter is so referred to the Claims Tribunal would have no jurisdiction to entertain any question relating to such claim. This means if a claimant desires that irrespective of the amount of compensation claimed it should be decided by the Tribunal itself, he has the choice of filing the claim petition before the Tribunal and it has the jurisdiction to decide the petition and make an award and in such a case the civil court would have no jurisdiction in view of Section 110-F of the Act, if the intention of the legislature was that the words "damages to property" used in Section 110 should be given a restricted meaning confining them only to actual damage to the property and not to loss of income arising directly therefrom, the legislature would have so expressed. It has not done so, is itself, in our opinion, an indication of the absence of such intention. This is consistent with the object of the legislation which is social security measure, intended to provide full compensation to the victims of an accident. To illustrate take for instance a case in which a person, who is a driver of a vehicle on a salary of Rs. 1,0000=00 suffers personal injury as a result of

motor accident and is hospitalized for a period of six month. It is not disputed by the learned Counsel for the appellants that not only he is entitled to get a proper compensation for the injury suffered, but also he is entitled to an award towards loss of income in a sum of Rs. 6,000=00 for the period of six months during which period he was unable to earn the income. However, according to the learned Counsel for the appellants, in a given case a person who was running a taxi or an autorickshaw by driving himself and was earning a sum of Rs. 1,000=00 per month, if instead of suffering personal injury as a result of a motor accident the vehicle belonging to him is damaged and the same could not be used for about 6 months, the Tribunal has jurisdiction to award compensation only for the actual damage caused i.e., only charges for the repair of the vehicle and no compensation could be awarded towards loss of income during the period for which the vehicle was incapable of being used for earning the income and for that relief he was to file a civil suit, though the cause of action as well as the evidence to be adduced would be same for the claim petition and the Civil Suit. In our opinion, a construction of a statutory provision which brings about such a result should be rejected.

12.1.3 Same view has been expressed by the Rajasthan High Court rendered in the case of Union of India v. Ratan Lal reported in 1998 ACJ 992, wherein the Court has observed as under:

13. The Claims Tribunal has awarded under this head of compensation to the extent of Rs. 1,700=00. In this connection, Mr. Sisodia has invited my attention to Rajkumar v. Mahendra Singh 1985 ACJ 103, (MP). In this case the Division Bench of the M.P. High Court has interpreted the provisions of Section 110(1) of the Motor Vehicles Act and held that the Tribunal is only entitled to grant compensation in respect of (1) death; (ii) bodily injury and (iii) damage to property. As such loss of the business cannot be compensated, therefore, this claim cannot be entertained. With great respect, I do not agree with the view taken by the M.P. High Court. It may not be lost sight of that legislature in its wisdom has thought it proper to draft Section 110 for purpose of giving benefit to the victims of the motor accidents. It will not be proper to circumscribe the scope of Section 110 by narrow interpretation. It is a social legislation for the benefit of the public at large and it should be interpreted in a more wider and comprehensive manner so as to give relief to the victims and not to debar them. The expression damage to the property is of very wide amplitude. Though the future earning cannot be said to be ascertained sum, but it is a property in future which the owner of the damaged vehicle would have earned out of this truck, if his recurring income has been lost on account of this damage and how can this be deprived to owner of vehicle. In this connection, reference may be made to Section 110-F. Motor Vehicles Act which was barred the jurisdiction of the civil court, meaning thereby, that all the claims arising of motor accidents should be disposed of by the Tribunal only. Therefore, the jurisdiction of the civil court has been barred. It would mean that part of the claim is to be raised before the Tribunal and for remaining the incumbent has to take recourse to the Civil

Courts, then this will give rise to multiplicity of the proceedings. Thus, the scope of Section 110 is wide enough to include the future earning as a damage to the future property of the claimant.

12.2. I am in total agreement with the views expressed by these High Courts for the reasons already discussed in the foregoing paragraphs.

13. In this background, I will again deal with the decisions cited by Ms. Desai on this aspect.

13.1. So far the decision of M.P. High Court in the case of Rajkumar v. Mahendra Singh (Supra) cited by Ms. Desai is concerned it has held that u/s 110 the claims Tribunal is empowered to award compensation for death or bodily injury or damages to any property. But loss of business on account of vehicle remaining idle during repairs is a damage or loss to the owner and the Claims Tribunal has no jurisdiction to entertain claim pertaining to such loss. I respectfully disagree with this view since in my opinion the loss of earning caused due to vehicle remaining idle for repair is also damage to property and claim for such loss stands covered in third category namely damages to property. In that case obviously it is only the claims Tribunal which has jurisdiction and not civil court since the bar is imposed by Section 110 F of the Act.

13.2. So far as the decision of Kerala High Court in the case of Manager, K.S.R.T.C. (Supra) is concerned, the High Court has categorically observed in it that damages are of two kinds, General damages and Special damages. Special damages are damages which can be computed in terms of money or which can be specifically proved like, loss of earnings. It has also observed that 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 his income as a result of the accident. It has further opined that 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 while deciding the issue whether the same can be awarded by the Claims Tribunal, it has observed that since such claim may involve large amount, the provision to refer the claim to Civil Court is made. In this background also it has concluded that such claim has to be preferred before a Civil Court as the Motor Accident Claims Tribunal has no jurisdiction to consider such claim. Thus, even though the Kerala High Court has concluded that when there is loss of business income, the owner is entitled to claim such loss, essentially it has decided only the issue of jurisdiction and has held that since the power conferred on the Tribunal is restricted to deciding claims of damage to property, if there is any claim for damage suffered by the owner, apart from the claim for damage to the vehicle itself, the Claims Tribunal has no jurisdiction to entertain and adjudicate upon such claim. I respectfully disagree with this view as I have already held that the machinery and the procedure for holding enquiry into the claim or claims are as effective and adequate as the Civil Court and the Claims Tribunal can effectively adjudicate upon even the composite claim involving large amount howsoever, complicated it may be. Apart from this with

due respect to the Kerala High Court, I can not agree with its decision as it emerges as under from the discussion made in the foregoing paragraphs of the present judgment that:

(1) Though provision is for entertaining claims for compensation in respect of accidents death of, or bodily injury to, persons arising out of the use of motor vehicles, the admitted legal position is that not only claim for non-pecuniary loss can be entertained and adjudicated upon by the Claims Tribunal but even the claim for specifically proved pecuniary losses falling under the head of special damages can be adjudicated upon and granted by the Tribunal. In fact damage to the property will cause pecuniary loss alone i.e., (a) for carrying out repairs and (b) in a given case loss of earning since vehicle remained idle for repairs.

(2) Even assuming that the Section empowers the Claims Tribunal to adjudicate upon claim in respect to damage to the property alone, the loss of earning due to non use of vehicle is damage to the property of person/third party and the claims Tribunal has jurisdiction to entertain and decide such claim.

13.3. So far as the decision of the learned Single judge of this Court dated 28th July, 2006 in First Appeal No. 402 of 1986 is concerned, the learned Judge while dealing with the issue in question has simply relied on the decision of the M.P. High Court rendered in the case of Rajkumar v. Mahendra Singh (Supra). Before the learned Judge, the other decisions including the decisions taking different view do not seem to have been cited. In any case I respectfully do not agree with this view, which is simply based on the decision of Madhya Pradesh High Court.

14. Now I may revert to the facts of the case. On the ground of negligence of the driver of the tanker, Ms. Desai has submitted that considering the evidence of driver of the S.T. Bus, it is very clear that the accident occurred while the driver of the tanker was trying to overtake another vehicle proceeding ahead of him. She has further submitted that the photographs on record and the panchnama also indicate that the entire fault is that of the driver of the tanker. This issue has already been discussed by me above and the findings given by the Tribunal holding both the drivers negligent to the extent of 50% each is just and proper and there is no reason for me to disturb the said finding. In view of the same, I do not find any merit in First Appeal No. 2025 of 1983.

14.1. That brings me to appeal filed by the driver of the S.T. Bus i.e., First Appeal No. 1896 of 1983. The appellant of that appeal i.e., the driver of the S.T. Bus has claimed Rs. 50,000=00 before the Tribunal. Mr. D.M. Shah learned advocate appearing for this appellant has submitted that the Tribunal has erred in holding this appellant equally guilty of the negligence and in deducting Rs. 24,000=00 from the compensation assessed at Rs. 48,000=00. First of all it may be noted here that so far as the assessment made by the Tribunal with regard to compensation that could be awarded to this appellant is concerned, the Tribunal has examined the evidence in detail and determined the various amounts under

different heads. For pain, shock and suffering the Tribunal has awarded Rs. 25,000=00, because of shortening of the leg and the permanent partial disability suffered by this appellant. The Tribunal has also awarded Rs. 5,000=00 for medical expenses and Rs. 2,000=00 for special diet and Rs. 1,600=00 for actual loss of two months salary. The loss of earning capacity is assessed at Rs. 14,000=00. Thus, the Tribunal has assessed the compensation payable to this appellant at Rs. 48,000=00. But on account of his negligence to the extent of 50%, Rs. 24,000=00 has been deducted. So far as the assessment of compensation is concerned, I do not find any error having been committed by the Tribunal. In fact, the claim of this appellant is to the extent of Rs. 50,000=00 only out of which amount of compensation is assessed at Rs. 48,000=00. It is only because of negligence of this appellant, Rs. 24,000=00 has been deducted. The issue of negligence has already been discussed above and on that count, the submission of Ms. Desai has been rejected. Therefore, Mr. Shah has no scope for challenging the finding with regard to 50% negligence attributed to this appellant by the Tribunal. Hence, I hardly see any scope of enhancing the amount awarded to the appellant by the Tribunal. This appeal has, therefore, no merit.

15. The net result is that First Appeal No. 1583 of 1983, filed by G.S.R.T.C., is dismissed. First Appeal No. 1584 of 1983 filed by the Insurance Company against the award made in MACP No. 126/1980 also stands dismissed. First Appeal No. 1426 of 1983 which is filed by M/s. Deepak Transport owner of the motor tanker is partly allowed and it shall be entitled to recover additional sum of Rs. 16,000=00 which has been wrongly deducted by the Tribunal. First Appeal No. 2025 of 1983 filed by the G.S.R.T.C., stands dismissed and First Appeal No. 1896 of 1983 filed by the driver of the S.T. Bus is also dismissed. In the facts and circumstances of the case, there is no order of costs.

R & P to be re-transmitted to the Tribunal forthwith.