
(1993) 08 GAU CK 0022
In the Gauhati High Court

Helen Ghosh

APPELLANT

Vs

Shri Babul Roy and Others

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

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

Citation : (1995) 1 ACC 95

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Judgement

N.G. Das, J.—This appeal is directed against the award of learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala dated 31st August, 1984 whereby claim petition was dismissed awarding no compensation for the damage caused to one heifer belonging to the appellant Smti Helen Ghosh.

2. The case of the appellant, shortly put, is that on 31.5.1983 at about 8 P.M. when her one heifer was grazing on the kutchra road situate in front of her residence at Haimara Tilla, the vehicle No. TRS 477 belonging to one Shri Babul Roy and Bankim Chakraborty was passing along that road at a high speed and while it was passing in front of the residence of appellant the vehicle knocked down the heifer causing grievous injuries on it. The heifer was removed to Veterinary Hospital for treatment but after about 2 months the heifer died. In the meantime, the driver-cum-Caretaker of the vehicle Shri Saroj Bhowmik agreed to pay the price of a similar heifer but neither the owner nor the driver-cum-Caretaker paid any money towards compensation to the appellant. The appellant also approached the insurer but the insurer did not agree to compensate. It is stated that the price of such heifer was Rs. 5,000/- at that time. The appellant, therefore, presented a claim petition u/s 110A of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) claiming compensation of a sum of Rs. 5,100/- due to the death of her heifer on account of motor accident which took place on 31.5.1983 at Haimara Tilla, Agartala.

3. The owners Shri Babul Roy and Bankim Chakraborty and driver-cum-Care

Taker Shri Saroj Bhowmik resisted the claim petition by filing a joint written statement wherein they, inter alia, contended that their vehicle was not involved in the accident as alleged in the claim petition and as such this claim petition u/s 110-A of the Act was not maintainable against them. It was also pleaded that such an application u/s 110-A of the Act was maintainable only against the death or injuries to human being and not to animals. It was further averred that at the relevant time the vehicle was insured with Oriental Fire and General Insurance Company Ltd. and the policy covered the risk. So, the answering respondents are not liable to pay any compensation for such damage.

4. The Oriental Fire and General Insurance Co. Ltd. also resisted the claim petition by filing a written statement wherein it was contended that this claim petition was not legally maintainable and that it was barred by the law of limitation and also by the principles of waiver, estoppel and acquiescence. It was averred that the vehicle being driven on a private pathway at the time of occurrence the Insurance Co. as per contents of the policy was not liable to pay any compensation under the provision of Section 110-A of the Act. It was further contended that the conditions laid down in the policy would be applicable only to human beings and not to animals. It was, therefore, submitted that the claim petition was not maintainable.

5. Upon the pleadings, the learned Member Motor Accident Claims Tribunal, West Tripura, Agartala framed the following issues for determination of the claim petition:

1. Whether the accident occurred due to the rash and negligent driving of vehicle No. TRS 477?
2. Whether the petitioners are entitled to any compensation as claimed? If so, to what extent?
3. Who is to pay compensation if any awarded?
4. To what relief, if any, the parties are entitled?

6. After appreciation of the evidence of the parties adduced before the learned Motor Accident Claims Tribunal, the learned Member decided issue No. 1 against the appellant holding that TRS 477 was not involved in the accident. Consequent upon this findings, learned Member of the Motor Accident Claims Tribunal decided the remaining issues also against the appellant and thus dismissed the claim petition. Hence, this appeal.

7. I have heard learned Counsel for the parties and have also gone through the records. Although the learned Member, Motor Accident Claims Tribunal rejected the claim petition mainly on the ground that vehicle No. TRS 477 was not involved in the accident, Mr. Section Deb, the learned Counsel for the respondent submitted that according to law such a claim petition for the death of a heifer was not maintainable. Mr. K.N. Bhattacharjee, the learned Counsel appearing on behalf of the appellant, therefore mainly argued on the question as to whether a

Claims Tribunal has jurisdiction to grant compensation for death of an animal. It was contended by Mr. Bhattacharjee that property as defined u/s 93(bb) of the Act covers animals also. Section 93(bb) of the Act reads:

Property includes goods carried in the motor vehicles, roads, bridges, culverts, cross-ways, trees, posts and mile stones.

It is apparent from Section 93(bb) of the Act that it does not include animal. Mr. Section Deb has also argued that Section 93(bb) does not cover animal. But Mr. Bhattacharjee has submitted that although Section 93(bb) of the Act has not included animal as property, there is no reason why animal should not be regarded as property. He laid stress on the word "includes" and submitted that the word "includes" was introduced in place of the word "means". According to him the use of the word "includes" widens the scope of Section 93(bb). In Blacks Dictionary the meaning of the word "property" is given as, "...the word is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate. It extends to every species of valuable right and interest, and includes real and personal property...Criminal Code "property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power".

8. It would, therefore, be apparent from what is stated above that animal is also covered by the expression property. Now "injury" occurring in Clause (1)(A) of Section 110 should be given so as to include injury to the property also. According to the Dictionary meaning of the word "injury" it means damage or hurt done or suffered by a person or thing. The word injury is of large import. It cannot be restricted to mean bodily injury, but may include injury by which damage or loss has been caused to property. Webster's 3rd New International Dictionary has given a wide meaning to the word injury. It is defined as an actionable wrong distinguished from harm, an unjust or undeserved infliction of suffering. It is accompanied by loss, damage and hurt. Injury is said to be, according to Webster, an act or result involving an impairment or destruction of right, health, freedom, soundness or loss of something of value...inflicting on a person a positive hurt either in the form of direct suffering or of the privation of some good which he had reasonable ground either of a physical or social kind for counting upon. It is also held to be violation of another right for which the law allows an action to recover the damages or specific property or both in that sense it is aid to be an actionable wrong.

9. In the case of Ratan Singh Karsambhai Nakum v. Isadkhan reported in 1975 ACC CJ 455 it was held that claim for compensation with respect to damage of property can be preferred before Claims Tribunal and such a claim would be covered by the relevant provisions of the Motor Vehicles Act. Similar question

arose in the *The Motor Owners' Insurance Co. Ltd. and Another Vs. Hrishikesh Das and Others*, The Division Bench of the Calcutta High Court was of the opinion that Claims Tribunal constituted under the Motor Vehicles Act has jurisdiction to pass an award in respect of damages to property to a third party. Such a power could not be denied to the Tribunal on the plain reading of the provisions of law and on the basis of the amendment which was effected in Section 110(1) by act of 56 of 1969.

10. A Division Bench of the Madhya Pradesh High Court in *Banwari Lal v. Vishnunarayan* reported in 1975 ACC CJ 40 has also held that jurisdiction of Claims Tribunal would extend to the matters relating to the grant of compensation for damage of property also. It was pointed out by the learned Judges in this authority that power of Tribunal constituted by notification is not confined only to those matters which were specified in unamended Sub-section (1) of Section 110 which existed at the date of the notification.

11. In *Ratan Singh's case* 1975 ACC CJ 455 (supra) it was held that the Claims Tribunal has jurisdiction to award compensation for loss of or damage to property even if no compensation is claimed for bodily injury.

12. Section 110-A of the Act provides that an application may be made for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 of the Act. So, Section 110 and Section 110-A of the Motor Vehicles Act are to be read together in order to ascertain the ambit and scope of the jurisdiction of the Tribunal with respect to the matters where compensation for property alone is claimed. It says that in the following cases application can be made for compensation:

(a) by the person who has sustained the injury; or (aa) by the owner of the property; or

(b) where the death has resulted from the accident by all or any of the legal representatives of the deceased;

(c) by an agent duly authorised by the, person injured or all or any of the legal representatives of the deceased as the case may be.

13. Clause (aa) has been inserted by Act 47 of 1978. This clause clearly indicates that owner of the property can also file application for compensation for damage done to his property. As already quoted above Section 93(bb) of the Act shows that property includes....According to this Clause the word "property" is not restricted to mean goods carried in the motor vehicle roads, bridges, culverts, cross-ways, trees and mile stones only. Now a plain reading of Section 110 will make it manifestly clear that bodily injury or damage to any property arising out of a motor accident or both could be made subject matter of claim before the Claims Tribunal. It would, therefore, mean that a claim petition is maintainable u/s 110 of the Act in respect of both injuries whether it be to property or to person. The words "or both" occurring in Section 110 signifies that. A careful reading of

this Section makes it clear that such a claim can be filed also for damages to any property. The Section 110-A is not restricted to mean bodily injury only. The injury would not mean that it would be the bodily injury alone and not injury to the property. Section 110 has to be read conjointly with Section 110-A for the purpose of understanding the meaning and import of the word "injury". A composite application may however, be made by a person who has suffered a bodily injury as also injury to the property. But it does not preclude a man from claiming compensation on account of damage to property without sustaining bodily injury. So, in view of what has been stated above, I am of the view that such an application is maintainable if it is proved that death of damage of the animal was caused due to a motor accident.

14. The next question obviously is whether the appellant could establish that her heifer was killed by vehicle No. TRS-477. To prove her case the appellant examined her husband as P.W. 1 who deposed that while heifer was grazing by the road side in front of their residence, the vehicle No. TRS-477 knocked it down and as a consequence of that accident the heifer sustained severe injuries and it died after 2 months. P.W. 2 also deposed to the same effect. But O.P.W. No. 1 deposed that the vehicle was not involved in the accident. O.P.W. 2 who is the Secretary of the Tripura Bus Association proved two time charts relating to plying of buses on road No. 1 on 31.5.1983 and these 2 charts are marked as Ext. B and B/1. These two charts clearly show that the vehicle No. TRS 477 plied on road No. 1 in between the period from 5.15 p.m. to 10.30 p.m. on 31.5.1983. So, in view of this evidence it is difficult to conclude that the vehicle No. TRS-477 was involved in the accident. Admittedly, the accident took place at night. But there is no evidence to show how it was possible on the part of the appellant and her witnesses to see the number of the vehicle. There is practically no evidence on record to show that driver-cum-Caretaker agreed to compensate.

15. Apart from this, in the instant case the appellant claimed compensation to the tune of Rs. 5,100/-. But proviso to Section 110(1)(A) reads:

Provided that where such claim includes a claim for compensation in respect of damage to property exceeding Rs. 2,000/- the claimant may at his option, referred the claim to a Civil Court for adjudication and where the reference so made a Claims Tribunal has no jurisdiction to entertain any question relating to such claim.

16. So, in view of this provision also, the claim petition is not maintainable. The appellant, I think, ought to have filed a suit before a Civil Court for adjudication of the matter.

17. For the reasons stated above, the appeal fails and it is accordingly dismissed. But under the circumstances, there would be no order as to costs.