

(2016) 09 SHI CK 0052
In the High Court Of Himachal Pradesh
Case No : CWP No. 5733 of 2012

ICICI Lombard General Insurance Co. Ltd. APPELLANT
Vs
Bihari Lal RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, Section 166

Citation : (2016) sup HimLR 2769

Hon'ble Judges : Mr. Rajiv Sharma, J.

Bench : Single Bench

Advocate : Mr. Jagdish Thakur, Advocate, for the Petitioner; Mr. V.S. Rathour, Advocate, for the Respondents No. 1; Mr. Rajesh Verma, Advocate, Vice Counsel, for the Respondents No. 2

Final Decision : Disposed Off

Judgement

Rajiv Sharma, J. - This petition is instituted against the award dated 1.8.2011, passed by the learned Motor Accident Claims Tribunal-I, Sirmaur District at Nahan in MAC Petition No. 50-MAC/2 of 2008.

2. "Key facts" necessary for the adjudication of this petition are that respondent-claimant has filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs. 5,00,000/- for the death of mare/pony in a motor vehicle accident dated 3.12.2007 at about 1:30 PM near Shambhuwala, involving Innova car bearing No. HR- 58-7379. The accident was attributed to respondent No. 2 Sharad Kumar, driver. FIR No. 272/2007 dated 3.12.2007 was registered at Police Station, Nahan under Sections 279 and 429 IPC.

3. The petition was contested by owner and petitioner-Insurance Company. The driver did not file any reply. The owner has denied the factum of accident for want of knowledge. The petitioner-Insurance Company averred that the liability of the Insurance Company for third party property damage was restricted to Rs. 6,000/- as per statute and subject of the policy condition. It was also contended

that no accident has taken place in the mode and manner as alleged in the petition.

4. The issues were framed by the learned Tribunal on 8.12.2009. The learned Tribunal awarded compensation amounting to Rs. 1,78,000/- along with interest @ 7.5% per annum from the date of the filing of the petition i.e. 22.5.2008 till realisation of the entire amount. The amount of compensation was ordered to be paid by the owner Dinesh Chibar and driver Sharad Kumar. The owner and driver were to be indemnified by the petitioner-Insurance Company.

5. Mr. Jagdish Thakur, Advocate for the petitioner has vehemently argued that the learned Tribunal has awarded a sum of Rs. 1,78,000/- along with interest @7.5 % for the death of mare/pony i.e. damage to the third party property. He then contended that Section 165 of the Motor Vehicles Act, 1988, deals with only the adjudication of 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. He further contended that though mare/pony is property of the claimant who was a third party and the learned Tribunal has rightly awarded sum of Rs. 10,000/- on account of loss to the mare/pony, but has erred in awarding compensation based on loss of future income. He also contended that the petitioner-Company has not taken any additional premium. On the other hand, Mr. V.S. Rathore, Advocate has supported the award dated 1.8.2011 passed by the learned Tribunal.

6. I have heard learned counsel for the parties and gone through the records carefully.

7. PW-1 Bihari Lal was the owner of the pony. He has attributed the death of pony to the rash and negligent driving by the driver of Innova car Sharad Kumar.

8. PW-2 Balwant Singh has led his evidence by filing affidavit Ext. PW-2/A. He also attributed the death of pony to the negligent driving by the driver Sharad Kumar. According to him, the Pony sustained injuries and died on 7.12.2007.

9. The driving licence of driver Sharad Kumar was in subsistence w.e.f. 27.12.1995 to 19.5.2015. The Insurance Cover is Ext. RW-1/A. The learned Tribunal has erred by treating mare/pony as a person. The learned Tribunal has taken the income of the mare/pony @ 2,000/- per month and by applying the multiplier of 7 has wrongly awarded compensation of Rs. 1,68,000/- to the claimant. The learned Tribunal has assessed compensation on account of price of pony to Rs. 10,000/-.

10. The learned Single Judge of the Andhra Pradesh High Court in the case of Konala Maniyya v. K. Sambasivarao and ors., reported in 2001 ACJ 112, has held that the Tribunal has no jurisdiction to entertain a claim for loss of business. It has been held as under:

"3. It is stated that the respondents 1 and 3 remained ex parte. In view of the claim made by the petitioner, the fourth respondent Insurance Company paid an

amount of Rs.19,000/- towards damages caused to the vehicle. With regard to the other claims made by the appellant-claimant towards loss of business when the vehicle was under repair and payment of salary to the cleaners and drivers of the lorry, the Court below following the judgment in General Manager, KSRTC v. Saradamma, 1987 ACJ 92, dismissed the petition on the ground that the said petition has to be preferred before a civil Court since the Motor Accidents Claims Tribunal has no jurisdiction to entertain such claims."

11. The learned Single Judge of the Andhra Pradesh High Court in the case of New India Assurance Co. Ltd. v. Andhra Pradesh State Road Trans. Corpn. and another, reported in 2009 ACJ 1723, has held that the Tribunal can pass award with regard to damage caused to property only and it is not empowered to pass any award relating to damage or loss suffered by owner of vehicle due to vehicle remaining idle during the period of its repair. It has been held as under:

"[3] The point for consideration is whether the Tribunal constituted under the Act has jurisdiction to pass an award for the loss suffered by the 1st respondent during the period of repair of its damaged vehicle or not?

[4] Section 165 of the Act reads:

165. Claims Tribunals:- (1) A state Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter 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.

[5] Rajkumar Case (1 supra) relied on by the learned counsel for the appellant is a case that arose under the Motor Vehicles Act, 1939 (for short the 1939 Act). In that case a division bench of Madhya Pradesh High Court while considering Section 110 (I) of that Act, which is almost in pari materia with Section 165 of the Act, held that the words "damages to any property" used in Section 110 (I) of 1939 Act, do not take in their sweep "loss of business" on account of the damaged vehicle remaining idle during the period of damage, which may be a damage to the owner. Similar view was taken by a division bench of Kerala High Court also in Saradamma case (3 supra) relied on by the learned counsel for the appellant, where it is held that the direct damage to property alone is taken by the words "damages to property". That decision was followed by a learned Judge of this Court in Konala Maniyya case (2 supra). In view of the ratio in the above decisions I also am of the considered opinion that the Tribunal constituted under the Act can pass an award with regard to the damage caused to the property only, but it is not empowered to pass any award relating to the damage or loss suffered by the owner of the vehicle due to its remaining idle during the period of its repair. For that purpose the civil Court only is competent to pass a decree and so I hold that the Tribunal erred in granting damages towards loss of earnings to

the 1st respondent. The point is answered accordingly."

12. This Court in the case of National Insurance Co. Ltd. v. Himachal Road Transport Corporation and others, reported in 2010 ACJ 2664, has held that the Tribunal has no jurisdiction to entertain and adjudicate upon claims relating to consequential loss arising out of damage to the property. The jurisdiction is confined only to the damage actually caused to the property. "Damage to any property of a third party" is different from "damages arising out of the loss of any property". The learned Single Judge has held as follows:

"[13] This Court considered the question as to whether the MACT has jurisdiction to award compensation on account of consequential loss suffered due to damage to property in Oriental Insurance Company Ltd. v. Sh. Balwant Singh and Ors. FAO (MVA) No. 456 of 2000 decided on 25.10.2005 and held thus:

I am unable to agree with the subsequent view of the Madras High Court. With due respect, the learned Judge has proceeded on the basis that since the Civil Court has no jurisdiction, therefore, necessarily the Motor Accident Claims Tribunal alone has jurisdiction. In my view this is like putting the cart before the horse. Section 175 of the Act only bars the jurisdiction of the civil court in respect of those matters where the claims Tribunal has jurisdiction to entertain the dispute. The first question which has to be decided is whether the claims Tribunals have the jurisdiction to decide the claim or not. In case the claims Tribunals have the jurisdiction then obviously the jurisdiction of the Civil Courts is barred.

To appreciate what is the jurisdiction of the Claims Tribunals constituted under the Motor Vehicles Act it would be necessary to appreciate the scheme of the Act. A perusal of Section 147 quoted above clearly shows that the insurance with regard to 3rd party property is to be made only in respect of "damage to any property of a 3rd party". It is important to note that the legislature has made it necessary that the policy of insurance must cover liability in respect of damage to any property and not "damages arising out of the loss of any property". The difference is clear and sharp. It is also pertinent to note that as per the Act, the Insurance Company is only liable for Rs. 6000/-. Therefore, if there is no extended coverage taken then the Insurance Company cannot be held liable beyond that amount. Even in Section 165 the words used are that the State Government may constitute the Tribunal to adjudicate upon the claims for compensation in respect of accidents involving "...damages to any property of a 3rd party so arising." The word "damages" means compensation for loss. The damages are to be paid for the loss to the property and not for the loss arising out of the damage to the property.

Initially under the provisions of the 1939 Act no claim for compensation in respect of property damage alone was maintainable. Thereafter, the Act was amended and damage to 3rd property loss could also be claimed under the provisions of the Motor Vehicles Act but the limit of Insurance was Rs. 2000/-.

After the amendment in 1988 the Insurance Company is bound to cover 3rd party property damage loss upto Rs. 6000/- only. Any coverage of loss beyond the amount of Rs. 6000/- will have to be governed by the terms of the policy. The question which arises is whether even the owner should be made liable to pay this amount under the Motor Vehicles Act or not. In my view, the intention of the legislature was only to grant jurisdiction to the Motor Accident Claims Tribunal to award damages for the loss to the property. The consequential business loss could not have been assessed or awarded by the Tribunal. The loss caused due to the vehicle remaining idle is not damage to the property but a loss to the owner. In my opinion the Claims Tribunals constituted under Section 165 of the Act have no jurisdiction to entertain such claims. Section 175 of the Act bars the jurisdiction of the civil court only with respect to claims for compensation which can be adjudicated upon by the Claims Tribunals. The loss to the business cannot be termed to be a damage to the property and in my humble opinion is not covered under Section 165 of the Act.

[14] While taking this view I am strengthened by the fact that the Tribunals constituted under the Act are not fettered by the provisions of the Evidence Act. A Tribunal is not required to have a detailed inquiry in the matter. After the introduction of the provisions of Section 163-A in the Act the intention of the legislature is to make the mode of assessment and recovery faster and less cumbersome. This can never be done in case consequential loss is also required to be covered. The assessment of consequential loss because of its very nature will entail the recording of detailed evidence and a civil Court is best suited for this purpose. It is also settled position of law that if two views are possible then the ouster of the jurisdiction of the civil court should not easily be inferred. It is only if the provisions are clear and unambiguous that the jurisdiction of the civil Court should be excluded. In the present case, I do not feel that the jurisdiction of the Civil Court to entertain disputes with regard to consequential loss arising due to damage to property can be excluded. Therefore, in my opinion the Tribunal has no jurisdiction to entertain and adjudicate upon the claims relating to consequential loss arising out of the damage to the property. Its jurisdiction is confined only to the damage actually caused to the property.

[15] In view of the above discussion, the appeal of the Insurance Company is allowed and the award of the Tribunal in so far as it awards a sum of Rs. 81,583/- as loss of business income for the period when the vehicle is stated to have remained ideal is set-aside. Resultantly, the award of the Tribunal is reduced from Rs. 1,07,280/- to Rs. 25,697/-. Since admittedly the Insurance Company had charged extra premium and covered this loss it is liable to pay this amount."

13. In the instant case also, the claimant is only entitled to the loss suffered due to death of pony but not to any compensation based on loss of future income due to death of pony.

14. Accordingly, the Writ Petition is allowed. The award dated 1.8.2011 passed

by the learned Motor Accident Claims Tribunal-I, Sirmaur District at Nahan is set aside. The claimant is held entitled only to compensation of Rs. 10,000/- on account of death of pony/mare in an accident dated 7.12.2007. Pending application(s), if any shall stand disposed of.