

(1977) 07 MP CK 0006

In the Madhya Pradesh High Court

Case No : Civil Revision No. 13 of 1974

Jayendra Singh Kushwaha

APPELLANT

Vs

Madhya Pradesh Electricity Board, Gwalior and Others

RESPONDENT

Date of Decision : 22-07-1977

Acts Referred:

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

Citation : AIR 1978 MP 18 : (1980) ILR (MP) 169 : (1977) JLJ 687 : (1977) MPLJ 695

Hon'ble Judges : Shiv Dayal Shrivastava, C.J

Bench : Single Bench

Advocate : H.G. Mishra, for the Appellant; J.P. Dewan, for No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, C.J.

The defendant is aggrieved by an order passed by the trial Court holding that it has jurisdiction to try the suit. The defendant's objection was that the claim contained in the suit is exclusively triable by the Motor Accidents Claims Tribunal constituted u/s 110 of the Motor Vehicles Act, 1939. The trial Court did not accept this contention.

The plaintiff, M. P. Electricity Board, has claimed as compensation Rs. 35,220 on the following allegations; the defendant No. 1 is the owner of a bus, defendant No. 2 was the driver. On December 22, 1969, the bus dashed against a pick-up van belonging to the plaintiff M. P. Electricity Board which caused injuries to the occupants of the pick-up, one of whom died.

It is averred in the plaint that the plaintiff had to pay Rs. 4,800 as compensation under the Workmen's Compensation Act, to the dependants of the occupants who were in the pick-up when it became involved in the accident. The plaintiff had also to pay Rs. 420 on medical treatment given to the injured persons. The

damage caused to the pick-up has been claimed at Rs. 21,800. Thus there are three claims in the suit:--

(A)

Damage to the pick-up van ...

Rs. 21,800.00

(B)

Compensation paid under the Workmen's Compensation Act ...

Rs. 4,800.00

(C)

Expenses incurred in med cal treatment ...

Rs. 420.00

Rs. 27,020.00

Shri Mishra, learned counsel for the defendants argues that this is a composite claim which falls u/s 110 of the Motor Vehicles Act and is triable exclusively by the Tribunal. Reliance is placed on Dr. Om Prakash Mishra Vs. National Fire and General Insurance Co. Ltd. and Others, . The scheme of the Motor Vehicles Act from Section 110 to Section 110-F clearly shows that such claim may be categorised as follows:--

(1) If no death or personal injury results in the accident arising out of the use of motor vehicles, the claim for compensation for loss suffered in property alone is not tenable before the Claims Tribunal, but before the Civil Courts.

(2) If death or personal injury results in the accident arising out of the use of motor vehicles on the basis of express wordings used in these sections, the claim for compensation for such loss suffered has to be made before the Claims Tribunal, and not the Civil Courts.

(3) Loss or damage of property may be suffered by a person who has not been given a right to make an application under the provisions of Section 110-A to the Claims Tribunal The only remedy in such a case will lie in Civil Courts.

(4) There may be cases of composite injuries in which death or personal injury may have resulted, as well as loss or damage to property, or where death has resulted from the accident, loss is sustained by the deceased or by his legal representatives. In case of claims of such composite nature, the claim will be triable by the Claims Tribunal.

Thus the scheme is that the claims can, be tried only by a Claims Tribunal and the jurisdiction of the Civil Court is barred when there is composite claim for damages to property and injury to person. However, by virtue of the proviso to

Section 110, where such a 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" (which means the claim underlined by me) to a Civil Court for adjudication.

Now, in the present case there is a claim of the plaintiff for Rs. 21,800 for compensation in respect of damage to the property. There is no bar to a Civil suit in respect of this claim.

Then advertent to claims under heads (B) and (C) Shri. Diwan's contention is that to these claims Section 110 of the Motor Vehicles Act does not apply. His argument is that such claims can be made only by the persons enumerated in Section 110-A.

The petitioner's contention is really based on Section 110-F which bars the jurisdiction of Civil Court to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal. The scheme of the provisions beginning with Section 110 and ending with Section 110-F is that the legislature has provided cheap and speedy remedy for claims for compensation in respect of accidents involving death or bodily injury to persons arising out of the use of a motor vehicle and also damage to any property to a third party so arising or both.

The Claims Tribunal is constituted u/s 110 and that section confers jurisdiction on a Claims Tribunal to entertain such claims as specified above.

Section 110-A runs thus:--

"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) by the person who has sustained the injury; or

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

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

Provided etc."

The combined effect of Sections 110 and 110-A is that the Claims Tribunal may entertain a claim by one of the persons enumerated u/s 110 but not otherwise. The claim made by a person who falls outside the purview of Section 110-A cannot make claim u/s 110. In that event Section 110-F is out of the way.

A claim by a person other than those enumerated u/s 110-A cannot be made u/s 110. The claim is, therefore, not covered by Section 110-F. If a claim of a third person is not entertainable u/s 110, to apply the bar u/s 110-F merely because by its nature the claim is entertainable by the Claims Tribunal will leave the third

person without remedy. But it is an elementary rule of jurisprudence that where there is a right there is a remedy. Therefore, the expression "to any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal" must be limited to a claim which can be made u/s 110 but not otherwise.

In this view of the matter the conclusions I have reached are:--

(i) The plaintiff's claim in respect of damage to its pick-up van, i. e. Rupees 21,800 falls within the purview of Section 110 and it was in the absolute discretion of the plaintiff whether to bring a suit in the Civil Court or to lodge a claim before the Claims Tribunal. This I said earlier in Civil Revision No. 325/73 also decided on September 28, 1973 at Jabalpur in Ali Ahmed & Sons v. M. P. S. R. T. C. (See 1974 MPLJ 10).

(ii) As regards the other two claims, since the petitioner is neither a person injured (nor a legal representative to any of the persons injured), are outside the purview of Section 110 read with Section 110-A. Thus the two claims for Rs. 4,800 and Rs. 420 could not be laid before the Claims Tribunal so that the Civil Court necessarily has jurisdiction to try them.

In the result, this revision is dismissed. Parties shall bear their own costs. The record shall be returned to the trial Court within three days from today.