

(1991) 10 KL CK 0050
In the High Court Of Kerala
Case No : M.F.A. No. 739 of 1986

Kerala State Road Transport Corporation	APPELLANT
Vs	
Bhaskaran and Others	RESPONDENT

Date of Decision : 08-10-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 165

Citation : (1992) 1 ACC 744 : (1992) ACJ 133 : (1992) 1 ILR (Ker) 290 : (1991) 2 KLJ 704

Hon'ble Judges : T.V. Ramakrishnan, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : N. James Koshy, for the Appellant; Pirappancode V. Sreedharan Nair, S.P. Aravindakshan Pillai and M.K. Abdullah, for the Respondent

Judgement

Radhakrishna Menon, J.—The Kerala State Road Transport Corporation, for short "the Corporation", the claimant in O.P. (MV) No. 164 of 1985 of the M.A.C.T. Manjeri, is the appellant.

2. Facts relevant and requisite to dispose of the appeal can briefly be stated thus: The bus bearing registration No. 487 belonging to the Corporation was operating on the route Mundakkayam-Nilambur. On 23.10.1984 when this bus was ascending a slope near the place called Naripoil, the bus, driven by the first respondent, (for short "the private bus") was seen coming from the opposite direction at an abnormal speed and without sounding the horn. The driver of the Corporation stopped the bus on the left side of the road. The other bus hit the Corporation bus causing damage to the same. The revenue loss suffered by the Corporation during the period when the bus was off the road was assessed at Rs. 99,600/-. This claim was in addition to the claim falling under the head "repair charges". No other point, apart from the one dealt with in the para 10 infra arises for consideration in the appeal, according to the parties.

3. The respondents including the insurance company contested the claims.

4. After considering the various aspects on the first point the Tribunal found that the accident can be attributed to the negligence of the driver of the private bus. The compensation for repairing the vehicle was fixed at Rs. 10,672.65. The compensation claimed for loss of revenue on account of the non-availability of the bus to ply on the route was denied on the ground that the Tribunal has no jurisdiction to entertain such claim. On the merits of this case the Tribunal has found that the Corporation is not entitled to get compensation under the head "loss of income". It is this order of the Claims Tribunal that is under challenge in this appeal.

5. The main question arising for consideration is whether or not the Claims Tribunal has the jurisdiction to award compensation for the loss of revenue on account of the deprivation of the use of the vehicle for the period of time when it was garaged.

6. The answer to this question depends upon the construction of Section 110 of the Motor Vehicles Act, 1939 (corresponding to Section 165 of the Motor Vehicles Act, 1988). Construing Section 110 of the 1939 Act a Division Bench of this Court in *General Manager, K.S.R.T.C. v. Saradamma* 1987 ACJ 926 (Kerala), has held thus:

The direct damage to property alone is taken by the words "damage to the property". If there is any claim for damages suffered by the owner of motor vehicle which was involved in an accident, apart from the claim for damage to the vehicle itself, it will thus have to be preferred before a civil court since the Motor Accidents Claims Tribunal has no jurisdiction to entertain such claim.

This opinion expressed by the Division Bench, in our view, correctly reflects the intention of the legislature in enacting Section 110, namely, to confer jurisdiction on the Claims Tribunals 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 damage to any property of a third party so arising or both.

7. The learned Counsel for the appellant nonetheless argued that the words employed in Section 110 of the 1939 Act corresponding to Section 165 of the 1988 Act, namely, "damages to any property" in fact empowers the Claims Tribunal to award compensation for the deprivation of the use of the vehicle during the period when it was under repair. In support of this contention the counsel relied on a recent decision of the Karnataka High Court in *Karnataka State Road Transport Corporation Vs. Abdul Majeed*, . The Division Bench considering a similar argument has held that it is a 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. The Division Bench has further held that 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 the 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. The Division Bench accordingly was of the view that the legislature did not intend to restrict the meaning of these words as to say that the Claims Tribunal can award compensation only for actual damage to the property and not to loss of income arising directly therefrom. Had that been the intention, it is further observed, the legislature would have so expressed.

8. This ruling of the Karnataka High Court, which runs counter to the dictum laid down by this Court, undoubtedly supports the above argument of the learned Counsel.

9. With respect, we cannot agree with the above view of the Karnataka High Court. It is true that under the common law the owner of the chattel which is involved in the accident, 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. These latter losses falls under the head "consequential pecuniary losses" which is distinct and different from "the basic pecuniary losses", both losses together in legal parlance are called "losses in relation to torts concerning property". An action for damages in this regard necessarily has to be initiated in a civil court because such action is intended to determine the tortious liability. But by enacting Section 110 of the 1939 Motor Vehicles Act (corresponding to Section 165 of the 1988 Motor Vehicles Act) the Parliament has conferred on the Claims Tribunal exclusive jurisdiction to adjudicate upon claims for compensation in respect of accidents involving damage to any property of a third party also. jurisdiction of the civil court, to the above extent, should be held to have been ousted. We shall now reproduce Section 110 (leaving out those clauses which are not relevant here) of 1939 Act.

110. Claims Tribunals-(I) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter 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 damages to any property of a third party.

The words employed in the section, namely, "...for the purpose of adjudicating upon claims for compensation in respect of accidents involving damages to any property" make it very clear that the intention of the Parliament was to deprive the civil court of its jurisdiction to decide the question pertaining to the basic pecuniary losses in relation to torts concerning property. Had the Parliament intended to have the "consequential pecuniary losses" suffered by a person on account of the damage to the property involved in the accident also to be adjudicated upon by the Claims Tribunal, the Parliament could have made that intention clear by using the words "and consequential loss of use, loss of

property" after the words "damage to property". It is relevant in this context to remember the well settled canon of interpretation, namely, that the words in a statute are used precisely and not loosely. Yet another legal principle equally well established is that the exclusion of jurisdiction of civil courts is not to be readily inferred; in other words, a provision of law ousting the jurisdiction of the civil court must be strictly construed. We, therefore, are inclined to take the view that by enacting Section 110 the Parliament never intended to confer jurisdiction on the Claims Tribunal to determine the damages falling under the head "consequential pecuniary losses" suffered by a person in relation to torts concerning property. We accordingly conclude that the Claims Tribunal has jurisdiction, apart from its power to adjudicate upon claims for compensation in respect of death or personal injury to persons, to adjudicate upon claims for compensation in respect of basic pecuniary losses in relation to torts concerning property also. The Claims Tribunal, therefore, cannot be said to have jurisdiction to adjudicate upon the claims falling under the head "consequential pecuniary losses" in relation to torts concerning property.

10. The learned Counsel for the appellant then argued that the Claims Tribunal erred in not awarding the overhead charges coming to Rs. 6,342.70 as compensation. The only document to prove this claim produced by the appellant is Exh. A-5. From Exh. A-5 it is seen that an amount of Rs. 6,342.70 is claimed as overhead charges which is assessed "at the rate of 174 percent". It is not clear from the details given in the document what exactly is the basis of this claim. For that matter the oral evidence adduced in this regard is as vague as vagueness could be. Under the circumstances we are unable to hold that this claim has been established by the Corporation. The Tribunal, therefore, has rightly rejected this claim.

11. The Tribunal, however, has awarded interest only at the rate of 10 per cent. This court has consistently been awarding interest on the compensation amount at the rate of 12 per cent per annum. Applying the said principle to the facts of the case we are of the view that the Claims Tribunal ought to have awarded interest at the rate of 12 per cent. To put it differently the appellant is entitled to get interest on the compensation amount awarded at the rate of 12 per cent per annum from the date of the application. To the above extent the award is modified.