(2006) 04 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : CIMA No. 166 Of 2004

National Insurance Company Ltd. — APPELLANT

Vs

Abdul Karim & others — RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 165

Citation : (2006) KashLJ 116

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : Rajnesh Oswal, Jugal Kishore, A.G.Sheikh, Advocates appearing for the Parties

Judgement

J.P, Singh, J.—National Insurance Company Limited questions award dated 31st of May, 2004 of Motor Accidents Claims Tribunal,

Jammu, awarding an amount of Rs. 1.44.000/ (Rupees one lac and forty four thousand) with interest @ 9% per annum pendentelite in File No.

174/Claims, on a claim preferred by first respondent, Abdul Karim, seeking compensation for the death of a buffalo owned by him, which died on

spot because of the rash and negligent driving of Matador No. JK02F9657, which hit it while moving along with the herd near Interrogation

Centre, Jammu.

2. This respondent's claim was contested by the Insurance Company, which had sought permission to contest it on grounds other than those, which

were available to an insurer under the Motor Vehicles Act, inter alia, on the ground that the claim was irrational, illogical and highly exaggerated.

3. The Tribunal raised four issues to resolve the matter in dispute between the parties. The issues read thus:

1. Whether on 14.7.98 (97), because of the rash & negligent driving of veh JK02F/9657 by respondent driver, petitioner's she buffalo received

serious injuries and died of the same? OPP

2. If issue No. 1 is proved in affirmative to how much amount of compensation, petitioner is entitled to & from whom? OPP

3. Whether respondent driver did not possess valid driving licence & it was driven against the terms & conditions of policy? OPR

4. Relief.

4 The Tribunal, accordingly, appreciated the evidence led by the parties and recorded its findings on the issues framed in the petition. The Tribunal,

on the basis of its findings, held the driver of the vehicle negligent in driving the vehicle and causing injuries to the buffalo of the first respondent.

Issue No. 3 was decided by the Tribunal in favour of the AppellantInsurance Company, meaning thereby that the vehicle in question had been

driven against the terms and conditions of the Insurance Policy, because the driver did not hold a valid driving licence to drive the vehicle. While

deciding Issue No. 1, the Tribunal held that the first respondent had been getting an amount of Rs. 100/ (Rupees one hundred) per day by selling

milk of the buffalo and had, thus, been deprived of his income, which he would have got for a period of another four years because the buffalo

would have survived for another 4 years, providing income to the first respondent for all these years. The Tribunal, accordingly, assessed the total

loss of income of the petitioner on account of death of the buffalo at Rs. 1,44,000/ and, accordingly, passed the impugned award by providing that

the Appellant would be entitled to recover the awarded amount along with interest thereon from the owner of the vehicle.

5. Shri Jugal Kishore, learned counsel for the Insurance Company, has raised an interesting question of law that the Tribunal did not have the

jurisdiction to assess and award compensation for the loss of income suffered by the first respondent, because of the loss of his buffalo. Shri Jugal

Kishore submits that Tribunal could, at the most, award the cost of buffalo to the first respondent and nothing more than that. Learned counsel

refers to General Manager, Kerala State Road Transport Corporation vs. Saraddamma, reported as 1987 ACJ 926 and Kerala State Road

Transport Corporation vs. Bhaskaran and others, reported as 1992 ACJ 133, to support his submission regarding interpretation of the expressions

damages"" and ""compensation"" as these so appear in Section 165 of the Motor Vehicles Act, 1988.

6. Shri Rajnesh Oswal, learned counsel for respondent1, on the other hand, refers to Kamataka State Road Transport Corporation and another

vs. V.K. Abdul Mqjid and others, a Division Bench of Karnataka High Court, which had taken a view different from the one taken by the Division

Bench of Kerala High Court in the judgments (supra).

7. I have considered the submissions of learned counsel for the parties and noticed the cleavage in the opinion of Division Benches of two High

Courts.

8. The High Court of Kerala, while dealing with the question of jurisdiction of Motor Accidents Claims Tribunal to deal with a claim of

compensation for damages to the property, held as follows:

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.

9. Karnataka High Court, on the other hand, while referring to the judgments of the Division Bench of Karnataka High Court in two cases (supra),

held as follows:

11. In the light of the above discussion we proceed to analyse the scope of the jurisdiction conferred on the Tribunal under Sec. 110 of the Act.

Section 110 as it originally stood empowered the Tribunal to award compensation only in respect of death or bodily injury to any person. The

Section was amended by the Amending Act 56/1967 which came into force with effect from 231970. By this amendment the jurisdiction to award

compensation in respect of damages to property was also included. Thus, the Section confers jurisdiction on the Tribunal to award compensation

both for personal injury as well as damages to property of a third party arising out of an accident. 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

injury 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 damages 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, llth Edition at page

623, wherein it 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 is used the damaged chattel in a profit earning capacity and whether he has

suffered actual pecuniary loss or not.

xx xx xx xx

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 is 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 Sec. 110 of the Act, the Legislature

intended to give relief to persons who had suffered loss as a result of damages to their property as a result of a motor accident and in the absence

of any express of (or) implied indication to the contrary, the expression 'damages to property' must be given the same meaning which they have

been assigned in the law of damages which takes in not merely actual damage to the property but also loss on account of its nonavailability for use.

If the construction suggested for 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 not(e) of the fact that under Section 110 the pecuniary

jurisdiction of the Tribunal is made unlimited regarding awarding of compensation for damages to property, as is discerni(a)ble from the proviso

therein, which states that in respect of property when its value is more than Rs. 2.000/ at the option of the claimant he may seek a reference to the

civil court and when the matter is so referred 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 110F 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. 1.000/ suffers personal injury as a result of

motor accident and is hospitalized for a period of six months. 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 he is also entitled to an award towards loss of income in a sum of Rs. 6.000/ 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/ 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 has to file a civil suit, though the cause of action as well as the evidence to be adduced would to be the 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.

10. Before concluding as to which of the two views lays down the law correctly, it would be necessary to refer to Section 165 of the Motor

Vehicles Act, 1988, which reads thus:

Section 165...(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals

(hereinabove 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.

(2) xx x x x x x x

(3) xxxxxxxx

(4) x x x x x x x x

11. Section 165 (1) of the Motor Vehicles Act, 1988, contemplates the jurisdiction of the Motor Claims Tribunal to adjudicate 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, AS ALSO upon

claims for damages to any property of a third party or of persons involved in the accident. A claim for compensation in respect of accident

involving the death of, or bodily injury, to persons arising out of the use of motor vehicles, includes Discretionary Damages, i.e., Damages such as

Damages for Mental Anguish, Pain or Sufferings, General Damages, Hedonic Damages, besides, Incidental Damages. For determination of

compensation, as aforesaid, the Tribunal, in terms of Section 169 of the Motor Vehicles Act, 1988, read with Rules 324 and 325 of the Jammu

and Kashmir Motor Vehicles Rules, is vested with all the powers which a Civil Court has while trying a civil suit. There is, thus, no restriction of

any type, whatsoever, on the power and jurisdiction of Claims Tribunal to adjudicate upon a claim of compensation in respect of the accidents

involving the death of, or bodily injury, to persons arising out of the use of the motor vehicles.

12. To accept the view of Kerala High Court that the Claims Tribunal would not have jurisdiction of a Civil Court while determining claim of

compensation in respect of damages to any property of a third party, I say, with utmost respects to the learned Judges constituting the Bench of

Kerala High Court, would be doing violence to Section 165 of the Motor Vehicles Act, 1988, because I find it extremely difficult to accept the

view that the Parliament would have contemplated different yardstick for adjudicating the claims maintainable under Section 165 of the Motor

Vehicles Act, 1988, i.e, one regarding compensation for damage to the property and the other regarding compensation for death of, or injury

suffered in the motor vehicle accident. Expression ""damages"" to any property of a third party occurring in the last line of Section 165 (1) of the

Motor Vehicles Act, 1988, too refers to a claim for compensation and, thus, two yardsticks, as held by Kerala High Court, cannot be

contemplated so as to determine claim for compensation in respect of accident involving the death of, or bodily injury, to persons AND in respect

of claim of compensation for damages to any property of a third party or of persons injured in a motor vehicle accident.

13. The view taken by the Division Bench of Karnataka High Court in Karnataka State Road Transport Corporation vs. V.K. Abdul Majid and

other, reported as II (1990) ACC (DB), explains the intention of the Parliament in empowering the Tribunal to deal with claims of compensation

regarding damage caused to the property of a third party too, in addition to the claims of compensation in respect of accidents involving death of,

or bodily injury, to persons arising out of the use of motor vehicles, by adopting single yardstick for determination of claims contemplated by

Section 165 of the Motor Vehicles Act, 1988.

14. In view of the discussion made hereinabove, I am not inclined to accept the submission of Shri Jugal Kishore that the Claims Tribunal had no

jurisdiction to adjudicate the claim of compensation filed by the first respondent and the jurisdiction of adjudicating such claim vested in the civil

Court. The contention of Shri Jugal Kishore is, thus, rejected.

15. I, however, find force in the second contention of Shri Jugal Kishore that the Claims Tribunal had erred in awarding excessive amount to the

first respondent by way of compensation. This is so because the Tribunal had not kept Section 168 of the Act in view while determining the

amount of compensation. Section 168 contemplates determination of amount of compensation, which should appear to the Tribunal to be ""Just"". A

Motor Accidents Claims Tribunal is required to consider the equitability, fairness and reasonableness of the amount, which it may determine as

Just compensation"".

16. In the present case, the first respondent had lodged a claim for the loss of

income, which he had allegedly suffered because of the death of his

buffalo. In other words, it was a claim of compensation for total loss of the property of the first respondent because of the accident. The just

compensation in case of total loss of the property, in my view, would be awarding of such monetary compensation, which would facilitate the

claimant to have the replacement of his property he had lost because of the accident. Just compensation, as defined in Black's Law Dictionary

(Seventh Edition) means, a fair payment by the Government for property it has taken under eminent domain usually as the property's fair market

value so that the owner is no worse off after the taking over. This just compensation may be termed as adequate compensation or due

compensation.

17. The Tribunal had not considered this aspect of the matter and had proceeded to determine the expected loss of income to the claimant

because of the death of his milching buffalo, thereby awarding a bonanza. The compensation awarded by the Tribunal falls in the realm of Remote

damages or for that matter speculative or punitive damages. Such damages cannot be awarded under the Motor Vehicles Act, 1988, which

permits awarding of only ""Just compensation"".

18. The first respondent had mentioned in his claim petition that he had purchased the buffalo for an amount of Rs. 18.000/ on 15th of May, 1997.

For replacing his buffalo, he would have needed approximately an amount of Rupees nineteen thousand in July 1997 and payment of this amount

to the first respondent in 1997 would, in my view, be the just compensation for the loss of his livestock. The question that arises now is as to how

much amount in 2006, when the appellant's appeal is being disposed of, would be just compensation to the first respondent for the loss of his

buffalo. Nonpayment of the amount to the first respondent for nine long yeas has also to be kept in view because non payment of the value of the

buffalo for nine years has deprived the claimant of his right to utilize it for purchasing a new buffalo. Purchase of new buffalo, on the other hand,

would provide additional benefit to the claimant of deriving benefit therefrom for a longer span of period than that he would got from the

comparatively older animal. Taking stock of all these considerations, I am of the opinion that payment of an amount of Rupees fifty five thousand in all would be just compensation for the loss of first Respondent's buffalo, because this amount would facilitate the purchase of a young milching

buffalo, besides meeting the litigation expenses and the interest component had he purchased a new buffalo in 1997 by investing an amount of Rs.

19.000/, i.e., the estimated cost of the buffalo at the time of its death.

19. The impugned award shall stand modified accordingly to be an award for an amount of Rs. 55.000/ (Rupees fifty five thousand) against

respondent3.

20. AppellantInsurance Company is directed to satisfy this award made against respondent3. In view of the findings of the Tribunal on Issue No.

3, the appellant shall be entitled to recover the awarded amount from the owner of the offending vehicle by taking out execution of this award

against respondent3, owner of vehicle No. JK02F9657.

21. With the aforesaid modification in the award, the appeal of the appellant is, accordingly, allowed to the extent indicated hereinabove.

22. Registrar Judicial shall release the amount awarded to the first respondent in terms of this judgment on his proper identification and rest of the

amount shall be released in favour of the AppellantInsurance Company along with interest accrued thereon.