

(2009) 12 SHI CK 0028
In the High Court Of Himachal Pradesh

National Insurance Company Ltd.

APPELLANT

Vs

H.R.T.C. and Others

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2011) 1 TAC 496

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This appeal by the National Insurance Company Limited u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) is directed against the award of the learned Motor Accident Claims Tribunal, Kullu in Claim Petition No. 36 of 2002 decided on 1.10.2004. A collision of bus No. HP-47-0372 belonging to Himachal Road Transport Corporation (HRTC) took place with bus No. HP-345401 owned by Sh. Mohinder Pal and driven by Dhani Ram. It was insured with appellant National Insurance Company. The HRTC filed a claim petition claiming compensation of Rs. 1,07,280/- on account of the damage suffered to the bus and the loss incurred by the HRTC due to the fact that the bus could not be run for about one month when it was stationed at the Divisional Workshop at Mandi. The learned Tribunal on the basis of the evidence held that the HRTC had spent Rs. 9,101/- on the spare parts and Rs. 14,296/- on labour charges and Rs. 2300/- for retrieving the bus. Thus, the damage to the bus was assessed at Rs. 25,697/-. In addition thereto a sum of Rs. 81,583/- was awarded to the HRTC as the loss of income suffered by it for the period during which this bus could not be operated. Thus, an award of Rs. 1,07,280/- was passed in favour of the HRTC and the Insurance Company held liable to pay the same. Hence, the present appeal.

2. Mr. Ashwani Sharma, learned Counsel for the Insurance Company has argued that the Tribunal had no jurisdiction to award Rs. 81,583/- for loss of business. According to him the Company, as per the provisions of the Act and the terms of

the insurance policy Ext.PX, is only liable to cover liability in respect of any loss or damage to any property and excludes liability resulting or arising from any consequential loss. On the other hand Sh.H.S. Rawat, learned Counsel for the claimant argued that under the provisions of the Act the Insurance Company is liable in respect of all damage relating to the property and since in the present case the Insurance Company had charged extra premium its liability is unlimited. According to Mr. Rawat, the Insurance Company under the provisions of the Act is bound to cover the liability in respect of consequential loss also.

3. The provisions of the Act relevant for deciding this issue may first be noticed. The Claims Tribunals are constituted under Chapter 12 of the Act. Relevant portion of Section 165(1) of the Act reads as follows:

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

4. u/s 166, an application for compensation arising out of a motor accident can be made even by the owner of the property. Section 146 makes it necessary for the owner of every motor vehicle to insure its vehicle against 3rd party risk. Section 147 provides the essential requirements and limitations of any insurance policy so that it complies with the provisions of the Motor Vehicles Act. Section 147(1) (i) of the Act in so far as it is relevant in the present case reads as follows:

147. Requirements of policies and limits of liability:(1)In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which----

(a) is issued by a person who is an authorized insurer; and

(b) insures the person or classes of persons specified in the policy to the extend specified in Sub-section(2)---

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

5. Section 147(2) of the Act provides as follows:

(2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, upto the following limits, namely:

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

6. Section 175 of the Act provides as under:

175: Bar on jurisdiction of Civil Courts: Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

7. A number of authorities have been cited by both the sides.

8. A Division Bench of the Madhya Pradesh High Court in *Raj Kumar v. Mahendera Singh and Ors.* 1985 ACJ 103, considered the import of Section 110 of the Motor Vehicles Act, 1939.

9. Section 110(a) of the Act as it stood at the relevant time reads as follows:

110(a): A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as Claims Tribunals) 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:

Provided that, where such 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 to a civil Court for adjudication, and where a reference is so made, the Claims Tribunal shall have no jurisdiction to entertain any question relating to such claim.

10. The High Court of Madhya Pradesh after considering the provisions of Section 110 of the Act held as follows:

12. ...The claims Tribunal constituted u/s 110 of the Motor Vehicles Act is empowered only to adjudicate upon claims for compensation in respect of accidents involving "damages to any property" arising out of use of the motor vehicle. Therefore, at best, the claim which can be lodged and adjudicated upon by the Claims Tribunal contemplated by the section is claim for compensation for damages resulted to the vehicle due to the accident. Usually a claim of such nature is made to recover expenses which may be or might have been incurred for repairs or restoration of the vehicle to its original condition. The "loss of business" on account of vehicle remaining idle during repairs is not a "damage to the property" of the owner, but may be damage or loss to the owner. We do not think that the Claims Tribunal is empowered u/s 110 of the Motor Vehicles Act to entertain such a claim. Claims for compensation on account of the accident involving death or bodily injury to the person as also the damage to any property

could always be laid down before a civil Court being actions in tort. However, in order to provide speedy and cheap remedy to sufferers a special provision has been made empowering the State Government to constitute Claims Tribunal for adjudicating claims for compensation on account of death, bodily injury or damage to property arising from accidents. So far as, a reference to Section 110-F of the Act barring the jurisdiction of the civil Court is concerned, we find that it bars the civil Court to entertain any question relating to "any claim for compensation which may be adjudicated upon by the Claims Tribunal". This section bars the jurisdiction of the civil Court only in respect of such matters which can be adjudicated upon by the Claims Tribunals. The words "any claim for compensation" in this section mean any one of the classes of the claims specified in Section 110(1) of the Act, namely, (1) death, (2) bodily injury and (3) damage to the property. After the amendments made by the Amending Acts No. 56 of 1969 and No. 47 of 1978, as held above by us, there cannot be any doubt that a claim simpliciter for damage to the property can be made before Claims Tribunal. This also confirms our conclusions. A claim for compensation for "loss of business" on account of the damaged vehicle remaining idle during its repairs cannot be laid before the Claims Tribunal. A party aggrieved on this count will be free to file a civil suit and Section 110-F of the Act does not bar the jurisdiction of civil Court.

11. This judgment of the Madhya Pradesh High Court was followed in *Shantilal Chhitarji Soni and Others Vs. M.P. Rajya Parivahan Nigam and Another*, *Kacharmal Kishanlal Mahajan and Another Vs. Chainram Kishanlal Mahajan and Another*, and *New India Assurance Co. Ltd. Vs. Subhash Jain and Others*, .

12. A single Judge of the Madras High Court took a similar view in *Nesamony Transport Corporation Ltd. v. Kochammal (minor)*, Rep. by father and next friend *Nesamony Transport Corporation Ltd. Vs. Kochammal rep. by Father and next Friend T. Rajiah and Others*, . After considering a number of judgments and the various provisions of the Act the Court held as follows:

9. ...However, on a careful consideration of the different views expressed in the decisions referred to already, the interpretation which commends itself to me is that the expression "damage to property" would take in only the monetary compensation to set right the actual damage caused to the property in an accident involving the use of a motor vehicle and nothing more. The expression "damages to any property of a third party" has to be necessarily restricted in its application to the actual damage caused to the property and cannot, in the absence of any indication in Section 110(1) of the Act, be expanded. The expression "damages" would connote pecuniary compensation obtainable in an action for a wrong, which is a tort in the case of motor vehicle accidents and when the language of the section is confined only to damages to (underlining mine) any property, it cannot, as it is, be extended or expanded into damages under other heads and not necessarily restricted to property. No doubt, such an interpretation may leave a claim for damages other than that to property arising

out of a motor accident, for adjudication by a Civil Court, but that cannot be helped in view of the language employed in Section 110(1) of the Act. If it was the intention of the Legislature that damages under all its different heads could be recovered in an action u/s 110(1) of the Act before a Motor Accidents Claims Tribunal, suitable language could have been employed to that effect. But having regard to the phraseology actually employed, it is difficult to extend its scope by bringing under its coverage claims for damages other than actual damage to the vehicle involved in the accident and the Tribunal was in error in having entertained the claim of Nesamony Transport Corporation in this Regard....

13. This judgment was followed in Thiruvalluvar Transport Corporation Ltd. Vs. C.K. Syed Yacoob, .

14. On the other hand another single Judge of the Madras High Court in Rajendran and Another Vs. Selvaraj and Others, , disagreed with the earlier view of the Madras High Court and came to the conclusion that the Motor Accident Claims Tribunal has jurisdiction to consequential damage arising out of the damage to the property. The learned Judge relied upon the provisions of Section 175 of the Act of 1988 and has come to the conclusion that this bars the filing of any civil suit with regard to consequential economic loss resulting from damage to the property and as such the Tribunal alone could have jurisdiction to award such damages. The relevant portion of the judgment reads as follows:

29. Now, the position in 1988 Act is that the proviso mentioned above is not in existence. With the result, the legislature having chosen to retain the bar on the civil court u/s 175 of 1988 Act also, and the claimant having been deprived of his liberty to move the civil court for claims towards damages to the property, he is totally disabled from suing for loss of income or economic loss. There can be no dispute over the entitlement of a person aggrieved, to sue for loss of income or revenue loss under common law and if there is a forum before which he could pray for the said relief, he cannot be heard to complaint. But, with the deletion of the option given to the claimant to approach the civil court, he has no other option except to pray for the remedy only before the Tribunal. Section 165 of the Act, is all pervasive and for all claims of compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicle or damages to any property of a third party so arising, a claimant can approach only the Tribunal and nowhere else his claim petition could be entertained, if the claim relates to an accident arising out of the use of the motor vehicles. Therefore, the court inclined to hold that by necessary implication it is only the Claims Tribunal which has the jurisdiction to adjudicate and to grant the loss of income or revenue loss arising out of damage caused to the property of the claimant.

30. Assuming for the sake of discussion that the common law remedy before the civil court is not barred for claiming the revenue loss on the ground that it is not covered by the Act, it would lead to very anomalous and conflicting results. In 1939 Act the proviso ensured that the claim petition can be filed before only one

of the two forums. Now, the claimant has to necessarily file his petition only before the Tribunal for compensation for damage to the property and a separate suit before the civil court for revenue loss. This could result in conflicting verdict by the respective authorities. On the question of negligence and liability, two different opposing views could be expressed. Therefore, there is one more reason to hold that by necessary implication, the Tribunal has jurisdiction to award compensation for revenue loss. 31. It is true that in assessing such economic loss or loss of income arising from damage to the property, the Tribunal has to adopt a strict assessment and claimants cannot be permitted to capitalize on the accident unreasonably. The period of assessment could be only the reasonable maximum period required to restore the property to its original condition. It cannot depend upon the self-serving plea of the claimant that he was unable to do so within the reasonable period for his own reason or that he would not condescend to restore the property to its original position within that period. For instance, if the property damaged is a commercial vehicle which could be put on the road only after repairs, a reasonable income for a period of two or three months at the most can be granted. The claimant cannot keep his vehicle idle without being sent for repairs for several months or years and claim loss of income for such indefinite period.

15. 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 party 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 u/s 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 u/s 165 of the Act.

16. 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.

17. 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.

18. The appeal is disposed of in the aforesaid terms with no order as to costs.