
(1991) 11 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.A. No. 135 of 1983

New India Assurance Co. Ltd.

APPELLANT

Vs

P.N. Vijaiwargiya and Others

RESPONDENT

Date of Decision : 18-11-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 110(1), 110D

Citation : (1993) 1 ACC 254 : (1992) ACJ 312

Hon'ble Judges : R.C. Lahoti, J;K.M. Pandey, J

Bench : Division Bench

Advocate : V.K. Sharma, for the Appellant; N.M. Haswani, for the Respondent

Judgement

R.C. Lahoti, J.—A learned single Judge of this Court while hearing an appeal u/s 110-D of the Motor Vehicles Act, 1939 has framed the following question of law and referred the same for the opinion of the Division Bench:

Whether a claim for compensation simpliciter for damage caused to property, preferred by a third party, in all circumstances, can be tried by a Motor Accidents Claims Tribunal in respect of an accident where claim is preferred or preferable also for bodily injury suffered or for death?

2. A car No. CPH 87 met with an accident on 7.7.1981 having been hit by another car registered as MPW 9669 approaching from the other side. The occupants of the car got injured. The car was also damaged. On 20.8.1981 a joint claim petition was preferred which included the claim for compensation for bodily injuries sustained by the occupants of the car as also for damage to the car. However, as a measure of abundant caution, to avoid any legal objection in future, a separate claim was preferred by the owner-claimant P.N. Vijaiwargiya claiming compensation for damages suffered only by the car in the accident to the tune of Rs. 16,000. This P.N. Vijaiwargiya is undisputedly a third party.

3. The Tribunal has awarded an amount of Rs. 11,508.50 on account of damages to the car.

4. The learned single Judge entertained a doubt as to the maintainability of the claim petition only for compensation for damages suffered by the car and noticed two divergent lines of decision: Banwari Lal v. Vishnunarayan 1975 ACJ 40 (MP); Manohar Singh v. Canara Motor & General Insurance Co. 1977 ACJ 280 (MP); Han Industries v. Roshan Lal Kothari 1987 ACJ 20 (Rajasthan), taking the view that such a claim was maintainable; Yaswant Raj v. Mohan Lal 1985 ACJ 23 (Rajasthan) and R. Vanamaraju v. A.P.S.R.T.C. 1984 ACJ 336 (AP), taking the view that such a claim was not maintainable.

5. The correctness of the view taken by the two Division Benches of this Court has been doubted on the ground that they based their decision only on the construction of the notification establishing the Motor Accidents Claims Tribunal as contemplated u/s 110 of the Act, but failed to take into consideration the effect of the proviso to Section 110 (1).

6. Section 110 (1) of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act" for short), reads as under:

110, Claims Tribunals.-(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as "the 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.

7. It is interesting to note that in the text of Section 110 (1), as it originally stood, the provision terminated with the words "motor vehicles". Material changes were effected by the Motor Vehicles (Amendment) Act, 1969 (Act No. 56 of 1969) not only in Section 110 but in various related provisions. Section 57 of the Amendment Act substituted the following words in place of the words "motor vehicles" in Sub-section (1) and also added the proviso thereafter:

motor vehicles, or damages to any property of a third party so arising, or both.

Section 95 of the Act, as it originally stood, was also suitably amended and Clause (b) as occurring in Sub-section (1) of Section 95 as it originally stood was deleted and substituted by a fresh provision so as to read as under:

95. 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 authorised insurer or by a co-operative

society allowed, u/s 108, to transact the business of an insurer, and

(b) insures the person or classes of persons specified in the policy to the extent 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, or damage to any property of a third party caused by, or arising out of, the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle, caused by, or arising out of, the use of the vehicle in a public place:

Provided that a policy shall not...be required

(i) to cover liability in respect of the death, arising out of, and in course of, his employment, of the employee of a person, insured by the policy, or in respect of bodily injury, sustained by such an employee arising out of, and in the course of, his employment other than a liability, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee,-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

Explanation.-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by, or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(Italics by me)

It is to be noted that all the provisions touching-damage to property-were newly introduced.

8. The Motor Vehicles (Amendment) Act, 1969 came into force w.e.f. 2nd March, 1970.

9. Section 110. (1). as it stands, provides for claims for compensation being

preferred before the Motor Accidents Claims Tribunal in respect of the accidents involving:

- (i) the death;
- (ii) the bodily injury;
- (iii) the damages to any property of a third party;
- (iv) the death and/or bodily injury coupled with damages to any property of a third person.

10. The claim for compensation in respect of accidents involving the death or bodily injury may relate to the insured and/or a third person. However, the claim for compensation involving damages to any property to be entertainable before the Claims Tribunal must relate to a third party only and not the insured. The proviso provides for an option lying with the claimant. Where claim for compensation in respect of damage to property exceeds rupees two thousand which would necessarily be of a third party (and not the insured), the claimant may have it adjudicated upon by the Claims Tribunal or may have it referred to a civil court for adjudication. Where the claim does not exceed rupees two thousand it has to be tried by the Claims Tribunal. Section 110-F bars the jurisdiction of civil court where the claim is entertainable by a Claims Tribunal and a Claims Tribunal has been constituted for that area.

11. The change in law introduced by the Amending Act of 1969 came up for consideration of a Division Bench of this Court in *Banwari Lal v. Vishnunarayan* 1975 ACJ 40 (MP). In *Banwari Lal*'s case accident had occurred on 20.1.1971 and the claim was preferred before the Claims Tribunal on 26.6.1971 for damage to the property alone. The Tribunal formed an opinion that it had been established on 29.12.1969, that is, prior to the date (2nd March, 1970) on which the Amendment Act had come into force and it would not have jurisdiction to entertain the claim relating to damage to property alone. The Tribunal expressed an opinion that there should have been a fresh notification under Sub-section (1) of Section 110 of the Act to be issued by the State Government after the amendment so as to confer it with jurisdiction to entertain claims relating to damage to property alone. The Tribunal dismissed the claim. The Division Bench allowing the appeal held-

The relevant amendment in Sub-section (1) of Section 110 of the Act has been brought into force with effect from 2.3.1970. There is no dispute that a claim like the present being only for damage to any property falls squarely within this amended provision and that it was not covered by Sub-section (1) of Section 110 as it stood prior to this amendment. In the present case the date of accident itself is subsequent to the date on which the amended provision came into force. The claim was, therefore, naturally filed subsequent to this amendment.

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It is clear that the provision relating to the State Government's power to constitute the Claims Tribunal remains unaltered by the aforesaid amendment and the only effect of the amendment is to widen the amplitude of the Tribunal's powers so as to enable the Tribunal to entertain and decide also such claim which falls within the ambit of the amendment. It is not as if the provision relating to the State Government's power to constitute the Tribunals has itself undergone some change by the aforesaid amendment.

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In our opinion, there can be no doubt that the Tribunal clearly has jurisdiction to entertain the appellant's claim and in taking the opposite view it has failed to exercise jurisdiction vested in it.

12. Excepting the High Court of Andhra Pradesh, there is no controversy amongst any of the other High Courts and the view taken by all the High Courts as determinable from the reported decision is that claim for damage to property alone can definitely be entertained and tried by the Claims Tribunal after the amendment of 1969.

13. The High Court of Rajasthan in *New India Assurance Co. Ltd. v. Gauri Shankar Sharma* 1985 ACJ 734 (Rajasthan), observed:

... the damage to property in an accident by a motor vehicle is covered by the jurisdiction of the Accidents Claims Tribunal and no valid objection can be taken to entertainment of such a claim, all alone, even though it may not be a composite claim.

14. The Division Bench of Jammu & Kashmir High Court has taken the same view in *Kamal Kusha v. Kirpal Singh* 1987 ACJ 709 (J&K). In *Kamal Kusha's* case, earlier decision of that High Court in *Iqbal Singh v. Jagan Nach* 1980 ACJ 220 (J&K), taking a view to the contrary was overruled. The Division Bench of Kerala High Court has taken the same view [see, *R.C. Mathew v. KM. Jose* 1982 ACJ (Supp) 33 (Kerala)].

15. For the view of other High Courts taking the view in line with the Division Bench of Madhya Pradesh High Court in *Banwari Lal's* case, 1975 ACJ 40 (MP), see, *Central Road Transport Corporation Ltd. v. Orissa State Commercial Transport Corporation* AIR 1985 Orissa 256; *Haryana State v. Pusa Ram* 1979 ACJ 12 (P&H); *Chanan Singh v. Tara Singh* 1981 ACJ 240 (P&H); and *Maharani Chopra v. Darshan Lal* 1985 ACJ 665 (Allahabad).

16. Section 110-A (1) of the Act also underwent a change brought by the Amendment Act of 1978 (Act No. 47 of 1978) introducing Clause (aa) therein which was not to be found before. Section 110-A (as amended, relevant part thereof) reads as under:

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

(aa) by the owner of the property; 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:

17. Why at all Section 110-A (1) was required to be amended? In spite of the amendments made by the 1969 Act, some of the High Courts took the view that Section 110-A (1) permitted filing of a claim for compensation only by the person sustaining injury or the legal representatives of a deceased in an accident or by an agent duly authorised by such person/s. The term "injury" occurring in Section 110-A (1) (a) was interpreted narrowly as meaning "bodily injury" merely. However, the majority of the High Courts did not approve of the view taken. They preferred to adopt a liberal view, utilising for the purpose of interpretation the Webster's Dictionary defining the word "injury" as meaning-"physical harm or damage to a person, property etc."-and held that the rule of harmonious construction obliged the term "injury" being read widely so as to include "harm or damage" done to "property" within the meaning of term "injury" as occurring in Section 110-A (1) (a) of the Act. The legislature put an end to the controversy by introducing Clause (aa) and specifically providing for claim for compensation by application being available also to an owner of property.

18. The Division Bench of Kerala High Court in R.C. Mathew v. KM. Jose 1982 ACJ (Supp) 33 Kerala, vide para 8 made it very clear that the subsequent introduction of Clause (aa) which specifically provides for application for compensation by owner of the property damaged in an accident is only-by way of an abundant caution and even if the amendment would not have been made, the position would have remained the same, i.e., with the amendment in Section 110 as made by Act No. 56 of 1969, adjudication of claims for compensation for damages to property of a third party was also brought within the jurisdiction of the Claims Tribunal. We find ourselves in respectful agreement with the view taken by the Division Bench of the Kerala High Court.

19. We may now proceed to examine the decisions referred to in the order of reference as also a few decisions, in addition, cited at the Bar.

20. In Dr. Om Prakash Mishra Vs. National Fire and General Insurance Co. Ltd. and Others, cited by the learned Counsel for the insurance company, the Division Bench had no occasion to consider the effect of 1969 Amendment Act and hence that decision is totally besides the point for determining the controversy arising for decision before us.

21. When Gauri Shankar Shanna's case, 1985 ACJ 734 (Rajasthan), came up to be decided on 16.8.1984, as stated in para 5 of the report, earlier single Bench decision in Yaswant Raj v. Mohan Lal 1985 ACJ 23 (Rajasthan), was not available as having not been published. However, the facts of Yaswant Raj's case go to show that the date of the accident therein was 29.5.1968 and the claim petition was filed on 26.7.1968; both the dates occurring before 2nd March, 1970 when the 1969 Amending Act came into force. In Yaswant Raj's case, the Division Bench decision of M.P. High Court in Dr. Om Prakash Mishra Vs. National Fire and General Insurance Co. Ltd. and Others, was followed. Needless to say that Yaswant Raj's case has also no relevancy.

22. True it is, as observed by the learned single Judge, the Division Bench in Manohar Singh's case, 1977 ACT 280 (MP), was concerned with determining the jurisdiction of the Tribunal only by reference to the Government notification constituting the Tribunal and hence, the law laid down therein does not have any impact on the point at hand. Nevertheless, the earlier Division Bench decision in Banwari Lal's case, 1975 ACJ 40 (MP), was referred to therein and vide para 6, the Division Bench expressed its respectful agreement with the view taken by the Division Bench in Banwari Lal's case.

23. In Hari Industries v. Roshan Lal Kothari 1987 ACJ 20 (Rajasthan), the learned single Judge of Rajasthan High Court has, vide para 3, assigned reasons for not following the view taken in Yaswant Raj's case, 1985 ACJ 23 (Rajasthan), stating that Yaswant Raj's case has lost all its importance on account of amendment having been made in Sections 110 and 110-A of the Motor Vehicles Act, 1939. But the learned single Judge in Hari Industries' case (supra) expressed his perfect agreement with the view taken by the High Court of Karnataka in Jyoti Constructions' case 1979 ACJ 426 (Karnataka) and the other decision of the Rajasthan High Court taking the view that an owner of the property is entitled to claim for damages to property alone before the Claims Tribunal after 1969 Amendment, The learned Judge further added that the view taken stands fortified by further amendment introduced by Act No. 47 of 1978, which came into force on 16.1.1979, noticed by us in para 16 above.

24. The only decision taking a view to the contrary is a single Bench decision of the Andhra Pradesh High Court in R Vanamaraju v. A.P.S.R.T.C. 1984 ACJ 336 (AP). The date of accident was 31.1.1977. The claim petition was preferred on 11.7.1977, prior to the amendment made in the year 1978 in Section 110-A of the Motor Vehicles Act, 1939 inserting Clause (aa) providing for award of damages to the owner of the property. The learned single Judge chose not to follow the Karnataka Division Bench decision in Jyoti Constructions' case, 1979 ACJ 426 (Karnataka) and Punjab & Haryana decision in Pusa Ram's case, 1979 ACJ 12 (P&H). The infirmity in R. Vanamarajus' case (supra) is that it interprets the term "injury" in its narrow sense confining it to "bodily injury" alone and in spite of having referred to Jyoti Constructions' case and Pusa Rain's case does not assign any reason for not taking a broad view and interpreting the provision

keeping in view the welfare nature of the provision and the principle of beneficial construction. The learned single Judge in R. Vanamaraju's case does not at all consider the view that the amendment made in Section 110-A in the year 1978 was only by way of abundant caution.

25. Be that whatever it may, we are of the opinion that isolated view taken by the learned single Judge of Andhra Pradesh High Court in R. Vanamaraju's case, 1984 ACJ 336 (AP), does not lay down the correct law. The Division Bench of Karnataka High Court in Deputy General Manager, K.S.R.T.C. v. Jyoti Constructions 1979 ACJ 426 (Karnataka), has followed the Madhya Pradesh view enunciated in Banwari Lal's case, 1975 ACJ 40 (MP) and the view of Punjab & Haryana in several cases to the same effect. In doing so, the Division Bench has referred to the term "injury" as defined in Stroud's Dictionary, 4th Edition at page 1372, as meaning "a wrong or damage to a man's person or goods" as also the historical background which had warranted the 1969 Amendment.

26. We may also consider whether the proviso enacted to Section 110 (1) has any impact or bearing on the question at hand. A bare reading of the proviso shows that it has a very limited field to operate. Out of the 4 types of claims for compensation categorised by us in para 9 above, the proviso has relation only to the 4th type of claim for compensation, i.e., where a claim for compensation for death or bodily injury is coupled with a claim for compensation in respect of damage to property and that too when the compensation in respect of damage to property caused exceeds rupees two thousand. In that case the claimant may have his option for the claim being tried by a civil court or by Claims Tribunal. If the claimant exercises that option then alone the civil court shall acquire jurisdiction to adjudicate upon the claim relating to compensation in respect of damage to property. If the claim for compensation in respect of damage to property does not exceed rupees two thousand or where such a claim is in respect of damage to property alone preferred by a third party, then too the proviso would not come into play. [See, Chief Secretary v. Charles Perea 1987 ACJ 446 (Karnataka)].

27. We answer the reference in the following terms:

With effect from 2nd March, 1970, the date of coming into force of the Motor Vehicles (Amendment) Act, 1969 (Act No. 56 of 1969), a claim for compensation suffered for damage caused to property preferred by a third party in all circumstances can be tried by Motor Accidents Claims Tribunal in respect of accident where claim is preferred or preferable also for bodily injury suffered or death caused.

28. Let the matter be now placed before the learned single Judge for hearing of the appeal.