

(1999) 06 MAD CK 0072
In the Madras High Court

Oriental Insurance Co. Ltd. and Another	APPELLANT
Vs	
M. Baskar and Others	RESPONDENT

Date of Decision : 25-06-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 110(1)

Citation : (2000) 1 ACC 322 : (2000) 3 LW 905

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Judgement

M. Karpagavinayagam, J.—These appeals, filed by the Oriental Insurance Company, Madurai and Virudhunagar, have arisen out of the common judgment rendered by the Tribunal in MCOP Nos. 453 and 310 of 1990.

2. Dhinagara Raj, the claimant in MCOP No. 310 of 1990, is the owner of Lorry TNR. 1339. Baskar, the claimant in O.P. 453/90, is owner of the Bus TMN 468. On 7.1.1990, at about 7.50 p.m., when-the said lorry was proceeding from West to East, in Tiruchuzi Main Road, the Bus TMN 4608, belonged to M/s. Jaya Roadways, Aruppukkottai, came in the opposite direction and dashed against the lorry, as a result of which, both the lorry and bus got damaged. Therefore, Dhinagara Raj, the lorry owner, filed a claim petition in MCOP No. 310/90 and Baskar, the owner of the bus, filed a petition in MCOP No. 453 of 1990.

3. The Tribunal, after enquiry, directed the appellant-Insurance Company to pay the compensation of Rs. 32,267/- to the owner of the lorry, the claimant in MCOP No. 310/90 and Rs. 72,651/- to Basker, the owner of the bus, the claimant in MCOP No. 453/90.

4. While calculating the damages, the Tribunal fixed Rs. 6,000/- towards the loss of income for the days when the lorry remained idle for making repairs and fixed Rs. 45,000/- for the loss of income towards the period in which the bus remained idle in the workshop for making repairs.

5. The Insurance Company, with whom the lorry and bus were insured, aggrieved

by the award, mainly on the ground of awarding compensation towards the loss of revenue for the period during which the bus and lorry were kept in the workshop, since the same is not permissible under law and the same is outside the scope of jurisdiction of the Tribunal, filed these appeals before this Court.

6. I heard the Counsels on this aspect and the Counsels for both parties would cite several authorities.

7. Mr. D.M. Venkataraman, learned Counsel appearing for the appellant-Insurance Company, would cite I (1995) ACC 601, Nesamony Transport Corporation Ltd. v. Kochammal and Ors. and unreported decision in C.M.A. Nos. 650 to 652 of 1993, National Insurance Co. Ltd. v. Sriramulu and Ors. dated 30.4.1999 rendered by the Honourable P. Sathasivam, J., in order to substantiate the ground of appeals.

8. Mr. Mahendran, learned Counsel appearing for the claimants/respondents in both these appeals, would cite Karnataka State Road Transport Corporation Vs. Abdul Majeed, , Ranganathar Trans. (P) Ltd. v. Tanjore Co-op. Marketing Federation 1987 ACJ 111 :(1985) ACC 65, Karnataka State Road Transport Corporation Vs. Pishori Lal, , Karnataka State Road Transport Corporation v. Pishori Lal, and contend that the Tribunal has got jurisdiction to award compensation for the loss of income for the period which the vehicles remained idle for carrying out repairs, besides compensation for damage caused to the vehicles.

9. The above referred to question has already been dealt with by the Honourable Ratnam, J., (as he then was) in the decision reported in I (1995) ACC 601 , elaborately. Following the said judgment, the Honourable Justice P. Sathasivam also, in the decision cited supra, held that the Tribunal has no jurisdiction to order compensation towards the revenue loss sustained by the owner of the vehicle during the period when lorry was kept idle for carrying out repairs.

10. In both the above referred to decisions, Section 110(1) of the Motor Vehicles Act has been interpreted in detail and it has been held that 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. It is also further held that the language of the section is confined only to damage to any property and it cannot be extended or expanded to damages under any other heads. All the decisions contra, including the decision cited by the Counsel for the respondents now, have been considered by Honourable Ratnam, J.

11. In the instant case, the incident took place on 7.1.1990. Therefore, the Motor Vehicles Act, 1988 is applicable. The Section 110(1) of the Act, 1939 has been verbatim reproduced in Section 165 of the Act, 1988. As per this section, the Motor Accident Claims Tribunals are constituted only 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. Therefore, the expression "damages to any property of a third party" has to be necessarily restricted in its application to the actual damages caused to the property alone. In this context, the observation made by the Honourable P. Sathasivam, J., in the decision cited *supra*, is quite relevant and the same is reproduced as follows:

However, the other High Courts, after referring Section 110(1) read with Section 110F of 1939 Act, have taken a different view and after holding that Section 110 is wide enough to include the future earnings as damage to future property. It is my duty to point out that the very same decisions have been considered by the learned Judge (Ratnam, J.) and in view of the specific words in Section 110(1), the learned Judge expressed his inability to follow those decisions. I have already extracted the relevant provision. Among the 3 Clauses, we are concerned with the third Clause, namely, damages to any property to a third party. Since the Legislature has specifically mentioned damages to any property of a third party, as rightly observed by His Lordship, it is not open to the Court to give extended meaning. As rightly observed, in the absence of any indication in the section referred to above, the expression "damages to any property of a third party" has to be restricted in its application to the actual damage caused to the property and cannot be expanded for a claim like revenue loss. Even though the owner of the property might have suffered because of the damage to his property, in view of the language used, the same cannot be agitated in the Motor Accident Claims Tribunals under the provisions of the Motor Vehicles Act, 1939. Accordingly, in view of the restricted scope of an adjudication before the Claims Tribunals in regard to the damages to the vehicle involved in the accident and of the fact that even according to the claimant, he did not take the vehicle for a period of 3 months due to non-availability of driver, the claim under "revenue loss" cannot be sustained before the Tribunal. Accordingly, with respect, I am in agreement with the view expressed by Ratnam, J., in the decision reported in I (1995) ACC 601 and unable to share the contrary view expressed by the other High Courts.

12. I am in full agreement with the view expressed by the Honourable Ratnam, J. and the Honourable P. Sathasivam, J. Section 110 of the Act, as it originally stood empowered by the Tribunal, the award of compensation can be given only in respect of death or bodily injury to any person. The said section was subsequently amended. By this amendment, the jurisdiction to award compensation in respect of damage to the property is also included. Thus, the section conferred jurisdiction on the Tribunal to award compensation, both for personal injury as well as damage to the personal property to party, arising out of the accident. The words, "claim for compensation in respect of damage to the property" mean, the damage to any property, involved in the accident, due to use of the motor vehicle. The loss of income, on account of vehicle remaining idle during, repairs, cannot certainly mean damage to the property of the owner. It may be the damage or loss to the owner. No doubt, it is true that the person who sustained the personal injury due to accident can claim for loss of income too. But, the words, "bodily injury" or "personal injury" cannot be equated to the

"damage to the property". Of course, Section 110F (present Section 175) of the Act bars the jurisdiction of the Civil Court to entertain any claim for compensation, which may be adjudicated upon, by the Claims Tribunal. But, since the loss of income, during the period when the vehicle was kept as idle for repairs, would not come under any of the three categories viz., (i) death, (ii) bodily injury, and (iii) damage to the property, of Section 110(1) (present Section 165) of the Act, the Civil Court would certainly have the jurisdiction to entertain the suit with reference to the claim for loss of income on account of the damage to the vehicle remaining idle during its repairs, which is altogether a different category in the language of the section, if so claimed. The power conferred on the Tribunal is restricted to decide about the claims of damage "to" property. So, the word "to" indicates the direct damage to the property alone.

13. In view of the discussion made above, I deem it fit to modify the impugned award by setting aside the award in respect of the compensation awarded to the claimants towards the revenue loss alone. In other respects, the award of the Tribunal is confirmed.

14. At the end of the argument, the learned Counsel for the Insurance Company would submit on the strength of the decision reported in 1996 (7) Supr 166 United India Insurance Co. Ltd. v. M.K.J. Corporation, that the award passed by the Tribunal to pay 15% of interest on the compensation may not be proper and the same may be modified by directing the Company to pay the interest at the rate of 12% per annum.

15. In the said decision, on the facts and circumstances of the case, the Supreme Court directed the Insurance Company to pay the interest at the rate of 12% per annum. But, that may not be helpful to the instant case, as in my view, the grant of 15% of interest cannot be said to be excessive. Moreover, in the decision reported in 1997 2 L.W. 575 Madheswaran and Anr. v. Rani and 3 Ors. the Division Bench of this Court held, when a similar question was raised, that the grant of 15% of interest per annum cannot be said to be excessive. Therefore, the Insurance Company is directed to pay the compensation to the claimants with interest at the rate of 15% per annum, as ordered by the Tribunal.

16. With these observations, the appeals are partly allowed. No costs.