

(2007) 07 AP CK 0030

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 169 of 2003

Pathuri Bheemeswararao

APPELLANT

Vs

A.P.S.R.T.C. and New India Assurance Company

RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A
Motor Vehicles Act, 1988 — Section 165, 166, 175

Citation : (2009) ACJ 1541 : (2008) 1 ALD 288 : (2008) 1 ALT 31

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : Kakara Venkata Rao, for the Appellant; B.G. Uma Devi, SC for Respondent No. 1 and V. Ajay Kumar, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—Heard learned Counsel for the appellant, learned Standing Counsel for respondent No. 1 and learned Standing Counsel for respondent No. 3 only, since respondent No. 2 is not necessary party, as per the cause title in the Civil Miscellaneous Appeal.

2. This Civil Miscellaneous Appeal is directed against the order and decree, dated 29.10.1997, passed by the Motor Accident Claims Tribunal-cum-III Additional District Judge, Kakinada, East Godavari District (for brevity "the Tribunal"), partly allowing the petition M.V.O.P. No. 909 of 1993, filed u/s 166 of the Motor Vehicles Act, 1988, and awarding a sum of Rs. 1,11,152-80 paise, as against the claim of Rs. 2,78,631-60 paise towards "cost of damages", "ex-gratia" and "loss of earnings" for three months, for the bus, belonging to the appellant, in a road accident that occurred on 29.03.1993.

3. Appellant is the owner of lorry bearing No. AHF-1519, respondent No. 1 is Andhra Pradesh State Road Transport Corporation (for brevity "the Corporation"), respondent No. 2 is the driver of lorry, belonging to the appellant, and respondent No. 3 is New India Assurance Company, in the O.P., before the

Tribunal.

4. For the sake of convenience, in this judgment, the appellant, respondent No. 1, respondent No. 2 and respondent No. 3 will be referred to as "the insured", "the Corporation", "the driver of lorry" and "the insurer", respectively.

5. The facts, in brief, are that there was collision between the bus bearing No. AEZ-4363, belonging to the Corporation, and the lorry bearing No. AHF-1519, belonging to the insured, due to which all the passengers were injured and the bus was damaged. The Corporation paid ex-gratia to the passengers and filed the O.P., against the insured, the driver of lorry and the insurer, seeking to award a total sum of Rs. 2,78,631-60 paise towards compensation under three heads viz., Rs. 12,552-80 paise towards repairs to the damaged bus, Rs. 2,57,478-80 paise towards loss of revenue and Rs. 8,600/- towards ex-gratia paid to various injured passengers.

6. Before the Tribunal, the insured and the driver of lorry remained ex parte.

7. The insurer had filed counter, denying the allegations in the O.P.

8. Basing on the respective pleadings of the parties, the Tribunal had framed the following issues for trial:

(1). Whether the accident had occurred due to the rash and negligent driving by the driver of the vehicle lorry AHF-1519?

(2). Whether the petitioner is entitled to the compensation amount and if so to what amount?

(3). To what relief?

9. The Tribunal, having considered the entire material, including the evidence, both oral and documentary, available on record, on issue No. 1 held that the accident had occurred due to the rash and negligence on the part of the driver of the lorry, on issue No. 2 held that the Corporation is entitled to a sum of Rs. 12,552-80 paise towards cost of repairs, Rs. 8,600/- towards ex-gratia paid to various passengers and Rs. 90,000/-, at the rate of Rs. 1,000/- per day, for keeping the bus idle for three months i.e., 90 days and, accordingly, awarded the said sums, fastening the liability on the driver of lorry and the insured and fastened the liability of the insurer only to the extent of Rs. 6,000/-. Aggrieved by the same, the Corporation has preferred the present Civil Miscellaneous Appeal.

10. The main contention of the Corporation is with regard to awarding of Rs. 90,000/- towards "loss of earnings", by the Tribunal, which has to be dealt with based on other incidental questions that the Tribunal has no jurisdiction to award compensation towards "loss of earnings" of the vehicle, in addition to repairs to it.

11. Sri K. Venkata Rao, learned Counsel for the insured, while contending that

the Tribunal has no jurisdiction to award any compensation towards damages and loss of earnings to the Corporation because of the damage caused to the bus, relies on the judgments of two learned single Judges of this Court in *Konala Maniyya Vs. K. Sambasivarao and others*, and *United India Insurance Company Ltd. Vs. K. Chandrasekharachari and Another*, wherein it was held that the Tribunal has no jurisdiction to enquire into the aspect of damages and that the Civil Court is the proper forum for claiming damages.

12. Therefore, I feel it appropriate to deal with the issue of jurisdiction first.

13. From a perusal of the judgment in *K. Maniyya's case* (1 supra), it appears that the learned single Judge had relied on the judgment in *G.M., Kerala State Road Trans, Corporation v. Saradamma* 1987 ACJ 926 wherein a Division Bench of High Court of Kerala at Ernakulam held that the Tribunal has no jurisdiction to entertain the claims for damages resulting from accident and that the Civil Court is the proper forum for claiming such claims.

14. From the judgment of the Division Bench in *Saradamma's case* (3 supra), it is obvious that Section 110-A of the Motor Vehicles Act, 1939, remains unamended and corresponds to Section 166 of the Motor Vehicles Act, 1988, and there was a proviso incorporated, which reads as under:

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.

15. From the said proviso, it is further obvious that if the damage claimed is beyond 2,000/-, an option had been provided to the claimant either to approach the Civil Court or to allow the Tribunal to adjudicate, even though the damages exceed Rs. 2,000/-.

16. In other words, the jurisdiction of the Tribunal was not ousted and it is only at the discretion of the claimant where to make such a claim i.e., either before the Tribunal or before the civil Court. The said decision of the Division Bench of High Court of Kerala at Ernakulam, in *Saradamma's case* (3 supra), was prior to introduction of the present Motor Vehicles Act, 1988, since the accident took place was covered under the old law, by interpreting and applying Section 110-A. But, it is obvious that the above said proviso, which is extracted above, is specifically omitted.

17. The purpose of such omission of the said proviso, as per which the civil Court has jurisdiction to award damage to property exceeding rupees two thousand, is to confer jurisdiction on the Tribunal to award "damages to the vehicle" and also "loss of income" u/s 166 of the Motor Vehicles Act, 1988, and further no pecuniary limitations were also provided under the new provision.

18. In *K. Chandrasekharachari's case* (2 supra), following the judgment in *K.*

Maniyya's case (1 supra), another learned single Judge of this Court had taken the same view.

19. Now, it is brought to the notice of this Court that a Division Bench of this Court in G. Md. Masoom Vs. S.K. Khader Vali and Another, , while considering the scope of Sections 165, 166 and 175 of the Motor Vehicles Act, 1988, held that "damages to the vehicle" and also "loss of income" can be claimed by the insured.

20. For convenience and ready reference, it will be useful to extract the relevant portion of the said judgment, which is thus;

In all the aforesaid decisions, it is dearly stated that the owner is entitled to claim damages for the vehicle involved in the accident. The civil court has no jurisdiction to award compensation after the amended provisions of Section 165 and 166 of the Act which have come into force after Motor Vehicles Act of 1988 as there is express bar of entertaining by civil court and the civil court cannot entertain a claim in respect of damage caused to the vehicle involved in the accident. The owner has been conferred with a right of presenting an application for compensation u/s 166 of the Act in respect of damages. The only thing that has to be decided is whether computation can be made in respect of business loss, which is part of the policy of insurance and whether the Tribunal has got jurisdiction under the head - damages or compensation. It is clear from the principles laid down by the decisions rendered by the English Courts that the loss occasioned due to non-availability of the vehicle under repair can be awarded during the period of repair. It is not stated in those decisions that the entire loss of business income can be entertained or awarded. What is contemplated under the law is that the loss of income sustained during the period of vehicle under repair is an incidental loss, which resulted due to damage to the vehicle, and it can be awarded and the Tribunal alone can entertain such a thing. Section 166 mentioned about the application to be made for compensation. Section 165 says that compensation can be claimed for damage to any property of a third party so arising out of the use of motor vehicle. Does it cover the loss of incidental income of the owner? It must be held that loss of incidental income due to non-availability of vehicle, which is under repairs is covered. That has to be taken into consideration while awarding compensation. It cannot be stated that the incidental loss sustained by the owner due to damage to the vehicle and due to non-availability of the vehicle cannot be taken into consideration. The court has to take into consideration about the ousting of civil courts jurisdiction for claiming compensation in respect of damage to any property. The incidental loss of income has to be taken into consideration while awarding compensation for damage to property.

21. Though the judgment of the Division Bench of this Court in G. MD. Masoom's case (4 supra) was not available when the judgment in K. Maniyya's case (1 supra) was rendered by the learned single Judge of this Court, it is very much available when the judgment in K. Chandrasekharachari's case (2 supra) was

rendered by another other learned single Judge.

22. But, unfortunately, during the course of hearing, judgment of the Division Bench of this Court in G. MD. Masoom's case (4 supra) had not been brought to the notice of the learned single Judge, who rendered the judgment in K. Chandrasekharachari's case (2 supra).

23. Therefore, I am in agreement with the judgment of the Division Bench of this Court in G. MD. Masoom's case (4 supra) and unable to accept and follow the judgments (1 and 2 supra), rendered by two learned single Judges of this Court.

24. Consequently, I am to hold that the Tribunal has jurisdiction not only to award "damages to the vehicle" but also award compensation for "loss of income".

25. Coming to the merits of the case on hand, it is to be seen that the Tribunal had awarded a sum of Rs. 90,000/- towards "loss of earnings" of the bus because of non-plying for a period of about 90 days and the loss was estimated at the rate of Rs. 1,000/- per day.

26. Now, the question is - to what extent the said quantification, made by the Tribunal, is justified?

27. For that, it is important for this Court to look into the evidence on record. P.W. 1, the Chief Inspector of the Depot, who was examined on behalf of the Corporation, has categorically stated that the average income from the bus would be more than Rs. 3,000/- per day and on that particular day of accident, the collection was about Rs. 2,787/-. It is his further evidence that "in that particular route, another spare bus was run and that route was not kept idle for a period of three months".

28. From the evidence of P.W. 1, it is obvious that the Corporation has not sustained any "loss of income", during that particular period.

29. That apart, it was a spare bus that was pressed into service during the period when the bus in question was met with an accident and was under repairs. It is not as if, in that route, that was the only bus, which met with an accident, and because of that the Corporation had suffered "loss of income".

30. As admitted by P.W. 1, a spare bus had been pressed into service forthwith and has been running in that route. It further implies that there was no reduction in the trips of the bus, which met with an accident, and that has been compensated by utilizing the services of another spare bus. Therefore, there was no loss of trips and "loss of income" to the Corporation.

31. Further, it should be specifically established by the Corporation that because of damages to the vehicle, the same could not be plied and consequently there was a substantial reduction in the trips of bus, which resulted in "loss of income", certainly is not the case of the Corporation. Since the business of Corporation had been restored to its original position, by way of assigning

services to another spare bus, there was no "actual loss" much less "financial loss" to the Corporation and, therefore, the question of awarding compensation towards "loss of income" also does not arise.

32. In view of the evidence of P.W. 1, it is not for the Corporation to contend that there was "loss of income" because of non-availability of bus for three months. Further, the other evidence also cannot substantiate the stand of the Corporation that it had suffered "loss of income". Therefore, I am of the view that though the Corporation had suffered loss, in the light of the evidence of P.W. 1, who is the Chief Inspector of the Depot of the Corporation, it is too far, for this Court, to arrive at a conclusion that the Corporation had actually suffered any "loss of income".

33. Therefore, disagreeing with the reasoning, assigned by the Tribunal, and recording a finding that the Corporation insofar as awarding of an amount of Rs. 90,000/-, towards "loss of income", I am to hold that the same is liable to be set aside and, accordingly, set aside. The compensation awarded under the other heads shall stand confirmed.

34. In the result, the Civil Miscellaneous Appeal is allowed in part, to the extent indicated above. No order as to costs.