

(2014) 04 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Writ Petitions Nos. 10052, 10058, 10061, 10062, 10063, 10064, 10065, 10066 and 10456/2011

Phool Singh and Others

APPELLANT

Vs

Bharat Singh (Union of India) and Others

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2015) 2 CDR 952

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : M.C. Jain, Advocate, for the Appellant; Shailesh Prakash Sharma, G.S. Brijwasi and R.P. Vijay, for the Respondent

Final Decision : Disposed off

Judgement

M.N. Bhandari, J. These writ petitions have been filed against the order dated 11th January, 2011 whereby application moved under Section 140 of the Motor Vehicle Act (for short "M.V. Act") was dismissed and at the same time, the claim petition was returned for its filing to the Court having jurisdiction. Learned counsel for the petitioner/s submits that though accident took place in Rajgarh, district Churu and all the other respondents other than the Railways are having their office or reside in the State of Haryana but as the office of General Manager of Zonal Railway is in Jaipur, thus claim petition so as the application under Section 140 of the M.V. Act was rightly maintained before the Motor Accident Claims Tribunal, Jaipur. The application under Section 140 of the M.V. Act should not have been dismissed in view of the above so as the return of claim petition for want of jurisdiction. Accordingly, the impugned order deserves to be set aside.

2. Learned counsel for the respondent - Railways, on the other hand, submits that when accident did not take place in the jurisdiction of MACT, Jaipur and even the respondents are having office at Haryana, which includes even the office of the Railways, hence, claim petition was rightly returned to the claimant so as the

dismissal of the application under Section 140 of M.V. Act.

3. I have considered the submissions made by learned counsel for the parties and perused the records.

4. The MACT passed two orders on 11th January, 2011. The first order was on an application under Section 140 of the M.V. Act. For ready reference, the said provision is quoted hereunder:

"40 (Sic 140). Liability to pay compensation in certain cases on the principle of no fault.--1. Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

2. The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of twenty-five thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twelve thousand rupees.

3. In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

5. The perusal of the provision quoted above reveals that the liability to pay compensation on the principle of no fault can be imposed but it can be against the owner of the motor vehicle and when more than one vehicle is involved, then it can be against the owners of the vehicles and liability can be shared jointly and severally. In the instant case, the accident took place between the motor vehicle and a train. In view of above, so far as the application under Section 140 of the M.V. Act, is concerned, it was maintainable against the owner of the motor vehicle and not against the Railways in view of Section 140 of the M.V. Act which imposes liability on the owner of the vehicle/motor vehicle. It is keeping in mind the definition of "motor vehicle" given under the Act and is quoted hereunder for ready reference:

"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from

an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters."

6. In view of the definition quoted above, the "motor vehicle" or "vehicle" is a vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which body has not been attached and a trailer but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters upon fixed rates.

7. The definition of "owner" is also given and is quoted hereunder:

"owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

8. The owner of the vehicle is one in whose name the vehicle stands registered and where such person is minor, the guardian of such minor. In view of definition of "owner" and "motor vehicle" so far as Section 140 of the M.V. Act is concerned, it makes it clear that the aforesaid would not be maintainable against the Railways but it can definitely be entertained against the owner of the motor vehicle as Rail is not covered by the definition of vehicle/motor vehicle.

9. In view of above, I am of the opinion that dismissal of the application was not proper against the owner of the vehicle, though it was not maintainable against the Railways. Section 140 of the M.V. Act applies only against the owner of motor vehicle/vehicle as per the definition given under the Act itself. The impugned order dismissing the application under Section 140 of the M.V. Act against all the respondents is thus, not proper. The order aforesaid is quashed against other respondents than the Railways, against whom, the application under Section 140 of the M.V. Act was not maintainable, thus to that extent, order will stand.

10. The issue, however, remains" further that as to whether the Claims Tribunal at Jaipur was having jurisdiction to entertain the claim petition as the accident took place in village Rajgarh, Churu and all the respondents other than the Railways are having their office in the State of Haryana. It has not come on record as to the train involved in the accident was under control of the General Manager of North-Western Railway or was running under the General Manager of other Zonal Railway. In fact, those facts can be brought on filing of reply by the Railways.

11. Accordingly at this stage, dismissal of the claim petition with return of file cannot be said to be proper. The impugned order dated 11th January, 2011 showing claim petition to be not maintainable for want of jurisdiction of the Court and even return of file at this stage cannot be said to be proper. Accordingly, the impugned order is quashed. The respondent - Railways are given liberty to submit reply, which includes even the objection regarding maintainability of claim petition before the MACT, Jaipur after giving all the facts specially in regard to the train involved in the accident whether it was controlled by the General Manager of North-Western Railways or by any other zonal railway. On submission of reply, the Tribunal would first decide the issue of jurisdiction and thereafter proceed in the matter, if it falls in the jurisdiction of the Tribunal. In case, it is found that claim petition is not maintainable before the MACT, Jaipur then it will return to the claimant with liberty to maintain it before the MACT having jurisdiction. With the aforesaid, the writ petitions stand disposed of.