
(1992) 01 AP CK 0002

In the Andhra Pradesh High Court

Case No : A.A.O. No"s. 721, 602, 892, 934 and 1067 of 1989

Pilli Kamaraj and Others

APPELLANT

Vs

Sajja Chandramouli and Others

RESPONDENT

Date of Decision : 21-01-1992

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 110B

Citation : (1993) ACJ 232

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : Syed Shareef Ahmed, for the Appellant; T. Sunil Choudary and K. Ramakrishna Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishna Rao, J.—The claimants approached the Motor Accidents Claims Tribunal for compensation u/s 110-A of the Motor Vehicles Act.

2. The facts of the case are that on 28.2.1987 when the jeep was stuck up on the railway track due to mechanical failure, a passenger train came and the engine smashed the jeep, which ultimately resulted in the death of five persons. The place where the accident took place is a railway track which is connected to a highway with unmanned level crossing. In the case of unmanned level crossing, it is the duty of the driver of the railway engine to see whether any person or object was proceeding to the unmanned level crossing. Similar degree of diligence cannot be expected from the railway engine driver in the case of a level crossing where it has been regulated by mechanical process or by a person. Since the pleadings indicate that the accident took place on an unmanned level crossing, the vehicle got stuck up on the railway track due to failure of brakes and the railway engine came and hit the jeep resulting in the death of five persons, it is a case where the competent court has to consider whether composite negligence is there or not, if there is any composite negligence what is the percentage or the degree of negligence between the Railways and the driver

of the jeep. Without impleading proper and necessary parties, the court is not expected to decide the degree of negligence that resulted in the accident. The scheme of the Motor Accidents Claims Tribunal, as is contemplated u/s 110-A of the Motor Vehicles Act, is that the Tribunal has to hear the parties, holding enquiry into the claim and to pass an award, determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them. The persons against whom the Tribunal is competent to fix the liability are the persons who are amenable to its jurisdiction and the Tribunal has no jurisdiction to fix the liability against the persons who are not parties before it.

3. So far as the Railway Claims Tribunal is concerned, it has to consider the claims of the persons that arise on account of the rash and negligent act of the drivers concerned. The Railway Claims Tribunal, constituted under relevant Act, has no jurisdiction to determine the liability of the driver, owner or insurer in considering the compensation that has to be paid. So far as the Motor Vehicles Act is concerned, in a case of composite negligence on the basis of the pleadings, the Motor Accidents Claims Tribunal is disabled to pass any award against the railway administration and similarly the Railway Claims Tribunal is disabled to determine the compensation with regard to the driver, owner and insurer of the vehicle concerned. When both the Tribunals are disabled to determine the entire issue, i.e., whether the accident took place due to the rash and negligent driving of the driver of the railway engine or the motor vehicle and in the absence of any forum that is available to determine the composite negligence, it is only the civil court that is competent to decide the nature and degree of composite negligence and all the parties can be joined in such proceedings.

4. In all the decisions cited before me, namely, Union of India Vs. Smt. Sushila Devi and others, , Gujarat State Road Trans. Corpn. v. Union of India 1987 ACJ 734 , Swaranalata Dutta Barua v. National Transport India Pvt. Ltd. AIR 1974 Gauhati 31 and Rajpal Singh v. Union of India 1986 ACJ 344 (P&H), the basic aspect of jurisdiction and the rights of the parties to be determined in a given circumstance have not been considered by them and the courts are merely guided by the language used in Sections 110-B and 110-E of the Motor Vehicles Act or some other provisions or the principles that have been enunciated by the foreign courts which are not necessary for the purpose of determining the issue which has to be decided on the basis of pleadings. The basic principle is, as enunciated by the Privy Council or the House of Lords, that the competent court can try and decide the issue only when all the proper and necessary parties are impleaded.

5. I am in agreement with the view, though not with the reasoning, given in Union of India v. Bhimeswara Reddy 1988 ACJ 660 (AP), that in a case where a claim is made on account of the death of the persons who are travelling in a

motor vehicle due to the negligent act of the drivers of railway engine and a motor vehicle, the proper forum is civil court.

6. Hence, the Motor Accidents Claims Tribunal has no jurisdiction to decide the nature and degree of negligence in a case where on pleadings there appears to be composite negligence involving the railway administration and motor vehicle.

7. In a case where the parties are misled on account of different interpretations of different High Courts or approach the Motor Accidents Claims Tribunal which is incompetent to pass award, they are entitled to deduct the period of time that has been spent in pursuing this remedy and if they so desire, they can approach the civil court.

In the result, the appeals are dismissed. No costs.