
(1984) 07 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous (First) Appeal No. 14 of 1982

Raj Kumar

APPELLANT

Vs

Mahendra Singh and Others

RESPONDENT

Date of Decision : 12-07-1984

Acts Referred:

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

Citation : AIR 1985 MP 94 : (1984) JLJ 696

Hon'ble Judges : P.C. Pathak, J;C.P. Sen, J

Bench : Division Bench

Advocate : P.S. Das, for the Appellant; R.P. Verma, for the Respondent

Final Decision : Partly Allowed

Judgement

P.C. Pathak, J.—This appeal, u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") is directed against an award dt 15-12-1981, passed by Shri V. D. Bajpai, Motor Accident Claims Tribunal Seoni, in Motor Claims Case No. 18 of 1981, whereby the appellant-claimant prays for enhancement of compensation against the respondents.

2. The appellant filed an application u/s 110-A of the Act for compensation of Rs. 1,04,847/- under different heads, out of which the Tribunal accepted the claim for Rs. 6,200/- only together with interest @ 6% from the date of application till realisation, against the respondents.

3. The facts giving rise to the claim are that on 23-5-1980, at about 1.30 p.m., the appellant's truck MFC 474, loaded with wooden logs, was coming on the National Highway from Khawasa towards Seoni and, at the relevant time, the truck was ascending Kurai Valley. Another truck MPG 2192, owned by respondent 1 and driven by respondent 2, while going down in the said valley, violently dashed and pushed behind the truck of the appellant. After some distance, both the trucks got entangled in such a manner that they could not move further. As a result of the impact, the appellant's truck was badly damaged and logs were

scattered nearby. The appellant claimed compensation against the respondents as detailed below :

(i) Repairing charges of truck

Rs. 34,847/-

(ii) Loss of business

Rs. 35,000/-

(iii) Physical and mental pain

Rs. 35,000/-

Rs. 1,04,847/-

4. Respondents, namely, the owner and the driver of the offending truck remained ex parte. Respondent 3, the insurer of the truck of respondent No. 1, alone filed the written statement denying all the allegations in the claim petition.

5. The Claims Tribunal held that truck MPG 2192 was driven by respondent 2 rashly and negligently as a result of which the appellant's truck MFC 474 was damaged. The Tribunal allowed a sum of Rs. 600/- towards expenses incurred by the appellant for repairs of the vehicle. The Tribunal also allowed compensation for loss of income at the rate of Rs. 800/- p.m. amounting to Rs. 5,600/-. In all, Rs. 6,200/- with interest at 6% per annum, from the date of application, were allowed.

6. Before this Court also respondents 1 and 2 did not appear. We heard counsel for the appellant and that of respondent 3, Insurance Company.

7. On behalf of the appellant, it was submitted that the compensation allowed to him towards the repairs of the vehicle as also for loss of business are too low. It was further submitted that the Tribunal was wrong in not allowing any compensation towards the physical and mental pain. As against this, the learned counsel for the Insurance Company supported the award passed by the Tribunal and submitted that no interference by this Court was called for.

8. The finding of the Claims Tribunal that the accident took place solely on account of negligence of respondent 2 was not challenged. It is also not in dispute that the accident did not involve death or bodily injury of anyone. The appellant's claim was restricted to claim for compensation in respect of repairs of the vehicle, loss in business on account of the vehicle remaining idle during repairs and physical and mental pain. The Tribunal did not allow any compensation for the alleged physical and mental pains, and in our opinion, rightly so. There is not an iota of proof in support of the claim under this head.

9. The next question for consideration is whether the claim for damage to the truck alone is maintainable and if so, what should have been the just and proper compensation. By Amendment Act No. 56 of 1969. Sub-section (1) of Section

110 of the Act was amended so as to confer jurisdiction of a Claims Tribunal to adjudicate upon claims for compensation in respect of accidents involving "damages to any property of a third party so arising, or both". Proviso to Sub-section (1) of Section 110 of the Act was also amended so as to give an option to the claimant to lodge the claim before the Claims Tribunal or a civil Court if the claim for compensation in respect of damage to property exceeding rupees two thousand. After this amendment, it is clear that a Claims Tribunal constituted u/s 110 of the Act has jurisdiction to entertain claim in respect of damage to property which includes a vehicle. See : Banwari Lal v. Vishnunarayan. 1975 Acc CJ 40 (Madh Prat and Manohar Singh v. Canara Motor General Insurance Co. 1977 Acc CJ 280 (Madh Pra). Again by another Amendment Act No. 47 of 1978 in Sub-section (1)(a) of Section 110-A of the Act, words "by the owner of the property" were inserted. A reading of these sections makes it clear that a claim for loss or damage to the property simpliciter is within the cognizance of the Tribunal. It is also not correct to say that the claim for compensation exceeding Rs. 2,000/- towards the damages of the property cannot be filed before the Claims Tribunal. Proviso to Section 110(1) of the Act lays down that all claims relating to damages to the property can be made before the Claims Tribunal. However, if the claim for compensation towards damage to the property exceeds Rs. 2,000/-. option is available to a claimant to lodge the claim before the Claims Tribunal or before a civil Court. This option can be exercised only when the claim for compensation in respect of damages to any property exceeds Rs. 2,000/-. The appellant's claim for Rs. 34,847/-. by way of compensation in respect of damage to his truck, was within the competence of the Claims Tribunal.

10. The next question for consideration is the amount which ought to be allowed to the appellant for repairs of his truck. The Tribunal allowed a sum of Rs. 600/- only as proved by A. W. 3 Durga Prasad and Ex. A-8. The appellant as A. W. 1 stated that the entire truck was damaged and that he spent Rs. 35000/- for its repairs. In cross-examination, he admitted that documents Exs. A-1 to A-13, filed by him, were the quotations. He also admits that he had not filed any bill. However, on a careful examination of documents viz. Ex. A-10 for a sum of Rs. 150/- and Ex. A-13 for a sum of Rs. 300/-, we find that they are not quotations but are receipts for the amounts paid by the appellant. The expenses evidenced by Exs. A-10 and A-13 (total Rs. 450/-) should not have been disallowed. The appellant's claim for compensation for Rs. 450/- thus stands allowed. Lochanlal (A. W. 2) stated that he had given quotation Ex. A-4, whereafter he carried out the repairs. He had nowhere stated what amount was exactly paid to him by the appellant. His statement is of no value. Abdul Rajik (A. W. 3) stated that he gave quotation Ex. A-9 and thereafter, in lieu of carrying out the repairs, he received Rs. 2200/-. In cross-examination he admits that he had passed a receipt, which was not filed in the Court. For want of receipt, his oral statement alone cannot be believed. Sitaram (A.W. 4) stated that he fixed the glasses in the truck and received Rs. 405/- as acknowledged by him in Ex. A/5. In cross-examination, he admitted that Ex. A/5 is not a bill or receipt but only a quotation. His statement

deserves to be rejected. Nizamuddin I A. W. 6) claims to have painted the truck body: but he neither proved the amount, nor the claimant filed the receipt passed by him. His statement is thus rendered useless. In view of the foregoing discussion, we feel that in addition to compensation of Rs. 600/- allowed by the Tribunal, the appellant has also proved expenses of Rs. 450/- incurred by him. The appellant, however, failed to prove other expenses. An inference against the appellant has to be drawn for not filing the original receipts and vouchers. Thus, the appellant is found entitled to Rs. 600/-allowed by the Tribunal and Rs. 450/- allowed by us. total Rs. 1,050/- only. The claim for the rest of the expenses allegedly incurred by him for repairs of the truck are hereby rejected.

11. The appellant also claimed compensation for loss suffered by him in his business on account of the truck remaining idle during repairs. The Tribunal awarded Rs. 5,600/- as compensation towards loss of business. There is no cross-objection and hence this award has become final. The appellant submitted that the award on this count should have been as per his claim. In order to decide, whether the compensation for loss of business can be enhanced, we have to examine whether a claim for compensation on account of loss in business due to the truck remaining idle during repairs can be entertained by the Claims Tribunal. In *Shankarlal v. M.P.S.R.T.C.* IW Acc CM 447. a single Bench of this Court awarded damages for loss of income for 20 days during which the damaged truck could not be gainfully used. In this case, the question whether the Claims Tribunal has jurisdiction to entertain a claim of this nature was not canvassed. Upon going through that decision, we find that there is no discussion whether a claim for loss of business could be entertained by the Claims Tribunal. In our opinion, it does not lay down correct law. Another case dealing with the question is *Sri Ranganathar Trans. (P) Ltd. v. Tanjore Co-op-Marketing Federation*. 1982 Acc CJ 199 : (AIR 1982 NOC 206) (Mad). In that case, a suit, claiming compensation for damages to the lorry involved in an accident and for loss of income arising from the said vehicle which was kept idle during repairs, was filed in the civil Court. An objection was raised to the jurisdiction of the civil Court on the ground that the claim, as laid, could be lodged before the Claims Tribunal and not before the civil Court. The Munsifs Court held that the civil Court has no jurisdiction because Section 110-B (should be 110-F) of the Motor Vehicles Act, 1939, clearly bars the jurisdiction of the civil Court in that any claim made with respect to collision that takes place between two vehicles or damage to any extent as a matter of fact may be made only by way of application u/s 110 of that enactment. But on appeal against the said order, the lower appellate Court partly reversed the judgment of the trial Court, holding that the civil Court has got jurisdiction to try claim for loss of business, because it is only compensation claimed for not having facilitated the lorry that got damaged in the accident, and as such the said claim has nothing to do with the claim contemplated under the provisions of Section 110 of the Act. The lower appellate Court thus confirmed the dismissal of the suit with regard to claim for compensation for damages caused to the vehicle but set aside the dismissal of the suit with regard to the

claim for loss of income on account of the lorry being kept idle during repairs. The defendants filed a revision challenging the order of remand passed by the lower appellate Court and submitted that Section 110-F of the Motor Vehicles Act is a bar to the jurisdiction of civil Court to entertain the claims by way of suit. A single Judge of the Madras High Court held that Section 110-F, as amended by Act No. 56 of 1969, clearly shows that the claim now made, as a matter of fact, all the claims made in the suit, can be entertained only by way of an application u/s 110 of the Act by the Tribunal specially constituted for the purpose of adjudicating upon such claims and Section 110-F clearly bars the jurisdiction of the civil Court with respect to such claims by way of a suit. The learned single Judge took this view since in his opinion, the phrase "any claim" in Section 110-F of the Act includes claims with respect to the vehicle not being facilitated. In this view of the matter, the revision was allowed, the judgment of lower appellate Court was set aside, and that of the Munsifs Court holding that the civil Court has no jurisdiction to entertain the suit was confirmed. The claims Tribunal relied upon *Niranjan Lal Ram Chandra Vs. Ram Swarup Bhagwan Singh and Another*, wherein it was held :

" In a suit for damages for damage caused to plaintiffs motor truck due to negligent act of the defendant the loss suffered by the plaintiff on account of the truck remaining idle for a month because of the accident cannot be said to be remote but is directly referable to the negligent act of the defendant and the plaintiff would be entitled to claim such damages. So also the plaintiff would be entitled to damages on account of depreciation of the truck."

The aforesaid observation was made in second appeal arising out of civil Suit. The question of jurisdiction of Claims Tribunal was not involved in it. Another case relied upon by the Tribunal is *Dharmalinga Mudaliar Vs. N. Mohamed Ebrahim and Another*, . In this case also, the point relevant for decision of this appeal was not raised and it was assumed that such a claim was maintainable. Thus, both the aforesaid cases relied upon by the Claims Tribunal are of no assistance. As regards the single Bench decision of Madras High Court in *Ranganathar Trans. (P) Ltd. (supra)*, we regret we are unable to agree with the view taken in that case.

12. Section 110(1), as amended by Act No. 56 of 1969, reads as under :

"A State Government may, by notification in the Official Gazette, constitute one or more Motor Accident Claims Tribunals (hereinafter referred to as 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." (underlining is ours)

This section empowers the State Govt to constitute Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving, amongst others, "damages to any property" of a third party. In the proviso to Sub-section (1) of Section 110 of the Act, the words used are : "a claim for compensation in respect of damage to property". We are of the opinion that the word "damages" or "damage" used in Section 110 of the Act means injury to any property, involved in the accident due to the use of the motor vehicle. The use of the word "damage" in plural in the body of Section 110(1) and that of singular in the proviso does not make any difference. The Claims Tribunal constituted u/s 110 of the Motor Vehicles Act is empowered only to adjudicate upon claims for compensation in respect of accidents involving "damages to any property" arising out of use of the motor vehicle. Therefore, at best, the claim which can be lodged and adjudicated upon by the Claims Tribunal contemplated by the section is claim for compensation for damages resulted in the vehicle due to the accident. Usually a claim of such a nature is made to recover expenses which may be or might have been incurred for repairs or restoration of the vehicle to its original condition. A claim for "loss of business" on account of vehicle remaining idle during repairs is not a "damage to the property" of the owner, but may be damage or loss to the owner. We do not think that the Claims Tribunal is empowered u/s 110 of the Motor Vehicles Act to entertain such a claim. Claims for compensation on account of the accident involving death or bodily injury to the person as also the damage to any property could always be laid down before a civil Court being actions in tort. However, in order to provide speedy and cheap remedy to sufferers, a special provision has been made empowering the State Government to constitute Claims Tribunal for adjudicating claims for compensation on account of death, bodily injury or damage to property arising from accidents. So far as a reference to Section 110-F of the Act barring the jurisdiction of the civil Court is concerned, we find that it bars the civil Court to entertain any question relating to "any claim for compensation which may be adjudicated upon by the Claims Tribunal". This section bars the jurisdiction of the civil Court only in respect of such matters which can be adjudicated upon by the Claims Tribunals. The words "any claim for compensation" in this section mean any one of the classes of the claims specified in Section 110(1) of the Act, namely, (1) death (2) bodily injury and (3) damage to the property. After the amendments made by the Amending Acts No. 59 of 1969 and No. 47 of 1978, as held above by us, there cannot be any doubt that a claim simpliciter for damage to the property can be made before the Claims Tribunal. This also confirms our conclusions. A claim for compensation for "loss of business" on account of the damaged vehicle remaining idle during its repairs cannot be laid before the Claims Tribunal. A party aggrieved on this count will be free to file a civil suit and Section 110-F of the Act does not bar the jurisdiction of civil Court.

13. "In view of our conclusion that claim for compensation for loss of business on account of damaged vehicle remaining idle cannot be adjudicated upon by the Claims Tribunal, we cannot accept the argument of the appellant to enhance the award under this head. As stated above, the Claims Tribunal awarded Rs. 5600/- as compensation towards loss of business. Since no appeal or cross-objection was filed against this part of the award, it has become final and we cannot interfere with the same.

14. "Consequently, this appeal is allowed in part. The award made by the Claims Tribunal allowing compensation of Rs. 600/- towards damage to the truck is modified to Rs. 1050/-. Interest on this sum @ 6% per annum from the date of application, i.e. 20-12-1980, is also allowed. The respondents Nos. 1 to 3 are liable to pay the amount jointly and severally. In view of the partial success, the parties are directed to bear their own costs in this Court. The costs awarded by the Claims Tribunal shall be borne as directed by that Court.