

(1985) 01 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 56 of 1980

Rajasthan State Road Transport Corporation

APPELLANT

Vs

Virendrakumar Singh

RESPONDENT

Date of Decision : 31-01-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110A, 110A(1)

Citation : AIR 1985 Raj 170 : (1985) 2 WLN 355

Hon'ble Judges : S.S. Byas, J

Bench : Single Bench

Advocate : M.S. Singhvi, for R.N. Munshi, for the Appellant; J.S. Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Byas, J.—This appeal u/s 110D, Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") is directed against an award of the Claims Tribunal, Jodhpur dt. 26-2-1980 directing the appellant and its driver Gyanchand to pay a sum of Rs. 51,299/- as compensation to the respondent Virendrakumar Singh.

2. Briefly stated, the relevant facts giving rise to this appeal are that Virendrakumar Singh is a registered owner of truck RJL 8835. It was carrying stone-slabs from Jodhpur to Jaipur on 21-10-1974. Nandlal was the employed driver on this truck. He was driving the truck on that day. Mukhram (PW 4) was also there in the truck as the second driver. He was sitting by the side of Nandlal. Poonaram Jat was also there in the truck. When the truck reached near Dangiawas. Nandlal noticed bus RRM 618 coming from the opposite direction at a fast speed. Seeing the bus, Nandlal took the truck on the extreme left edge of the road. He completely lowered down the speed of the truck and took it on the Kacchaside track of the road. Gyanchand was driving the bus. The bus belonged to the Corporation. He was driving it so rashly and negligently that it swerved on the right side (wrong side) of the road and dashed against the truck on the Kaccha track. It resulted in a severe and head-on collision between the truck and

the bus. As a result, the driver of the truck (Nandlal) and Poonaram passed away instantaneously on the spot. Many persons sitting in the bus also sustained injuries -- The impact of the collision was so severe that the truck got completely damaged, and the cost of repairs as per estimate given in the application came to Rs. 51,150/-Virendrakumar Singh presented an application u/s 110-A of the Act before the Tribunal, claiming a sum of Rs. 69,050/-. It was alleged that the accident had taken place due to the rash and negligent driving of the bus by its driver Gyanchand. A sum of Rs. 51,150/- was claimed as costs of repair and a sum of Rs. 17,900/- was claimed as loss of normal daily income at the rate of Rs. 1007- per day from the date of the accident to the date of filing the application. Thus, a sum of Rs. 69,050/- was claimed as compensation. The application was opposed by the appellant as well as its driver Gyanchand through separate written statements. Both of them admitted the accident, but denied that it was on account of rash and negligent driving of the bus by its driver Gyanchand. It was pleaded that the accident had taken place on account of rash and negligent driving of the truck by its driver Nandlal. The quantum of compensation was also challenged. Necessary issues were raised. It may be mentioned that Satya Narain and Chandidan, who were travelling in the bus and who had sustained injuries in this accident and Mukhram, who was the second-driver in the truck, also, presented applications for compensation before the Tribunal. There were, thus, four claims before the Tribunal, arising out of the same accident. Though they were not consolidated, common evidence was recorded in all of them. On the conclusion of trial, the Tribunal held that the accident and collision had taken place on account of the rash and negligent driving of the Corporation bus by its driver Gyanchand. The Tribunal further held that the loss sustained by Viredrakumar Singh on account of damages caused to the truck was of Rs. 51,299/-. This amount was taken as the costs of repair of the truck. The Tribunal, therefore, awarded a sum of Rs. 51,299/- as compensation and directed the appellant and its driver Gyanchand to pay the same to the claimant. Aggrieved against the said award, the Corporation has come up in appeal.

3. Gyanchand, who was impleaded as a respondent in the appeal passed away during its pendency. His name was consequently deleted from the cause title of the appeal.

4. I have heard the learned counsel for the parties and perused the record carefully.

5. In assailing the award, learned counsel appearing for the Corporation raised three contentions, namely : --

1) the finding of the Tribunal that the accident had taken place due to the rash and negligent driving of the bus by its driver Gyanchand was wholly erroneous:

2) the compensation has been assessed exorbitantly and

3) the Tribunal had no jurisdiction to entertain the claim and award the compensation. The claim in respect of damages to the property was beyond the

jurisdiction of the Tribunal.

6. It would be, therefore, proper to take up these contentions at seriatim.

Re : 1-- So far the Tribunal's finding on the question of rash and negligent driving of the bus by its driver Gyanchand is concerned, I have held in S. B. Civil Misc. Appeal No. 55/80 (Rule S. Rule T. C. v. Chandidan decided today on Jan. 31, 1985) that the collision between the truck and the bus had taken place on account of rash and negligent driving of the Corporation bus by its driver Gyanchand. For the reasons mentioned therein, the finding of the Tribunal that the accident had taken place on account of rash and negligent driving of the bus by its driver Gyanchand is upheld. The first contention thus fails.

7. Re : 2 -- it was argued that the compensation has been assessed exorbitantly and extravagantly. There is no material on record to show that a sum of Rs. 51,299/- would be the cost of repairs of the truck. It was, on the other hand, contended on behalf of the owner of the truck that as per estimates Ex. 20, Ex. 22 and Ex. 23, the estimated cost of the repairs comes to Rs. 51,299/-. As such, the aforesaid amount was rightly allowed as compensation by the Tribunal. I have taken the respective submissions into consideration.

8. The claimant has submitted the various estimates Ex. 20. Ex. 21. Ex. 22 and Ex. 23 showing the damages to the truck and the amount likely to be spent in its repairs. The general rule for awarding compensation in respect of damages to the property, when the property has been partially damaged, is the estimated cost of repairs. A person, whose property has been damaged in an accident covered by Section 110 of the Act is entitled to full compensation for restoring the property damaged to its original condition. That means, the cost of repairs is to be awarded to the claimant. To prove the loss incurred in respect of the property, the claimant is required to produce the estimates and vouchers.

9. In the instant case, the claimant has examined himself and two witnesses: P. W. 2 Rule D. Shah and PW 9 Raj Kumar. He has filed the estimate Ex. 20. Ex. 21. Ex. 22 and Ex. 23. The claimant Virendrakumar Singh (PW 1) deposed that as a result of collision, his truck had become a wreck. He went to the persons who repair the trucks and obtained vouchers F4. 20 to Ex. 23 from them. P. W. 2 R.D. Shah is the Manager in United Motors. Jaipur.

He prepared estimate Ex. 20. He stated that the price of the articles mentioned therein is according in price list issued by the manufacturer of those parts. Ex. 20 is for a sum of Rs. 31,459.35 p. PW 9 Rajkumar runs a repair workshop of the motor vehicles. He deposed that he inspected truck RJK 3385. According to him he prepared the estimate Ex. 22 of the repairs which the truck required. The labour charges for the repair work has been shown as Rs. 1050/- in Ex. 22. Ex. 23, which has been obtained from Autobody Centre. Jaipur, shows that the fabrication of driver's cabin etc. and the body of the truck would require a sum of Rs. 17,500/- The various photographs Ex. 2 10 Ex. 18 show that the truck has been completely damaged and required extensive repairs. The truck was

inspected on 22-10-1474 i.e. the next day of the accident by the police Mechanic Takhatsingh I PW 2). He prepared the inspection note Ex. 1. He stated that the truck was found damaged as per details given in his report Ex.1. When the estimates Ex. 20 to Ex. 23 and the inspection report Ex. 1 are taken into consideration, it is amply clear that the estimates obtained by the claimant from various workshops relate to the damages caused to the truck, as mentioned in the inspection report. There is variance between the damages to the truck shown in Ex. 1 and the estimates procured by the claimant. When the amounts mentioned in estimates Ex. 20 Ex. 23 are added, the total comes to Rs. 51,299/- The claimant was entitled to have this compensation. This amount fairly represents the estimated cost of repairs. It may be mentioned that no evidence has been adduced in rebuttal by the appellant to show that the estimates have been wrongly procured by the claimant or that the truck has not been damaged, as mentioned in Inspection report Ex. 1. It appears that the truck was completely damaged and, therefore, it required a huge amount for its repair to bring it into the original condition. There is no error on the part of the Tribunal in assessing the compensation for the damages caused to the truck. The compensation has been rightly assessed and calls for no reduction.

10. Re :-- 3-- Mr. Munshi, who addressed the arguments at the initial stage, vehemently contended that the claim in respect of the damages to the property, viz. truck in the instant case, could not be filed under the Act before the Claims Tribunal. In support of his contention, he has put reliance on certain decisions, in which the accidents had taken place prior to March 2, 1970. There is no need to make a reference to those decisions which have lost their importance due to the amendment introduced in Section 110 of the Act in 1970.

11. There was a conflict of judicial opinions at one time in cases of damages to the property occurring before March 2, 1970 as to whether claim in respect of damages to the property could be entertained under the Act by the Claims Tribunal. Some of the High Courts, which represent the minority view, were of the opinion that claims in respect of death or bodily injury alone fell within the exclusive jurisdiction of the Claims Tribunal. Some other High Courts shared the view that compensation in respect of death or bodily injury and damages to property could be awarded by the Claims Tribunal provided it was a case of composite claim. The third view was that claim in respect of damages to the property fell within the jurisdiction of the Claims Tribunal and as such, compensation could be awarded in respect of the damages to the property.

12. 1 need not make a reference to these conflicting decisions and the reasons adopted therein in support of the respective views because of the amendments introduced in Section 110 of the Act by the Amendment Act 156 of 1969). The amended provisions came into force with effect from March 2, 1970. By this Amendment Act, the words "or damages to any property of a third party so arising or both" and the proviso to the Sub-section (1), Section 110 of the Act were added. This amendment now enables the Claims Tribunal to entertain an

application for award of damages in respect of property as well.

13. The word "injury" in Clause (1)(a) of Section 110-A of the Act includes injury to property also. The person whose property has been damaged in a Motor Accident would, therefore, be the person who has sustained "injury" within the meaning of Section 110-A(1)(a) of the Act. The claim for damages to property simpliciter is, therefore, within the cognizance of the Claims Tribunal under the Act. Thus, on reading Sub-section (1), Section 110 and Sub-section (1), Section 110A of the Act together and they should be read together), the position which emerges out is that a claim in respect of the damages to the property falls within the jurisdiction of Claims Tribunal provided the damages are the result of accident and the accident is of the nature mentioned in Section 110 of the Act. Of course, if the compensation claimed in respect of the damages to the property exceeds Rs. 2000/-, the claimant has an option to go to Civil Court instead of coming under the Act before the Claims Tribunal

14. A few authorities on the point may be noticed. In *Banwari Lal v. Vishnu Narain* 1975 ACJ 40, the accident took place on 17-9-1970, in which five buffaloes were killed by a truck. The claim for damages to property (i.e. the cattle) simpliciter was held within the cognizance of the Tribunal under the Act. In *Dadulal Gupta v. Basant Kumar* 1978 ACJ 193, a collision took place between a bus and truck on 16-3-1970. A claim for compensation for damages to the truck was filed under the Act before the Tribunal by its owner. An objection was raised that the claim was not maintainable under the Act. The objection was repelled by a learned single Judge of this Court and it was held that the Claims Tribunal under the Act has jurisdiction to adjudicate upon the claim relating to property. In *The Deputy General Manager and Divi. Controller, Karnataka State Road Transport Corporation, Hubli Vs. Jyoti Constructions, Mangalore and Another*, the accident took place between a bus and a truck on April 3, 1972. A claim was filed by the owner of the bus to recover compensation in respect of the damages caused to the bus by the truck. An objection was raised that the Tribunal under the Act had no jurisdiction to entertain the claim. The objection was overruled and the learned Judges held that the Tribunal under the Act is competent to entertain a petition merely for damages to property without anything more u/s 110(1) read with Section 110A(1)(a) of the Act.

15. Learned counsel appearing for the Corporation could not lay hands on a single authority that a claim in respect of damages to the property after the amendments introduced in Section 110 of the Act in 1969 was not within the jurisdictional competence of the Claims Tribunal. The contention of the appellant that the Tribunal had no jurisdiction to entertain the claim in respect of the damages to the property has thus no substance. The Tribunal had full and complete jurisdiction to try the claim.

16. No other contention survives for consideration.

17. For the reasons discussed above, I find no force in this appeal. The appeal is

consequently dismissed with costs.