
(1985) 02 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 300 of 1981

Rajpal Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 20-02-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 , 110A, 110B, 110C, 110D

Citation : (1986) ACJ 344 : AIR 1986 P&H 239

Hon'ble Judges : Prem Chand Jain, C.J;S.P. Goyal, J;D.S. Tewatia, J

Bench : Full Bench

Judgement

D.S. Tewatia, J.—This appeal raises a jurisdictional question of some significance. Since answer to the jurisdictional question is to take shape in the light of facts asserted in the plaint or the claim petition, it would, therefore, be appropriate first to notice the relevant facts.

2. The claimant Rajpal Singh happened to be driving Car No. CH 8851. While crossing Gate No. 121 on Panchkula-Zirakpur road, which was open at that time, railway train suddenly approached the said manned railway crossing, engine whereof said to be without lights, struck against his car as a result whereof the claimant received injuries and his car was damaged; that there was no red light to stop the traffic on the road and the accident resulted due to the carelessness and negligence of the driver, the guard in question and the gateman. Since the respondent, which inter alia, included the Union of India, General Manager, Northern Railway, New Delhi, Shri Baldev Raj Station Master, Chandigarh besides the driver, guard of the train and the gateman questioned the jurisdiction of the tribunal to try the matter so the tribunal formulated a preliminary issue to the effect as to whether the application lies before the Motor Accident Claims Tribunal. The Tribunal answered the question against the claimants and in favour of the respondents and dismissed the claim petition.

3. The appeal in the first instance came up for hearing before Sodhi, J. who referred the appeal to the larger Bench. The appeal was then put up before a

Division Bench which in turn referred the same to a larger Bench and that is how this appeal is before us.

4. In all civil matters, it is the Civil Court which has the jurisdiction to go into the claims of the kind unless its jurisdiction is either expressly or by necessary implication stands barred. claims for compensation arising out of accidents by use of motor vehicles, till the amendment of the Motor Vehicles Act (hereinafter referred to as the Act), which added Ss. 110 to 110F to the said Act, were tried by the Civil Court. The Legislature being aware of the increasing number of the accidents involving motor vehicles and the resultant misery to the persons involved in the accident or their dependents and the immediate need for financial succour provided a special forum (speedy and inexpensive) in the form of Motor Accident Claims Tribunal for adjudicating upon the 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 and it also sought to bar the expensive and tardy jurisdiction of the Civil Court by enacting S. 110F of the Act, which reads as under:--

"110F Bar of Jurisdiction of Civil Courts. Where any Claims Tribunal has been constituted for any area, no Civil Court shall relating to any claim for compensation which may be adjudicated upon bgy the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court ".

5. The determination of the parameter of the jurisdiction of the Tribunal envisaged under S. 110 of the Act would depend upon the construction of the experection "compensation in respect of accidents... arising out of the use of motor vehicles occurring in S. 110 of the Act. The aforesaid expression indicates that there should be an accident which should be as a result of the use o9f motor vehicles. Besides the aforesaid spelled out limiting words the aforesaid expression envisagtes no other limitations, that is, once it is held that there has been an accident as a result of the use of motor vehicle in which either a person has died or has received imjuries or there has been damage to any property of a third party, the Tribunal would have the jurisdiction to the person or authority against whom the claim is made, may be any.

6. Some High Courts however have sought to spell out limitation upon the jurisdiction of the Tribunal from the provisions of S. 110B or by giving a restrictive interpretation to the word use occurring in S. 110.

7. A Division Bench of Gauhati High Court in Swarnalata Dutta Barua and Another Vs. National Transport India Pvt. Ltd. and Another, took the view that from thescheme of newly added group of provisions starting from s. 110 to S. 110F, it would be clear that the Tribunal had got no jurisdiction to enforce authority except the owner, the driver and the insurer of the motor vehicle involved in the accident as would be evident from the provisions of S. 110B.

8. In *The Oriental Fire and General Insurance Company Ltd. and Another Vs. Union of India (UOI)*, one of the contentions raised before the Division Bench was that the Civil Court had no jurisdiction to adjudicate upon the claim for compensation arising out of the accident between the truck and the train view of the provisions of S. 100F, Motor Vehicles Act, and it was claimed that the Motor Accident Claims Tribunal alone had the jurisdiction to adjudicate upon the given claim. The above contention was repelled with the following observations:--

"It is true that the jurisdiction of the Claims Tribunal under S. 110 is stated to be to adjudicate up[on claims in respect of accidents involving the death of or bodily injury to, persons arising out of the use of motor vehicles..... But if we have regard to the scheme of the Act and the context in which S. 110 appears, it is clear that the claim referred to in the section can have reference only to claims only against the owner or the driver of the motor vehicle concerned in the accident. It could not have been the intention of the framers of the Act to include claim against other persons as well. The Motor Vehicles Act is an Act to consolidate and amend the law relating to motor vehicles. This section occurs in the chapter dealing with insurance of motor vehicles against third party risks. The object behind this section is to provide for speedy and effective machinery for persons injured in accidents arising out of the use of motor vehicles against the owners and the drivers and insurers of motor vehicles. To accept the contention of the learned counsel for the respondent that it would include claims against all persons would lead, in our view, to consequences which were never contemplated by the framers of the Motor Vehicles Act. For instance, a person proceedings in a motor vehicle may be injured by an accident resulting from the fall of tree or the collapse of building. It cannot be said that the occupants can lay a claim in the Tribunal constituted under the Motor Vehicles Act against the owners of the building or of the tree, if it was due to the negligence of such owner that such accident occurred. Similarly "in this case we do not think the provisions of the Motor Vehicles Act were intended to enable the parties injured or the owner of the lorry to make a claim against the railway, simply because the accident arose out of the use of motor vehicle. In our view, the claims referred to in S. 110 are applicable only to cases of claims against the owner or the driver of the motor vehicle or the insurer as the case may be and not as against strangers. The proper forum for adjudicating the claim against the strangers is a Civil Court. The jurisdiction of the Civil mCo is not, in our view, barred by S. 110F of the Act".

9. A single Judge of the High Court of Himachal Pradesh in *Bhola Ram and Another Vs. State of Himachal Pradesh and Another*, while considering the contention of the claimant that he be awarded compensation against the Government of Himachal Pradesh as it had failed to maintain the road because it was the sagging of the road that had led to the accident held that the respondent-State of Himachal Pradesh although being, the owner of the road and responsible for its maintenance might be liable in tort for such a claim but on a consideration of the scheme of the Act and the context in which S. 110 appears,

the jurisdiction of the Claims Tribunal appointed under S. 110 of the Act, is restricted to entertaining claims and giving awards only against the insurers, owners and drivers of the vehicles involved in the accidents and not against any other persons and a close scrutiny of the provisions of Ss. 110 to 110B appears to lend ample support to that view.

10. The learned single Judge of Delhi High Court in *Madan Lal Jain Vs. Municipal Corporation of Delhi and Others*, too had to deal with a like contention. In the case before him, scooter had fallen in a pit on the road as result whereof the claimant was injured. He sought compensation before the Corporation of Delhi whose duty it was to maintain the roads. The learned Judge held that in view of the provisions of S. 110B, the remedy of the owner, if any against the respondents lay before the Civil Court and not before the Tribunal. The learned Judge approvingly quoted the view taken by the Gauhati High Court in *Swarnalata Dutta Barua and Another Vs. National Transport India Pvt. Ltd. and Another*, and Andhra Pradesh High Court in *The Oriental Fire and General Insurance Company Ltd. and Another Vs. Union of India (UOI)*, .

11. Allahabad High Court in *Union of India (UOI) Vs. Bhagwati Prasad and Others*, however, took a different view of the matter. The question that arose for consideration of the Division Bench in *Bhagwati Prasad's* case (supra) was as to whether the Motor Accident Claims Tribunal had the jurisdiction to entertain a claim against the railway. The facts of the case were that various claimants were travelling by a Tempo-Taxi, which collided with the Allahabad-Saharanpur passenger at Sarai Gopal Railway crossing. As a result, the claimants sustained bodily injuries. The claimants filed claim petitions before the Tribunal against both the owner of the tempo-taxi as well as the applicant namely Union of India represented by the General Manager, Northern Railway. In the claim petition it was alleged that the accident had occurred due to the negligence of the employees of the railway staff at the aforesaid railway crossing. The employees had wrongly kept the level crossing wide open for the highway traffic to pass at a time when the aforesaid train happened to be passing through that point.

12. It was asserted on behalf of the Union of India that the claim against the railway was only triable before the Civil Court. Verma, J. who delivered the opinion for the Bench held that the Motor Accident Claims Tribunal had the jurisdiction to adjudicate upon the claims for compensation against the railway in the case in hand and that the provisions of S. 110B of the Act did not limit the jurisdiction of the Tribunal to the awarding of compensation against persons other than those mentioned in the said section. The following observations of Verma, J. on this regard can be noticed with advantage:--

"11. Then there is S. 110B on which the applicant mainly relies. It reads thus:--

"110B. Award of the Claims Tribunal--On receipt of an application for compensation made under S. 110A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an enquiry into the claim and may

make any 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 as the case may be".

12. We are clearly of the opinion, upon an provisions and the scheme of the enactment as projected by these provisions, that the Claims Tribunal constituted under the Act is empowered to adjudicate upon all claims for compensation in respect of accident involving the death or the bodily injury to persons, where the accident arises out of the use of a motor vehicle and, that in awarding compensation in respect of such an accident the Claims. Tribunal is empowered to award compensation not only against the insurer and the owner and the driver of the motor vehicle but also against those on account of whose negligence the accident may have been caused. The words "in respect of accidents..... arising out of the use of the motor vehicle....." occurring in S. 110(1) are words of the widest possible amplitude. We see no reason either on the plain language of S. 110 or in any other allied provisions of the scheme of the Act as manifested by the relevant provisions, which may have inhibited or barred the jurisdiction of the Claims Tribunal to entertain an application for compensation in respect of third parties, in the present case, the Railway.

13. As mentioned above, the Motor Vehicles Act is a comprehensive Code. The Claims Tribunals have been constituted, in our opinion, to entertain all claims in respect of accidents arising out of the use of motor vehicle. It cannot be disputed that where the death or bodily injury is caused to the claimant in an accident arising out of the use of motor vehicle and as a result of the negligence of the owner or the driver of the motor vehicle as well as of a third party, the claim so far as the owner or insurer or the driver of the motor vehicle are concerned would lie before the Claims Tribunal under the Act in terms of S. 110. The civil Court will indisputably have no jurisdiction to entertain the claim against the insurer or owner or driver in view of the express bar imposed by S. 110F.

14. If, therefore, were to accept the submission of the applicant it must follow as a necessary corollary that in regard to the same accident as against the third party, the claim would lie elsewhere, namely, the civil Court. In that event it would not be difficult to see that two conflicting decisions are likely to come into existence. The Tribunal may hold the driver of the motor vehicle wholly at fault and responsible for the accident and on that ground award compensation against the owner of the motor vehicle or the driver or the insurer. The Civil Court may, on the other hand seized of the case against the third party in respect of same accident, may come to an exactly opposite conclusion and hold some one else responsible for the accident and bodily injuries to the claimant.

15. Such a result cannot have been intended by the legislature. On the plain language of S. 110, therefore, we have no hesitation in coming to the conclusion that the claims in question were maintainable against the Railway. In our opinion

a complete adjudication of all the claims for compensation in respect of an accident arising out of the use of the motor vehicle was intended to be provided for under the Act and consequently unless all the parties involved in the accident are arrayed as opposite parties before the same forum and are heard on the question of negligence, the matter cannot be properly and effectively disposed of. For, otherwise, if the claimant is compelled to institute his claim before the Tribunal only against the owner and driver of the vehicle and insurer and is left to sue the remaining persons responsible for the accident the adjudication cannot be said to be complete and final.

Under the Circumstances, the only reasonable interpretation which has appealed to us is that suggested by the learned counsel for the claimants, namely, that the claims were maintainable against the Railway also.

16. We may now turn to S. 110B to see whether there is anything therein which might be construed as restricting the ambit of S. 110. The first part of S. 110B has been expressed in general terms. It provides that the Claims Tribunal shall after giving the parties an opportunity of being heard hold an enquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specify the person or persons to whom compensation shall be paid. In the first part, which is the substantive part, there is no indication that the Tribunal cannot award any compensation against persons other than the insurer or the owner or the driver of the motor vehicle. Stress was, however, made on the second part of S. 110B which provides that in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or the owner or the driver of the vehicle in question. It was submitted that this limits the power of the Claims Tribunal only to these three classes of persons.

17. We are unable to accept the above contention. "The second part of s. 110 comes into operation and is attracted only because it is necessary to apportion the liability between the insurer or the owner in accordance with the relevant provisions of the Act specifying the limits of liability of the insurer. It does not in our opinion, in any way curtail or restrict the power of the Claims Tribunal to award compensation against a third party who may be found to have contributed to the accident involving the death or bodily injuries to persons arising out of the use of the motor vehicle. In our opinion, the second part of S. 110B enjoins the Tribunal to apportion the liability between the insurer and the owner of the vehicle, where the Tribunal holds the owner or the driver responsible for the injury caused to the claimant".

With respect, I entirely concur in the view that Verma, J. has taken and the reasoning adopted by him and further find myself unable to concur in the view taken by the Gauhati, Andhra Pradesh, Himachal and Delhi High Courts in the cases referred to above.

13. Section 110A indicates the person or persons who could invoke the

jurisdiction of the Tribunal S. 110B, however, is not enacted by the Legislature in my opinion to indicate the persons against whom the compensation could be claimed. The said provision merely envisaged that in the event of a finding that an owner or driver of the vehicle was liable to pay compensation then it could specify the amount which the insurer, if any, and the owner and the driver was to pay. In a given case the insurer of the vehicle may not be liable to pay the entire compensation amount which had been found to be payable as a result of the negligence of the driver of the vehicle and so a Tribunal has to additionally specify as to what amount the driver has to pay. Also in a given case, an award can be made only against the driver and the insurance company See 1967 Accommodation C J. 312 (Punj). In such a case the limit of the liability of the driver and the insurer too may have to be fixed by the Tribunal, if the Statute had fixed the outside limit of the liability of the insurer.

14. I see no reason as to why the Claims Tribunal cannot award compensation against the owner of the tree if the accident resulted from the falling of the tree or against the owner of the building if the accident resulted from the falling of the building on the car and from the owner of the road if the accident resulted as a result of non-maintenance of the road in proper condition, if the allegation in the petition is that the accident occurred as a result of the negligence of the owner of the tree or the owner of the building or the owner of the road or the person whose liability it was to maintain the road in proper condition.

15. In the case in hand, it cannot be denied that the accident arose out of the use of the motor vehicle i.e., the accident arose as a result of the use of the motor vehicle.

16. In the case in hand, the Tribunal had the jurisdiction to identify the fault of the parties in question. In case it finds that the staff of the Railway was at fault and the accident had occurred as a result of their negligence, then the Tribunal is entitled to award compensation to the claimants against the respondents. If, on the other hand, it holds that the accident had occurred as a result of the negligence of the driver of the motor amount that is payable in terms of S. 110B of the Act.

17. For the reasons aforementioned, I hold that if it is alleged that claim for compensation arose in respect of an accident arising out of the use of motor vehicle, then the Claims Tribunal would have the jurisdiction to adjudicate upon the claim and award compensation against the party whom it finds to be responsible for the accident and further specify the amount of compensation in terms of s. 110B, if the said provision is found to be attracted to the facts of the given case.

18. In the result, I set aside the order and finding given by the Tribunal and remit the case to the Tribunal to proceed with the matter in accordance with law and the observations made in this judgment. No costs.

S.P. Goyal, J.

19. This claim petition under Motor Vehicles Act filed by the appellant for the grant of compensation for personal injuries and the damage caused to his car was dismissed by the Tribunal on a preliminary objection that it has no jurisdiction to entertain and try the same. Aggrieved thereby he has come up in this appeal. The matter came up for hearing in the first instance before a learned single judge who referred it to a Division Bench. The Division Bench further referred it to a Full Bench in view of the conflict of view between the Division Bench decisions of various High Courts.

20. The claimant along with Vasdev Bajaj on June 23, 1979 was returning from Panchkula to Chandigarh in Car No. CH 8851 driven by him at about 1. 30 a. m. When he was crossing Gate No. 121 on Panchkula-Zirakpur Road a railway train struck against his car. It was alleged that the engine was without lights, the Railway crossing gate was lying open and there was no red light to stop traffic on either side of the gate. It was pleaded that the accident was caused entirely due to the carelessness and negligence of the Railway authorities including the driver of the train and the gateman.

21. The claim was contested by the respondent who raised a preliminary objection that the Motor Accident Claims Tribunal had no jurisdiction to entertain and try the claim against them which was sustained and the petition dismissed.

22. The claims arising out of motor accidents being causes of civil nature used to be instituted and tried by the Civil Courts. the Legislature in view of ever increasing accidents caused by indisciplined and fast moving traffic enacted Motor Vehicles Act (No. 100 of 1956) to ameliorate the sufferings of injured and dependent claimants of the deceased and to provide cheaper and speedier remedy to them. By virtue of the provisions of S. 110. Motor Vehicles, Act, substituted by the Amendment Act in place of the original section, the State Government were empowered to constitute one or more Motor Accident Claims Tribunals for purposes of adjudicating upon claims for compensation in respect of accidents involving death or bodily injury to persons arising out of the use of motor vehicles or damages to the property of third party or both. It was further provided by s. 110F that where any Claims Tribunal has been constituted for any area, no civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area.

23. The precise point raised and canvassed before the Tribunal was that unless the alleged accident had occurred out of the use of a motor vehicle which necessarily means its negligent driving, the claim would not lie with the Tribunal and instead would be entertainable by the civil Court alone. so, it was contended that the Tribunal would have no jurisdiction to entertain the claim where the allegation is that the accident took place because of the negligence of any other authority in the maintenance of the the road or any other such like cause. The contention prevailed with most of the High Courts till a discordant note was struck by the Allahabad High Court in Union of India (UOI) Vs. Bhagwati Prasad

and Others, .

24. For the first time, this matter came up before a Division Bench of the Gauhati High Court in *Swarnalata Dutta Barua v. M/s. National Transport India Pvt. Ltd.* AIR 1974 Ga 31, though in an indirect way. The accident in that case had taken place between the bus and the Railway train on a Railway crossing. The claim was filed against the owner of the bus and the Insurance Company alleging that the accident had taken place because of the negligence of the driver of the bus. One of the pleas raised in the defence was that the accident took place not due to the negligent driving of the bus, but because of the negligence on the part of the Railway authorities in leaving the gate at the level crossing unmanned. An objection ancillary to this plea made was that the Railway authority was a necessary party and in its absence the claim petition could not be tried. After noticing the provisions of s. 110B and S. 110F, the Bench overruled the objection in the following terms:--

"From the scheme of this group of sections it will be clear that the claims tribunals have compensation for death of or injury to persons arising out of use of motor vehicles. The Tribunal has got no jurisdiction to enforce any such claim against any other person or authority except the owner, the driver and the insurer of the motor vehicle involved in the accident, as will be evident from the provisions of S. 110B. The being the legal position, there was no scope for the petitioners to implead the Railway Administration in these proceedings before the Claims Tribunal. If they have been able to prove that the accident arose out of any negligence or rashness in the use of the motor vehicle, they will succeed, otherwise they will fail. In this view of the case I hold that the claim petitioners are not bad for non-joinder of the Railway Administration".

Though there is no detailed discussion or reasoning for the view expressed, but apparently the learned Judges relied on the provisions of s. 110B to hold that the Tribunal under the act has no jurisdiction to enforce a claim against any other person or authority except the owner, the driver and the insurer of the motor vehicle involved in the accident.

25. In *The Oriental Fire and General Insurance Company Ltd. and Another Vs. Union of India (UOI)*, , a collision took place between a goods train and a lorry on account of which the owner of the lorry and the Insurance Company had to deposit certain amounts under the Workmen's Compensation Act for the deaths of some labourers and the injuries to the others. Later on, the owner and the Insurance company filed a suit for the recovery of those amounts from the Union of India alleging that the accident had taken place because of the negligence of the employees of the Railway. At the appellate stage, an objection was raised that the claim having arisen out of the use of a motor vehicle was triable only by the Tribunal and not by the Civil Court, and the Division Bench overruled the same observing thus:--

"It is true that the jurisdiction of the Claims Tribunal under S. 110 is stated to be

to adjudicate upon claims in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles. It is therefore submitted that it would include a Claim against any person provide that the accident arose out of the use of a motor vehicle. But if we have regard to the scheme of the Act and the context in which S. 110 appears, it is clear that the claim referred to in the section can have reference only to claims against the owner or the driver of the motor vehicle concerned in the accident. It could not have been the intention of the framers of the Act to include claim against other persons as well. The Motor Vehicles Act is an Act to consolidate and amend the law relating to motor vehicles. This section occurs in the chapter dealing with insurance of motor vehicles against third party risks. The object behind this section is to provide for a speedy and effective machinery for persons injured in accidents arising out of the use of the motor vehicles against the owners and drivers and insurers of motor vehicles. To accept the contention of the learned counsel for the respondent that it would include claims against all persons would lead, in our view, to the consequences which were never contemplated by the framers of the Motor Vehicles Act. For instance, a person proceeding in a motor vehicle may be injured by an accident resulting from the fall of a tree or the collapse of a building. It cannot be said that the occupants can lay a Claim in the Tribunal constituted under the Motor Vehicles Act against the owners of the building or of the tree, if it was due to the negligence of such owner that such accident occurred. Similarly in this case, we do not think the provisions of the Motor Vehicles Act were intended to enable the parties injured or the owner of the lorry to make a claim against the railway, simply because the accident arose out of the use of a motor vehicle. In our view, the claims referred to in S. 110 are applicable only to cases of claims against the owner or the driver of the motor vehicle or the insurer as the case may be and not as against strangers. The proper forum for adjudicating the claim against the strangers is a civil Court. The jurisdiction of the Civil Court is not in our view barred by S. 110F of the Act".

26. In *Bhola Ram and Another Vs. State of Himachal Pradesh and Another*, a truck belonging to the Himachal Government fell down into a deep khud near Ganasidhar resulting in the death of the driver and the owner of the goods. The claim petition filed before the Tribunal was dismissed on the finding that the accident had happened on account of giving way of false projection of the road which was supported on wooden logs and not due to the negligence of the truck driver. In the appeal before the High Court an alternate plea was raised that even if the accident be taken to have occurred on account of sagging of the road, the State would be liable in tort to pay the compensation being owner of the road. The plea was turned down holding that the Tribunal has no jurisdiction to entertain any claim against the State as owner of the road for the following reasons:--

"Section 110 empowers the State government to appoint the Claims Tribunal 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 and to define the local limits of their jurisdiction. S. 110A enumerates the persons who are competent to apply for grant of such compensation to such Tribunals. This section further provides that an application for compensation of the type mentioned above shall be made in such form and shall contain such particulars as may be prescribed,. It also provides for the period of limitation within which an application for compensation can be made before the Tribunal and further empowers the Tribunal to condone the delay if sufficient cause is shown. s. 110B which is important from the point of view for the issue in hand, requires the Tribunal to hear the parties, hold an enquiry into the claim and to make its award determining the amount of compensation which appears to it to be just. After the Tribunal makes its award so determining the amount of compensation, it is further required to specify the person or persons to whom the compensation shall be paid"

27. In *Madan Lal Jain Vs. Municipal Corporation of Delhi and Others*, , the claimant alleging that while he was going on his scooter on the ring road at about 10 p. m. the front wheel of the scooter fell in a pit on the road and overturned resulting in grievous injuries to him, filed a claim petition against the Municipal Corporation, Delhi, to recover Rs. 25,000/- by way of compensation. It was held that the Tribunal has no jurisdiction to entertain the claim on the grounds that if the opposite party had no connection with the vehicle involved in the accident, he cannot be made liable under the Act; and that the jurisdiction of the Claims Tribunal to award compensation is restricted against driver, owner or the insurer of the vehicle involved in the accident as mentioned in s. 110B of the Act.

28. As noticed above, a Division Bench of the Allahabad High Court in *Union of India (UOI) Vs. Bhagwati Prasad and Others*, for the first tribunal is empowered to award compensation not only against the insurer, the owner and the driver of the motor vehicle, but also against the Railway on the following ratio:--

"The Claims Tribunal constituted under the Act is empowered to adjudicate upon all claims for compensation in respect of accident involving the death or the bodily injury to persons, where the accident arises out of the use of a motor vehicle and, in awarding compensation in respect of such an accident the Claims Tribunal is empowered to award compensation not only against the insurer and the owner and the driver of the motor vehicle but also against those on account of whose negligence the accident may have been caused. The words "in respect of accidents..... arising out of the use of the motor vehicle.... occurring in S. 110(1) are words of the widest possible amplitude. There is no reason either on the plain language of S. 110 or in any other allied provisions or the scheme of the Act as manifested by the relevant provisions, which may have inhibited or barred the jurisdiction of the Claims Tribunal to entertain an application for compensation in respect of third parties in the present case, the Railway.

The second part of S. 110B which provides that in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or the owner or the driver of the vehicle in question does not in any way curtail or restrict the power of the Claims Tribunal to award compensation against a third party who may be found to have contributed to the accident. Where the driver or the owner of the motor vehicle is found to have been negligent and the injuries are found to have been caused as a result of that negligence, the liability has necessarily to be apportioned between the insurer and the owner in view of the provisions of the Act. It was to give effect to this statutory requirement that the second part of S. 110B enjoins the Tribunal to apportion the liability between the insurer and the owner of the vehicle, where Tribunal holds the owner or the driver responsible for the injury caused to the claimant. s. 110B, thus, does not curtail the width or amplitude of S. 110 which is the source of power of the Claims Tribunal under the Act.

Moreover, a complete adjudication of all the claims for compensation in respect of an accident arising out of the use of motor vehicle was intended to be provided for under the Act and consequently unless all the parties involved in the accident are arrayed as opposite parties before the same forum and are heard on the question of negligence, the matter cannot be properly and effectively disposed of. For, otherwise, if the claimant is compelled to institute his claim before the Tribunal only against the owner and/or driver of the vehicle and insurer and is left to sue the remaining person responsible for the accident, the adjudication cannot be said to be complete and final".

29. Relying on the above observations in *Union of India (UOI) Vs. Bhagwati Prasad and Others*, my learned brother Tawatia, J. has opined that a claim for compensation would be triable by the Tribunal so long as the death or the injuries are stated to have been caused while the deceased or the injured was travelling in a motor vehicle no matter whether the accident took place because of the negligence of the driver of the motor vehicle or any foreign agency. With utmost respect I find it difficult to go so far and, in my view, the claim petition would be entertainable by the Tribunal under the Act only if the accident is alleged to have taken place because of the negligent driving of the motor vehicle, though in the alternative the plea may be that the accident took place because of the composite negligence or the negligence of an agency other than the driver of the motor vehicle. If primarily the accident is alleged to have taken place because of the negligent driving of the motor vehicle, the claim would be maintainable even against the agencies other than the driver, the owner and the insurer of the motor vehicle if compensation is claimed against them in the alternative or jointly with the former because of composite negligence.

30. In all the above noted cases in which the view has been taken that a claim petition against the persons other than the owner, driver and the insurer is not maintainable before the Tribunal under the Act, reliance has been placed on that part of s. 110B which provides that 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, as the case may be. This provision, in my view, in no way indicates either that the jurisdiction of the Claims Tribunal is confined to give award against the insurer, or owner or driver or curtails the jurisdiction conferred on the Tribunal under the earlier portion of the section which authorises him to determine the amount of compensation to be payable to the claimants or any one of them. The latter portion of this section requires specification of the liability amongst the insurer or owner or driver because it has relevancy only amongst them. On the question of apportionment, if the liability is found to be composite of the owner, driver or insurer of the vehicle on the one hand and some other party on the other, the question of apportionment between the two set of parties would not arise. Similarly, if the liability to pay compensation is entirely fixed on a party other than the owner, driver or the insurer of the motor vehicle, again the question of apportionment would not arise. It is for this reason that the apportionment clause is confined to the insurer or owner or driver of the vehicle and the other persons are not named in the provision and not because the intention was to limit jurisdiction of the Tribunal to award compensation against the said three persons only.

31. Now, take for example, when accident is proved to have taken place because of the negligence of the driver, the owner may plead that he is not vicariously liable for the negligence because the driver was acting beyond his duties or against his instructions. Similarly, Insurer can take the plea that the driver was an unlicensed driver or that he was using the vehicle for an unauthorised purpose when the accident took place. Also the insurer is entitled to plead that his liability is limited to certain extent according to the insurance policy or the provisions of the statute. In all such cases, the Tribunal would be called upon to specify as to who was liable and to what extent, to pay the amount of compensation assessed. But if there is a conflict between the said three persons on the one hand and some other person on the other such as Railway employee or the agency responsible for maintaining the road etc., the question of specification of the amount payable by each set of the parties would not arise because so far as the joint tortfeasers are concerned all of them would be liable jointly and severally so far as the claimants are concerned. The answer to the problems, therefore, entirely depends on the interpretation of S. 110 under which the Claims Tribunals are set up and conferred with the jurisdiction to deal with the claims for compensation. According to this provision, the Claims Tribunal is set up to adjudicate upon claims for compensation in respect of the 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. So, the Tribunal has not been conferred with the jurisdiction to deal with the claims of compensations in respect of all kinds of accidents. Instead, its jurisdiction is confined to claims of compensation in respect of those accidents which arise out of the use of motor vehicles. In other words, the use of motor vehicle must be

the cause of the accident howsoever slight it may be and unless the accident the effect caused by the use of the motor vehicle it would not be possible to say that it has arisen out of the use of motor vehicle. The interpretation of similar words came up for consideration before a Five Judge Bench of the High Court of Australia in *Government Insurance Office of New South Wales v. R. J. Green & Leoyd Pty. Ltd.* 1967 ACJ 329. The words used in the insurance policy were "injury caused by or arising out of the use of the vehicle". Windeyer, J. while agreeing with the judgment written by Barwick, C. J. observed:--

"The words, 'injury caused by or arising out of the use of the vehicle' postulate a causal relationship between the use of the vehicle and the injury". Caused by connotes a "direct" or "proximate" relationship of cause and effect. "Arising out of extends this to a result that is less immediate; but it still carries sense of consequence. It excludes cases of bodily injury in which the use of the vehicle is a merely causal concomitant not considered to be, in a relevant causal sense, a contributing factor".

32. As stated above, my learned brother Tewatia, J. has relied on *Union of India (UOI) Vs. Bhagwati Prasad and Others*, for laying down the proposition that the claim would be triable by the Tribunal if in the accident a motor vehicle is involved, nomatter whether the accident has been caused by use of the motor vehicle or not. However, a close analysis of the facts and the observations made in the said case would show that the learned Judge there even did not go that far. The claim was filed in that case both against the owner of the tempo-taxi as well as the Union of India represented by the General Manager, Northern Railway which would necessarily mean that the allegation of negligence was both against the driver of the motor vehicle as well as the Railway authorities, may be in the alternative or in composite form. The conclusion arrived at by the Bench was also that in the Circumstances the only reasonable interpretation which appealed to them was the one suggested by the learned counsel for the claimants, namely, that the claims were maintainable against the Railway also. It is, therefore, apparent that neither there was any question before the said Bench as to whether the claim would be maintainable against the Railway authorities alone nor any opinion was expressed in this regard. The observation of the Bench in that case that they saw no reason either on the plain language of S. 110 or in any other allied provision or the scheme of the Act as manifested by the relevant provisions, which may have inhibited or barred the jurisdiction of the Claims Tribunal to entertain an application for compensation in respect third parties, that is the Railway, have to be appreciated in the context of the facts there. When so done, it would be evident that the observations related to a case where the claim was of composite nature and not against a third party alone, that is, the Railway. I am, therefore, of the considered view that nothing said even in *Bhagwati Prasad's* case (supra) can be understood to mean that the claim petition would be entertainable by the Tribunal where the motor vehicle has not contributed to the cause, howsoever slight it may be, of the accident resulting in the death or bodily injury.

33 The claim in the present case has been filed against the Railway authorities alone alleging that the accident took place entirely because of their carelessness and negligence and that of the driver of the train and the gateman. There being no allegation that the motor vehicle in any way contributed to the cause of the accident, it cannot be said that the same had arisen out of the use of the motor vehicle. As such the present claim would not be entertainable by the Tribunal and instead would be competent only in Civil Court. This appeal, therefore, must fail and is accordingly dismissed. No costs.

P.C. Jain, C.J.

34. I have the privilege to go through the judgments prepared by D. S. Tewatia and S. P. Goyal, JJ. separately. On giving my thoughtful consideration, I agree with the view taken by S. P. Goyal, J.

35. In view of majority judgment, the appeal fails and is accordingly dismissed. No costs.

36. Appeal dismissed.