

(1988) 08 MAD CK 0022
In the Madras High Court

Ramalingam Chettiar and Another

APPELLANT

Vs

The Tamil Nadu Water and Drainage Board and Another

RESPONDENT

Date of Decision : 29-08-1988

Acts Referred:

Motor Vehicles Act, 1988 — Section 110(1), 110A(1), 110F

Citation : (1989) 1 MLJ 485

Hon'ble Judges : Sathiadev, J

Bench : Division Bench

Judgement

Sathiadev, J.—The point involved in this revision petition is whether the suit filed in Sub-Court, Vellore, for recovery of a sum of Rs. 35,000

by way of damages suffered by plaintiffs jeep bearing Registration No. TNJ 1470 in a collision with the lorry bearing Registration No. MDT 4606

belonging to defendants 1 and 2, is maintainable?

2. It is claimed that, at about 11.15 a.m. on 29.12.1979, when the jeep was passing through the Palar Bridge near Vellore, the lorry was coming in

the opposite direction and as it was being driven rashly and negligently, it collided with the jeep and ran over a man and killed him. A sum of Rs.

35,000 had to be spent to put the vehicle back on the road. Therefore, this suit had been filed. Apart from the other defences taken, one of the

points taken was that, the claim for damages to the vehicle is no longer maintainable in a Civil Court, because of proviso to Section 110A (1) and

110F of the Motor Vehicles Act. The trial Court held that the plaintiff having exercised the option to seek for remedy before a Civil Court, it had

the jurisdiction to try the suit and posted it for trial of other issues. It is against the finding on this preliminary issue, this revision petition is preferred.

3. Learned Counsel for the petitioner relies upon the decision in Rajasthan State Road Transport Corporation Vs. Smt. Kistoori Devi and Others,

and claims that all the relevant decisions on this aspect have been considered in the said decision, and it covers the point involved in this revision

petition. In the said decision, the point which came up for consideration was, whether the provisions of Motor Vehicles Act would override or

exclude the provisions of the Fatal Accidents Act, in case the fatal accident occurs by use of a motor vehicle. It is not a decision which deals with

the question as to whether after constitution of the Tribunal, the claim relating to damages to any property of a third party arising in a motor vehicle

accident could be instituted in a civil court or not. That was a case in which compensation was claimed in respect of a fatal accident, which was

occasioned: by use of a motor vehicle. Hence, it was not an authoritative pronouncement, which is relevant for the point which has come up for

consideration in this case.

4. He also relies upon the decision in R. Tiiillai Govindan v. Karuppusamy 91 L.W. 563 which holds that, after the amendment effected by Act 56

of 1969, the jurisdiction of the Tribunal got enlarged, so as to cover the subjects added by the amendment and one of them being the claim relating

to damages to property of a third party upto a limit of Rs. 2,000 the same could be decided by the Tribunal. The point which arose therein was,

whether in spite of the amendment effected, the Tribunal would still be governed only by the limitations in the G.O. passed in 1961; and the learned

Judge held that, when the statute is amended, the jurisdiction got enlarged to that extent, and thereafter, the earlier G.O. cannot re-ï½ strict its

jurisdiction. This decision does not deal with the point involved in the revision petition.

5. On behalf of the plaintiff/respondent, Mr. Phillips, learned Counsel, relies upon the decision in Selvaraj v. Jagannathan and Anr. ILR (1968)1

Mad. 688 which arose before the 1969 amendment, and it was held that any claim for damages to the vehicle could be tried only by a Civil Court

because:

... The Tribunal is a creature of the statute and its jurisdiction is strictly limited by the terms of such statute. It cannot be allowed to exceed its limits

on any general principle of law. The jurisdiction should be delimited strictly in

terms of the statutory definition thereof.

It was further held that, unless it is expressly or by necessary implication taken away from the purview of Civil courts by a competent legislation, such suits would be maintainable.

5. After the 1969 amendment, an option is given to the claimant either to have it decided by the Tribunal or by a Civil Court, in instances in which a composite claim is made for compensation for bodily injury suffered or damages caused to vehicle. The option is available in such of those cases, where the damage claimed in respect of property, is in excess of Rs. 2,000. If it is less than that, it could be dealt with by the Tribunal. This is not a case wherein a composite claim has been made. The suit had been filed only for damages caused to third party's vehicle in the accident. The amount is in excess of Rs. 2,000 and, therefore, the option is given to the claimant, and when the statute has so provided, the suit as filed is maintainable.

6. To strengthen this point learned Counsel for respondents relies upon the decision in Jayendra Singh Kushwaha Vs. Madhya Pradesh Electricity Board, Gwalior and Others, wherein the learned judge held that, under the scheme of the Act claims can be tried only by a Claims Tribunal, when there is a composite claim for damages to property and injuries to person; but when the claim includes compensation in respect of damages to property exceeding Rs. 2,000 then the option to refer the claim to a civil Court for adjudication is available. It is then held as follows:

A claim by a person other than those enumerated u/s 110-A cannot be made u/s 110. The claim is, therefore, not covered by Section 110-F. If a claim of third person is not entertainable u/s 110, to apply the bar u/s 110-F merely because by its nature the claim is entertainable by the Claims Tribunal, will leave the third person without remedy.

As to what are the claims which had been categorised in Section 110 to Section 110-F, the learned Judge had summarised as follows:

(1) If no death or personal injury results in the accident arising out of the use of motor vehicles, the claim for compensation for loss suffered to property alone is not tenable before the Claims Tribunal, but before the Civil Courts.

(2) If death or personal injury results in the accident arising out of the use of

motor vehicles on the basis of express wordings used in these

Sections, the claim for compensation for such loss suffered has to be made before the Claims Tribunal, and not the Civil Courts.

(3) Loss or damage of property may be suffered by a person who has not been given a right to make an application under the provisions of

Section 110-A to the Claims Tribunal. The only remedy in such a case will lie in Civil Courts.

(4) There may be cases of composite injuries in which death or personal injury may have resulted, as well as loss of damage to property, or where

death has resulted from accident, loss is sustained by the deceased or by his legal representatives. In case of claims of such composite nature, the

claim will be triable by the Claims Tribunal.

7. In *Farsubhai Altaphai Saiyed and Others Vs. Dullabhabhai Bhagabhai Patel*, . it was held that a Civil Court had jurisdiction to entertain the suit

when the claim for compensation is not covered by the provisions of the Act. In *B.S. Nat v. Bachan Singe* AIR 1971 P & H 164 the Division

Bench held that, in an accident in which there was damage to the car and personal injury to the occupant, it is open to him to file a petition before

the Motor Accident Claims Tribunal for compensation for personal injuries and file a separate suit for damages to his car, because such a suit is not

barred by Section 110-F which reads as under:

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, 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.

8. The next decision relied upon is *Sheela Khur v. Union of India* 1972 A.C.J. 461 which takes the view that the Civil Court has the jurisdiction to

try a suit filed for damages to a third party's vehicle, because Section 110-F of the Motor Vehicles Act, is not retrospective. It was a case in

which the suit had been instituted before the Claims Tribunal was constituted. No doubt, reliance was placed on the decision of the Full Bench of

the Supreme Court in *New India Assurance Co. Ltd v. Shanti Misra* AIR 1976 A.C.J. 128 which dealt with a case wherein death occurred on

account of accident in a collision between a motor cycle and truck, sixty days before the Constitution of the Tribunal. It was held that a change of law operated retrospectively and the parties will have to go before a new forum, because there is no vested right of forum, but only a vested right of action. This decision does not deal with the claim relating to damage caused to the property of a third party.

9. Section 110(1) and (2) reads as follows:

Claims Tribunals (1) A state Government may, by notification in the official Gazette, constitute one or more Motor Accidents 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 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).

Explanation: For the removal of doubts, it is hereby declared that the expression ""claims for compensation in respect of accidents involving the

death of, or bodily injury to, persons arising out of the use of motor vehicles"" includes claim for compensation u/s 92A.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or

more members, one of them shall be appointed as the Chairman thereof.

10. The Tribunal has been thus conferred with power to entertain claims arising in respect of motor accidents involving death or bodily injury to

human beings or damages to any property of a third party so arising or both. The words ""motor vehicles, or damages to any property of a third

party so arising or both"" were included by Act 56 of 1969. Prior to this, the Tribunal had no jurisdiction to decide upon compensation for damages

to property of a third party. The intendment of the amendment was that when the Tribunal has to render a finding on the nature of the accident, it

would be inadvisable to subject the respondents to face the proceedings in a

different forum for damages to property of a third party arising from the same accident, and risk a different finding being arrived at by the other forum about nature of accident. Multiplicity of proceedings relating to the same accident has been avoided. In essence, when there is a composite claim, it would be advisable for the Tribunal to decide upon both the claims. Does this amendment also cover cases wherein a claim is made only for damages to property of a third party arising out of the use of motor Vehicle? The words "'or both'" having been used, it clearly means that the Tribunal has jurisdiction not only to deal with either of the one or other, but both. It is not as if only in instances where composite claims are made, the Tribunal could be moved. If the compensation claimed is in respect of death or injury, the Tribunal can decide upon it. Equally, if the compensation claimed is only in respect of damages to any property of a third party in a motor vehicle accident, it could also be dealt with by the Tribunal.

11. In the light of these decisions above referred to, it is only the proviso to Section 110(1) which restricts the jurisdiction of the Tribunal, at the option of the claimant. The proviso deals with instances wherein a composite claim is made, and if the compensation claimed to property is more than Rs. 2,000 then on the claimant opting for the matter to be decided by the Civil Court, the Tribunal ceased to have the jurisdiction over the claim. The intendment of the Act is that, the Tribunal even though has the jurisdiction to decide upon compensation for damages to property for an unlimited amount; it is left to the option of the claimant if the damages claimed is more than Rs. 2,000 either to invoke the jurisdiction of the Tribunal or a Civil Court. The Act itself having envisaged two forums for a claim of this nature, provided the compensation claimed would be more than Rs. 2,000, petitioner cannot contend that by the amendment effected, Civil Courts have lost their jurisdiction to decide upon compensation for loss of property of a third party in a motor vehicle accident. Only in respect of claim less than Rs. 2,000 the Civil Courts have no jurisdiction to entertain a civil suit.

12. Therefore, when the jurisdiction of a Civil Court is dependent upon the option of the claimant, and in the instant case, when the respondent had chosen to file a civil suit; in the light of the decisions above referred to, the suit filed in the Sub-Court, Vellore is maintainable, and hence, this

revision petition is dismissed, No Costs.