

(1981) 08 KL CK 0015
In the High Court Of Kerala
Case No : M.F.A. No. 514 of 1978

R.C. Mathew

APPELLANT

Vs

K.M. Jose and Others

RESPONDENT

Date of Decision : 12-08-1981

Acts Referred:

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

Citation : AIR 1982 Ker 71

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; George Vadakkal, J

Bench : Division Bench

Advocate : T.R. Ramchandran Nair and C.C. Thomas, for the Appellant; M.M. Thomas and K.M. Immanuel, for the Respondent

Judgement

George Vadakkal, J.—Can, a Claims Tribunal constituted u/s 110 of the Motor Vehicles Act, 1939 (hereinafter, the Act) adjudicate upon a claim for compensation in respect of an accident which arose on 26-5-1976 (i. e. prior to the introduction of Clause (aa) in Section 110-A (1) of the Act) out of the use of a motor vehicle but involving only damages to property and not involving death of or bodily injury to any person? This is the question that falls for decision in this case.

2. It is not disputed that u/s 110 of the Act the State Government can constitute one or more Claims Tribunal for the purpose of adjudicating upon claims for compensation in respect of accidents arising out of the use of motor vehicles, if such accidents involve the death of, or bodily injury to persons or damages to any property of a third party, or both, and that this provision is disjunctive wherefore a Claims Tribunal so constituted has adjudicatory jurisdiction to determine compensation for either or both of (i) the death of or bodily injury to persons and (ii) damages to any property of a third party caused by an accident arising out of the use of a motor vehicle. It is also not disputed that the Kerala State Government has constituted Claims Tribunals in this State in terms of Section 110 of the Act, conferring jurisdiction on them to adjudicate upon claims

for compensation for either or both of (i) the death of or bodily injury to persons and (ii) damages to any property of a third party caused by an accident arising out of the use of a motor vehicle.

3. The contention is that despite such conferment of jurisdiction as is contemplated by Section 110 of the Act, an application claiming compensation solely for damages to a property of a third party caused by an accident arising out of the use of motor vehicle cannot be entertained because Section 110A of the Act (as it stood prior to its amendment by Act 47 of 1978) does not mention that such a person can make an application. One would have thought that a Court or Tribunal invested by a statutory provision with jurisdiction to adjudicate upon a certain claim could competently exercise that jurisdiction on such jurisdiction being invoked by any one, who has a cause of action of the nature over which and in respect of which such adjudicatory jurisdiction is conferred on the Court or the Tribunal, no matter whether the statute contains or not another provision which says that such a person can make an application in that behalf. If adjudicatory jurisdiction exists, it needs only to be invoked for its exercise, as otherwise the conferment of that power will not serve any purpose. If there are provisions governing the manner in which such power is to be invoked, certainly, it could be invoked only in that manner. If there be no provision regulating the manner of invoking that power, then it can be invoked in any manner that is in accord with the general practice obtained in relation to invocation of the jurisdiction of the particular Court or the Tribunal, as the case may be.

4. The constitution of Claims Tribunals u/s 110 of the Act is, as stated therein "for the purpose of adjudicating upon claims for compensation". Compensation, in law means, a payment to make amends for loss or injury to person or property. The claim for compensation may be in account of the death of or bodily injury to persons; or of damage to any property.

5. Section 110-A (1), prior to its amendment by Act 47 of 1978, provided :--

"An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made.

(a) by the person who has sustained the injury; or

(b) where death has resulted from the accident by all or any of the legal representatives of the deceased; or

(c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:"

(Proviso omitted).

6. The argument on behalf of the respondents which was accepted by the Claims Tribunal is that a person whose claim is only for compensation in respect of damage caused to his property by the accident, cannot make an application for compensation, because he is not a "person who has sustained injury", meaning

thereby, that he is one who has not sustained (to borrow the language employed by the Statute in Section 110) "bodily injury". In other words, and shortly put, the submission is that Clause (a) of Sub-section (1) of Section 110A takes in only persons who have sustained "bodily injury" by the accident.

7. In our view the expression "bodily injury" in Section 110 is narrower in meaning than the sense of the word "injury" used in Section 110A (1) (a). The former term : "bodily injury" means "bodily harm" or "physical injury" sustained by a person, while the word "injury" connotes injury or harm of any kind sustained by a person. If it were otherwise why should the Legislature use the word "bodily injury" in Section 110 and not use the same expression in Section 110A (1) (a)? Section 110-A (1) (b) provides for making of an application for compensation by all or any of the legal representatives of the deceased where the accident has resulted in the death of any person. Where the accident has resulted only in physical injury short of death of a person, he can admittedly make an application for compensation for such injury because he falls u/s 110A (1) (a). If the Legislature had in view only these two classes of claims in enacting Section 110A (1) (as it stood previously) and had not in mind the third category of claims mentioned in Section 110, viz., claims for compensation for damage or injury to property, then, we think that the Legislature would have used the more particular expression, "bodily injury" used in Section 110 in Section 110A (1) (a) also rather than using the generic term "injury".

8. Perhaps, till the amendment of Section 110 by Act 56 of 1969 by which adjudication of claims for compensation for damages to property of a third party was also brought within the jurisdiction of the Claims Tribunals. Section 110A (1) (a) envisaged only making of applications for compensation for "bodily injury" sustained by a person as a result of a motor accident. However, we are of the view, that on such amendment, the Legislature did not make specific provision in Section 110A (1) as regards making of applications for claim for compensation for damages to property (as done later by introducing Clause (aa) in Section 110A (1) by Act 47 of 1978) because, Section 116A (1) (a) would take in applications in respect of such classes of claims also. We are also of the view that, therefore, the subsequent introduction of Clause (aa) which specifically provides for applications for compensation "by the owner of the property" damaged by the accident is only by way of abundant caution.

9. The decisions in *Ratan Singh Karsanbhai Nakum v. Isadkhan Gulam-khan* (1975 ACJ 455) (Guj) and *Haryana State Vs. Pusa Ram and Others*, take the same view as we have taken herein, namely, that Section 110A (1) (a) is comprehensive enough to include within its ambit also a person who has not sustained any bodily injury but whose property has been damaged by the accident. In the Gujarat High Court's decision it is pointed out that Webster's Dictionary defines the word "injury" as meaning : "physical harm or damage to a person, property etc." and the word "sustain" as meaning "to endure; to bear up against; withstand; to undergo; to experience; to suffer, as an injury or loss".

The other decision cited at the bar on behalf of the appellant are Thillai Govindan v. Karuppasamy 1979 ACJ 445 (Mad) and Banwari Lal v. Vishnunarayan 1975 ACJ 40 (MP). In these two cases the question raised in the case on hand did not arise for consideration though it was held that the Tribunal can, in view of amendment of Section 110 by Act 56 of 1969 adjudicate upon a claim for compensation for damage to property. Of the decisions cited at the bar it remains to be noticed only Dr. Achalmal Singhvi Vs. Chano Khan and Sons and Another, of the Rajasthan High Court. This was a case where a composite claim was made for compensation for damage to the claimant's car and for bodily injury sustained by him. The Rajasthan High Court held that such a claim is competent. We do not think that this decision is in any way germane to the point raised herein.

In view of what is said above, we set aside the order under appeal and direct the Claims Tribunal to try and dispose of the claim made by the appellant. This appeal is allowed to the above extent. There will be no order as regards costs.