
(2010) 02 P&H CK 0268
In the Punjab And Haryana At Chandigarh

Satyavir

APPELLANT

Vs

Satbir Singh and Others

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Motor Vehicles Act, 1988 — Section 110, 140, 158, 163A, 165
Penal Code, 1860 (IPC) — Section 279, 336

Citation : (2010) 4 CivCC 377 : (2010) 158 PLR 573 : (2010) 4 RCR(Civil) 5

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The defendant is in Second Appeal against the judgment and decree of both the Courts below whereby, suit of the plaintiff for recovery by way of damages, to the tune of Rs. 62,500/- along with interest @ 8% per annum has been decreed from the date of occurrence i.e. 28.1.2001 till the date of realization, against defendant No. 1 and 2 jointly and severally.

2. The case set up by the plaintiff is that on 28.1.2001 at 10.30 PM defendant No. 1, while driving tempo Tata 407 bearing No. HR.46A/5715, under the employment of defendant No. 2, while coming from the direction of Bahadurgarh in a rash and negligent manner dashed against the shop-cum-kothara of the plaintiff and damaged it completely, which caused loss to him to the tune of Rs. 62,500/-. One FIR No. 38 dated 29.1.2001, under Sections 279 & 336 IPC, was also registered at the instance of plaintiff against defendant No. 1 at Police Station, City Bahadurgarh. It was alleged that defendant gave an assurance to indemnify the plaintiff of the damage, which was caused because of his negligence, but the assurance was not fulfilled which led to the filing of the suit. On notice, defendant No. 2, vide order dated 24.10.2002 was proceeded against ex parte whereas vide order dated 22.1.2003, name of defendant No. 3, was deleted from the array of the suit. Defendant No. 1, in his written statement

alleged that the story of the plaintiff is concocted and he is not responsible for any damages.

3. After the total denial of the defendant, the plaintiff filed replication reiterating the stand taken in the plaint. On the pleadings of the parties, following issues were struck:

1. Whether the plaintiff is entitled for recovery/damages of Rs. 62500/- alongwith cost and interest? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the suit of the plaintiff is bad for nonjoinder and mis-joinder of necessary parties? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Relief.

4. Learned Trial Court, after taking into consideration, oral as well as documentary evidence, decreed the suit on 27.5.2004.

5. Aggrieved against it, defendant No. 1 preferred an appeal u/s 96 of the Code of Civil Procedure, 1908 (for short "CPC") in which objection was taken about the jurisdiction of the Civil Court on the ground that as per Section 175 of the Motor Vehicles Act, 1988 (for short "the Act"), the Civil Court does not have the jurisdiction to decide the lis either for the injury, death or damage to the property as the jurisdiction of the Civil Court is specifically barred.

6. The learned Additional District Judge, Jhajjar relied upon a decision of the Jammu and Kashmir High Court reported as National Insurance Co. Vs. Union of India (UOI) and Others, , to hold that the plaintiff has remedy either to prefer his claim before the Civil Court or before the Motor Accident and Claims Tribunal (for short "the Tribunal") and following the said judgment, the appeal was dismissed.

7. Unsuccessful but unfazed, defendant has come in Second Appeal, in which the question of law has been framed "as to whether the Civil Court has got the jurisdiction to entertain the suit for damages caused to the property in a vehicular accident?"

8. In order to substantiate his argument, learned Counsel for the appellant has referred to some provisions of the Act, namely, Section 165, 166 and 175. He also submits that judgment relied upon by the learned First Appellate Court is not applicable to the facts and circumstances of the present case as it pertains to Section 110 of the Motor Vehicles Act, 1939 in which there was an amendment by Act No. XVI of 1969 by which a proviso was added to Section 110, which reads that "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."

9. It is submitted that the Act has further been amended by the Act of 1988 i.e. the Motor Vehicles Act, 1988, which came into force on 1.7.1989 and Section 110 has been converted to Section 165, Section 110A has been converted to Section 166 and Section 110F has been converted to Section 175. Therefore, it is submitted that the said judgment is not applicable because the proviso has been deleted on the basis of which, in the said judgment, it has been held, that if the damage to the property is of more than Rs. 2000/- in the vehicular accident, the claimant can put up a claim either before the Civil court or before the Tribunal. Learned Counsel for the appellant has also referred to a decision of the Gujarat High Court in the case of Hirabhai Nanubhai Desai Vs. The State of Gujarat and Others, .

10. On the other hand, learned Counsel for the respondent/plaintiff could not refer to a precedent under the Act in order to say that in case of damage to the property the Civil Court has got the jurisdiction.

11. Be that as it may, in order to appreciate the rival contentions of the parties, it would be necessary to refer to the provisions of the Motor Vehicles Act, 1939, the amendment Act of No. XVI of 1969 as well as the provisions of the Act.

Section 110 of Motor Vehicles Act, 1939:- (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 notifications 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.

(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.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he -

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a judge of the High Court.

(4) Where two or more Claims Tribunals are constituted for any area the State Government may, by general or special order, regulate the distribution of business among them.

Section 110-A of Motor Vehicles Act, 1939:- (1) An application 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 the legal representatives of the deceased; or

(c) By any agent duly authorized by the person injured or the legal representatives of the deceased, as the case may be.

(2) Every application under Sub-section (1) shall be made to Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

(3) No application for compensation under this section shall be entertained unless it is made within sixty days of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

Section 110-F of Motor Vehicles Act, 1939:- 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.

Section 110 of Motor Vehicles Act, 1969:- In Section 110 of the principal Act, in Sub Section (1), for the words "motor vehicles", the following words shall be substituted namely:

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

Section 165 of the Motor Vehicles Act, 1988:

Claims Tribunals.- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) 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. 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 claims for compensation u/s 140 (and Sec. 163A).

(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.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a High Court Judge (or as a District Judge).

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

Section 166 of the Motor Vehicles Act, 1988:

Application for compensation:- (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made-

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

(b) by the owner of the property; or

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

(d) 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:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under Sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) xxxx

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under

Sub-section (6) of Section 158 as an application for compensation under this Act.

Section 175 of the Motor Vehicles Act, 1988:

Bar on jurisdiction of Civil Courts.- 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.

12. It is apparent that the amount of Rs. 2000/- was added for the first time as a proviso to Section 110 by amended Act No. XVI of 1969 to Section 110 of the Act of 1939 on the basis of which the J&K High Court correctly took a view but with the amendment in the Act, the proviso has been deleted and now as per Section 175 of the Act, the jurisdiction vest only with the Tribunal to adjudicate upon loss to the property in the vehicular accident and not with the Civil Court.

13. There is no dispute between the parties that in order to satisfy the claim made in terms of Section 166B, the owner of the property, namely, the plaintiff can put up his claim before the Motor Accident and Claims Tribunal at Jhajjar. Section 175 of the Act clearly provides that there is no jurisdiction of the Civil Court to entertain any question relating to any claim for compensation which can be adjudicated upon by the Claims Tribunal for that area, in respect of any action taken or to be taken whereas Section 165 says that the Tribunal has the jurisdiction to decide any matter with regard to accident involving death or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party or both.

14. In view of the above, the substantial question of law raised by learned Counsel for the appellant is answered in his favour and it is decided that the Civil Court does not have the jurisdiction to decide the claim of Rs. 62,500/- for damages caused due to negligent driving on the part of the appellant in the case of motor vehicular accident. The jurisdiction exclusively vests with the Tribunal to entertain a claim for damage to property, u/s 165 of the Act. Thus, the present appeal is allowed and judgment and decree of the Courts below is set aside.

15. Since, this Court has decided jurisdiction of the Civil Court viz-a-viz the Tribunal constituted under the Act, therefore, the respondent/claimant is at liberty to pursue his claim before the Motor Accident and Claims Tribunal, Jhajjar in accordance with law, if so, advised.