

(1990) 02 GAU CK 0011
In the Gauhati High Court
Case No : M.A. (F) No. 40 of 1983

State of Assam

APPELLANT

Vs

Sunil Kumar Dey

RESPONDENT

Date of Decision : 22-02-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 110

Citation : (1991) ACJ 382

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : B.P. Bora, for the Appellant; S.A. Laskar and H.A. Sarkar, for the Respondent

Judgement

B.P. Saraf, J.—This appeal has been filed by the State of Assam against the award dated 9.12.1982 passed by the Member, Motor Accidents Claims Tribunal, Goalpara in M.A.C. Case No. 7 of 1979. The facts of the case are as follows:

The respondent, Sunil Kumar Dey, filed a claim petition before the Motor Accidents Claims Tribunal, Goalpara at Dhubri (hereinafter referred to as "the Tribunal") stating that on 31.1.1979 at about 4.30 p.m. the fire brigade vehicle No. AMA 2299 came rashly and negligently and after knocking down a cyclist damaged his shop house, furniture, valuable commodities and some motor parts. A sum of Rs. 55,750/- was claimed by way of damages to property on various counts, as given in the claim petition. A number of issues were framed. One of the issues was whether the claim petition was maintainable. This issue was framed on the basis of the objection taken by the State of Assam that the Tribunal had no jurisdiction to entertain a claim in respect of damages to property and that its jurisdiction was confined only to claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles. The amount of claim was also challenged on the ground that it was excessive as well as on the ground that it included claim which does not fall within the expression "damage to property" and, as such, in

any event that part of the claim was not allowable. An issue was also framed whether the driver of the offending vehicle was rash and negligent in driving, causing accident as alleged in the petition.

2. The learned Tribunal held the claim to be maintainable. It also arrived at a finding that the driver was driving the vehicle rashly and negligently. So far as the amount of damages is concerned, as against the claim of Rs. 55,750/- the Tribunal awarded a sum of Rs. 34,000/- only. This amount comprised of the following: Rs. 8,850/- on account of damage to the shop house; Rs. 6,900/- on account of damage to the furniture; Rs. 4,500/- on account of damage to merchandise; Rs. 1,000/- for mental suffering; Rs. 750/- for incidental expenses and Rs. 12,000/- on account of loss of business during the period of three years. Aggrieved by the aforesaid award the State has come up in appeal.

3. Mr. B.P. Bora, learned counsel for the appellant, State of Assam, has challenged the award mainly on two counts. First, that the learned Tribunal has no jurisdiction to entertain the claim on account of damage to property. According to the learned counsel the claim for damage to property can be entertained only in case of an accident where death of, or bodily injury to, persons was caused. In other words, his submission is that the claim for damage to property simpliciter, without any claim for death or bodily injury, is outside the scope and purview of Section 110 of the Motor Vehicles Act, for short "the Act" and, as such, the present claim was not maintainable. He next challenged the award of Rs. 12,000/- on account of loss of income.

4. I have considered the submissions of the learned counsel for the appellant. Also heard Mr. S.A Laskar, learned counsel for the claimant-respondent. Let me deal with the first submission of the learned counsel for the appellant relating to the maintainability of the claim petition. Admittedly in the instant case the claim related only to damage to property. There was no death of, or bodily injury to, any person as a result of the accident. The question for determination is whether such claim falls u/s 110 of the Act. To appreciate the point at issue it is necessary to refer to Sub-section (1) of Section 110 of the Act which reads as follows:

1.10. 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 damage 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.

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 92-A.

5. It may be noted herein that Section 110 , as it originally stood, did not contain the words "or damages to any property of a third party so arising, or both". These words were inserted by Act 56 of 1969 with effect from 2.3.1970. The proviso was also inserted by the very same amendment Act. It appears that prior to the amendment there was a conflict of opinion as to whether a claim in respect of damage to property could be entertained by the Tribunal constituted u/s 110 of the Act or not. In some of the cases a view was taken by the courts that the Tribunal could award damage only in respect of death of, or bodily injury to, persons. Another view taken was that if as a result of the accident both death or bodily injury and damage to property were caused, the Tribunal could award damage also in respect of damage to property. To set at rest all controversies in regard to the scope and power of the Tribunal u/s 110 the aforesaid amendment was made in the year 1969 and it was specifically provided that the Tribunal can entertain and adjudicate claims in respect of damage to any property of a third party arising out of the use of motor vehicles. In view of the specific provision incorporated in Section 110(1) of the Act by the Motor Vehicles (Amendment) Act, 1969, the contention that the Tribunal had no power or jurisdiction to entertain claim for award of damages in respect to damage to property has no force.

6. In this connection it may also be worthwhile to note that as a consequence to the aforesaid amendment of Section 110(1), Section 110-A of the Act was also amended by insertion of a new clause (aa) in Sub-section (1) in the list of persons who may file an application for compensation arising out of the accident of the nature specified in Sub-section (1) of Section 110 of the Act. The new clause (aa) reads: "by the owner of the property; or". This insertion was made by Act 47 of 1978 with effect from 16.1.1979. The interpretation of Section 110(1) given above is enforced by the aforesaid amendment of Section 110-A

7. It is, therefore, clear that the claim for award of compensation in respect of damage to property arising out of the use of the motor vehicles can be filed before the Motor Accidents Claims Tribunal constituted u/s 110 of the Act. In cases where a claim includes claim for compensation in respect of damage to property exceeding Rs. 2,000/-, an option has been given to the claimant to refer the claim to a civil court for adjudication and where a reference is so made the Tribunal shall have no jurisdiction to entertain any question relating to such claim. The proviso, however, gives an option only to the claimant. If no such option is exercised by him, it is the Tribunal which shall have the jurisdiction to entertain and decide the claim. In the instant case, no such option was exercised by the claimant and, as such, the Tribunal had jurisdiction to entertain the claim and to decide the same on merits. The contention in regard to maintainability,

therefore, has no force.

8. The next submission of the learned counsel for the appellant is that the power of the Tribunal is confined to award of compensation for damage to any property, which expression cannot be interpreted to include loss of income.

9. I have considered the submission. The award of Rs. 34,000/- includes a sum of Rs. 12,000/- on account of loss of income from closure of the business as a result of the damage caused by the motor vehicle. The decision on this point will depend on the interpretation of the expression "damage to property". In my opinion, the expression "damage to property" only means any damage caused to the property itself. It cannot take within its sweep any other loss suffered by the owner as a result of the accident which caused such damage to the property. The jurisdiction of the Tribunal is limited to award compensation for "damage to the property" and nothing beyond that. If a claimant wants to claim anything further, he might exercise the option under the proviso of Section 110 of the Act to get the case referred to civil court in which case it might be open to him to claim even loss of income. In that view of the matter, I am of the opinion that the learned Tribunal committed an error in awarding the sum of Rs. 12,000/- on account of loss of business. The award to that extent shall stand modified.

10. Mr. Bora, learned counsel for the appellant, also faintly submits that the award of compensation on other counts is on the higher side. However, on a careful consideration of the evidence on record I am satisfied that the estimate of damages made by the learned Tribunal is very reasonable and based on materials on record. The same is accordingly sustained. As a result the award of Rs. 34,000/- is reduced to Rs. 22,000/-.

11. Mr. S.A Laskar, learned counsel for the claimant-respondent, submits that as the amount has not been paid as yet the appellant may be directed to pay the same with interest at the rate of 12 per cent. I find from the award that the learned Tribunal had directed the State of Assam to pay the amount within three months from the date of the award failing which it was directed that interest at the rate of 6 per cent shall be payable from the date of the award till realisation. In view of the aforesaid order of the learned Tribunal, no further order is needed. If the awarded amount has not been paid, the amount shall be paid by the State of Assam to the claimant within three months from today with interest at the rate of 6 per cent from the date of filing of the claim petition till the date of payment.

12. The appeal is allowed to the extent indicated above. No costs.