
(1975) 12 MP CK 0001
In the Madhya Pradesh High Court
Case No : F.A. No. 55 of 1965

State of Madhya Pradesh	Vs	APPELLANT
Bahadur Pehlajrai Dwarkadas and Another		RESPONDENT

Date of Decision : 03-12-1975

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A
Motor Vehicles Act, 1988 — Section 110, 111

Citation : (1976) ACJ 222

Hon'ble Judges : J.S. Verma, J;B.R. Dubey, J

Bench : Division Bench

Advocate : M.G. Upadhayaya, for the Appellant; S.L. Garg, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, J.—This first appeal is by Defendant No. 1 against the judgment and decree dated 18-1-1965, passed by the Additional District Judge, Shajapur, in Regular Civil Suit No. 2B of 1962.

2. The suit is to recover, damages for personal injuries sustained by the Plaintiff in a motor accident on 4-5-1961 at about 4 p.m. near the Dak Bungalow at Shajapur, when a jeep M.P.Z. 1020 belonging to Defendant No. 1 and driven by Defendant No. 2 Yusufkhan collided headlong with the Ambassador Car B.M.C. 5800 owned by the plaintiff in which the Plaintiff was traveling on his way from Bombay to Calcutta. The collision took place about 40 feet outside the gate of the Dak Bungalow when the Plaintiff's car was going to the Dak Bungalow and the Jeep was coming out of it. The Plaintiff alleges that the Jeep was being driven rashly and negligently by its driver and it came out abruptly from the gate of the Dak Bungalow giving no opportunity to the car driver to avert the collision. Injuries were sustained by the Plaintiff in this accident and in all a sum of Rs. 25,000 is claimed as damages under several heads.

3. There is no dispute that a Motor Accidents Claims Tribunal for that area had

been duly constituted and was in existence from a date prior to the date of this accident. However instead of filing the claim before the Tribunal, the Plaintiff filed a regular civil suit in the ordinary civil jurisdiction. An objection was taken to the filing of a regular civil suit, on the basis of Section 110-F of the Motor Vehicles Act. The Court below negated the objection on the ground that the word "accident" occurring in Section 110-F of the Act does not cover a tortious act on which the claim is based. For this reason, notwithstanding the existence of the Claims Tribunal, it was held that the claim in suit was beyond the jurisdiction of the Tribunal and as such was cognizable by a civil Court. The Court below accepted the Plaintiff's claim to the extent of Rs. 16,369.45 P. and consequently decreed the same to this extent. Hence this appeal by the State of Madhya Pradesh.

4. The first question relates to the jurisdiction of the civil Court to try such a suit in view of the express exclusion contained in Section 110-F of the Motor Vehicles Act. Mr. S.L. Garg learned Counsel for the Plaintiff-Respondent No. 1 has reiterated the argument which found favour with the trial Court. He contends that the jurisdiction of the Claims Tribunal is limited to claims for "compensation" arising out of an "accident" and the words "accident" and "compensation" have limited meaning. According to him, an "accident" is an inevitable accident which does not result from any negligence or lack of fore-sociability. Thus, according to him, claims before the Tribunal can be lodged only in respect of inevitable accidents and the remaining accidents which result from any negligence or rashness are outside the jurisdiction of the Claims Tribunal. To support the main argument based on this limited meaning of the word "accident" Mr. Garg also seeks support from use of the word "compensation" which he contends, has also a limited meaning and is not the same as "damages". On this basis, he argues that except for claims arising out of inevitable accidents, remaining claims resulting from injuries sustained from the use of the motor vehicle are to be made in the ordinary civil jurisdiction before the civil Courts, which are tortious acts resulting from negligence or rashness. Such an argument runs counter to a Full Bench decision of this Court in Mangilal Vs. Parasram and Others, . For this reason, Mr. Garg has challenged the correctness of the Full Bench decision. We have therefore, to see whether there is any merit in this argument because if the argument is acceptable, then the case will have to be referred to a larger Bench for considering the correctness of the Full Bench decision.

5. Mr. Garg fairly concedes that in case his argument is rejected, then there being in existence a Claims Tribunal duly constituted for the area in question from the date prior to the date of accident, the civil Court had no jurisdiction to try the suit by virtue of Section 110-F of the Motor Vehicle Act.

6. The main emphasis of Mr. Garg is on the meaning of the word "accident". In substance his argument is that "accident" means inevitable "accident" and the two expressions are interchangeable. On the very face of it, the argument is not acceptable for the simple reason that it requires addition of the word "inevitable"

to obtain this result. Addition of a word is not permissible according to the rule of construction unless the word to be construed is incapable of a proper construction without such addition. We shall show, hereafter, that there is no need for this addition. The expression "inevitable accident" has assumed a specific meaning in legal parlance and is understood for a long time to can note only those accidents which cannot be foreseen and consequently can not be averted with care and skill. Charlesworth on negligence, 4th Edn., in paragraph 1183 describes an inevitable accident" as follows:?

There is no inevitable accident unless the Defendant can prove that something happened over which he had no control and the effect of which could not have been avoided by the exercise of care and skill.

The settled meaning of the expression "inevitable accident" itself shows that all accidents are not inevitable and only some of them which satisfy the aforesaid requirements and exclude rashness or negligence on the part of the driver, fall within the category of inevitable accidents. In fact, the defence of inevitable accident, if proved, is an answer to a claim for damages. The result is that the contention of Mr. Garg is answered by his own argument because it requires addition of the word "inevitable" before the word "accident" to reach the result he desires. The same conclusion is also reached by a longer process of reasoning mentioned hereinafter, which has become necessary in view of the vehemence of Mr. Garg's argument.

7. In Smt. Kamla Devi and Others Vs. Kishanchand and Another, a Division Bench of this Court while dealing with the question of the law to be applied by the Tribunal in assessing compensation u/s 110B of the Motor Vehicles Act, held as follows:

The group of Section 110 to 110-F of the Motor Vehicles Act deals with the constitution of Claims Tribunals 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 and lays down the procedure and powers of these Tribunals. These sections also provide for an appeal to the High Court and bar the jurisdiction of civil Courts to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunals." Nothing is said in these sections about the basis and extent of liability or even about persons who can be subjected to liability. The sections do not deal with liability at all: they only provide a new mode of enforcing the liability in respect of accidents involving death or bodily injury which before the constitution of the Tribunal was being enforced by civil Courts. The object of these sections is to provide a cheap and speedy mode of enforcing liability arising out of use of motor vehicles. The remedy is made cheap by providing the application for compensation in place of suit and thus obviating the necessity of payment of court-fees. It is made expeditious by empowering the Tribunals to follow summary procedure and by cutting down second appeals. The sections are a complete code in so far as they deal with the constitution, procedure and powers

of the Tribunal and appeals against the awards made by the Tribunal. But these are all matters related to the mode of enforcement of liability. The sections do not enter the field of the law of liability which still remains to be governed by the ordinary Law of Torts and the Fatal Accidents Act, 1885 and it is for this reason that the sections do not refer to them at all. The power to make an award "determining the amount of compensation which appears to it to be just" conferred on the Tribunal does not create any new basis or extent of liability. The Tribunal must determine the amount of compensation according to the substantive law of liability already in force. The words "which appears to it to be JUST" only recognise that in assessment of compensation the Tribunal like Courts will have certain measure of discretion.

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In our opinion a Claims Tribunal inquiring into a claim for a compensation u/s 110B of the Motor Vehicles Act in respect of a fatal accident arising out of the use of a motor vehicle is bound to apply the law as contained in the Fatal Accidents Act. For example it cannot award compensation unless the death was caused by wrongful act, neglect or default. We are conscious that of late there is a movement to change the entire basis of liability in cases arising out of road traffic accident. The move is to make the liability absolute on no fault basis, so that the victims or their dependants are able to recover always some minimum compensation.

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Law reform on these lines will be of a far reaching nature and may be most welcome; however all that we need say at present is that Section 110 to 110F of the Motor Vehicles Act are not designed to bring about that kind of reform or for the matter any reform affecting the basis or extent of liability.

The Division Bench clearly held that the liability for compensation in all such cases continued to be governed by the ordinary Law of Torts and the Fatal Accidents Act, 1885. In the state of the existing law, the principles governing the assessment of compensation are the same with no new basis being provided for the Tribunal and the only effect of enacting Sections 110 to 110-F of the Motor Vehicles Act is to provide a cheap remedy for adjudication of such claims for compensation by a change of the forum from civil Court to the Tribunals, also prescribing the procedure to be followed by such Tribunals. It has been expressly held that negligence is required to be proved by the claimant in order to succeed before the Tribunal as is necessary under the ordinary Law of Torts and the Fatal Accidents, ct. In short it was clearly ruled that in every case of accident the proof of negligence is necessary to raise the liability for payment of compensation. The net result, is, that no occasion for payment of compensation would arise in the case of an inevitable accident, there being no negligence in such a case. On this basis, the question of providing any forum to adjudicate Upon claims for compensation in respect of. inevitable accidents would be wholly meaningless. If

Mr. Garg is right, then the constitution of such Tribunal under the Motor Vehicles Act would be only for adjudication on cases in which no compensation can be paid. The whole object of enacting Sections 110 to 111 of the Motor Vehicles Act by amendment in 1956 would, therefore, be a mere exercise in futility.

8. A Full Bench of this Court in *Mangilal Vs. Parasram and Others*, was required to answer the question: whether a finding that the accident of the nature as specified in Section 110-A of the Act was a result of negligence on the part of the owner or the driver of the vehicle is necessary or not? The question was answered in the affirmative and in doing so the conclusions reached by the Full Bench were summarised in Paragraph 32 of the judgment. Some of the conclusions relevant for our purpose are as follows:

The provisions of the Motor Vehicles Act have left wholly untouched the question what makes the insured liable.

The essential question what makes the insured liable, directly or vicariously, to pay damages is governed by the general substantive law, the Law of Torts, under which negligence is the sine qua non for the liability of the owner of the vehicle.

Sections 110 to 110-F are only adjective in their character and scope. They provide a remedial machinery as a substitute for the ordinary remedy in a civil Court. Jurisdiction of the civil Court is excluded.

The ultimate result is that there must be a finding of negligence of the insured which makes him liable in Torts, before compensation can be awarded to the claimant from the insurer u/s 110B of the Motor Vehicles Act.

Thus, the Full Bench consisting of three Judges other than the two who constituted the Division Bench in *Smt. Kamla Devi and Others Vs. Kishanchand and Another*, also reached the same conclusion unanimously.

9. Recently, in *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, their Lordships of the Supreme Court had occasion to decide the effect of Section 110-F of the Motor Vehicles Act in a case where the Tribunal was constituted after the date of the accident when the limitation prescribed for filing a claim u/s 110-A of the Act had expired but the ordinary limitation for a civil suit was still available and the suit till then had not been filed. The question for decision was, whether a claim could be entertained by the Tribunal or the remedy of the aggrieved person was to institute a civil suit? Their Lordships came to the conclusion that the jurisdiction of the civil Court is ousted by virtue of Section 110-F of the Motor Vehicles Act as soon as the Claims Tribunal is constituted and an application before the Tribunal is the only remedy available to the claimant who could also apply for condonation of the delay under the proviso to Sub-section (3) of Section 110-A of the Act. For deciding the case their Lordships were required to determine the effect of Section 110-F in regard to claims classified on the basis of their date in relation to the date of constitution of the Tribunal. On doing so, the law has been laid down as follows:

Until and unless the Claims Tribunal were constituted the provisions of the law sections introduced in the year 1956 could not be availed of. But as soon as a Claims Tribunal was constituted the jurisdiction of the civil Court was barred by Section 110-F?. There could not be any debate or dispute that if an accident occurred after the constitution of the Claims Tribunal, the remedy of the claimant was to file an application u/s 110-A. The jurisdiction of the civil Court in such a case was ousted in express language.

On the plain language of Sections 110-A and 110-F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law.

The underlying principle of the change of law brought about by the amendment in the year 1956 was to enable the claimants to have cheap remedy of approaching the Claims Tribunal on payment of a nominal court-fee whereas a large amount of ad valorem court fee was required to be paid in civil Court.

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In any view of the matter, in our opinion, the jurisdiction of the civil Court is ousted as soon as the Claims Tribunal is constituted and the filing of the application before the Tribunal is the only remedy available to the claimant.

10. The aforesaid recent decision of the Supreme Court is to the same effect and settles the law on the point. It is, therefore beyond doubt that the effect of Sections 110 to 110-F of the Act is merely to provide for a change of forum and its procedure, thereby substituting a cheap remedy to the victims of all motor accidents and from the date of constitution of the Tribunal the jurisdiction of civil Court is totally ousted in respect of such claims.

11. The Fatal Accidents Act, 1855, was enacted to provide for "compensation to families for loss occasioned by the death of a person caused by actionable wrong. Section 1A provides for liability where the result is brought about "by wrongful act, neglect or default". The preamble shows that the words "damages" and "compensation" are used as interchangeable words having the same meaning. The statement of objects and reasons of the amendment made in 1956 in the Motor Vehicles Act also shows that the constitution of the Tribunals was to adjudicate claims for "damages" and on determination to award "damages". Thus the word "compensation" used in these provisions introduced by that amendment has to be read as a synonym for "damages". "Compensation" is only a recompense for the pecuniary loss suffered by the victims and, in the context, the words "compensation" and "damages" have been understood and used as synonyms in the Law of Tort.

12. The settled rule to be applied while construing any word occurring in a statute has been reiterated in Deputy Chief Controller of Imports and Exports, New Delhi Vs. K.T. Kosalram and Others, as follows:

In our opinion dictionary meanings, however, helpful in understanding the

general sense of the words, cannot control where the scheme of the statute or the instrument considered as a whole clearly conveys a somewhat different shade of meaning. It is not always a safe way to construe a statute or a contract by dividing it by a process of etymological dissection and after separating words from their context to give each word some particular definition given by lexicographers and then to reconstruct the instrument upon the basis of those definitions. What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context the nature of the subject matter, the purpose or the intention of the author and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker of the writer and the words have naturally, therefore to be so construed as to fit in with the idea which emerges on a consideration of the entire context. Each word is but a symbol which may stand for one or a number of objects. The context, in which a word conveying different shades of meanings is used, is of importance in determining the precise sense which fits in with the context as intended to be conveyed by the author.

The rule of construction in such cases has been summarised in Justice G.P. Singh's Principles of Statutory Interpretation (Second Edition) at page 68 as follows:

It has already been seen that even ordinarily the meaning of a word is not to be taken in abstract but regard must be had to the setting in which the word occurs as also to the subject matter and object of the enactment. However, in case of doubt these factors gain great prominence in selecting the true meaning out of the rival interpretations which may be reasonably open of such language.

13. The meaning of the word "accident" has thus to be gathered from the context, the subject-matter, the intention of the Legislature, effect of the meaning given and the object of the enactment. While dealing with the meaning of the word "accident" in the expression "accident arising out of and in the course of the employment" in the (English) Workmen's Compensation Act, 1906 in Board of Management of Trim Joint District School v. Kelly 1914 AC 667 (House of Lords). Viscount Haldane L.C. observed as follows:

It seems to me important to bear in mind that "accident" is a word the meaning of which may vary accordingly as the context varies. In criminal jurisprudence crime and accident are sharply divided by the presence or absence of mens rea. But in contracts such as those of marine insurance and of carriage by sea this is not so. In such cases the maxim "injure non remota cause sed proximo spectatur" is applied. I need only refer your Lordships to what was laid down by Lord Herschell and Lord Barmwell when overruling the notion that a peril or an accident in such cases is what must happen without the fault of anybody in Wilson v. Owners of the Cargo per the Xantho.

It is therefore necessary, in endeavoring to arrive at what is meant by accident

to consider the context in which the word is introduced. The scope and purpose of that context may make the whole difference.... What was held in *Fenton v. Thorely* was the injury and accident were not to be separated, and that "injury by accident" meant nothing more than accidental injury or accident as the word is popularly used.

In the same case Earl Loreburn observed follows:

A good deal was said about the word "accident." Etymologically, the word means something which happens a rendering which is not very helpful. We are to construe it in the popular sense, as plain people would understand but we are also to construe it in its setting, in the context and in the light of the purpose which appears from the Act itself. Now, there is no single rigid meaning in the common use of the word. Mankind have taken the liberty of using it, as they use to many other words not in any exact sense but in a somewhat confused, or rather in a variety of ways,

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In short, the common meaning of this word is ruled neither by logic nor by etymology, but by custom, and no formula will precisely express its usage for all cases.

It is ultimately held by the House of Lords that injuries caused by deliberate violence which arose out of and during the course of employment also amounted to "accident". The meaning of the word "accident" has thus been understood so widely, depending on the context, as a result of its construction in the ordinary and its popular sense in which it is used and understood by the persons concerned. The English Courts have also taken the view that manslaughter arising from negligent driving on the road is covered by the contract of indemnity in respect of a accidental injury ; (1921) 3 K.B. 327 : (1957) 2 K.B. 311 which were approved by Denning L.J. in *Maries v. Philip Trant and Sons Ltd.* (1954) 1 Q.B. 29 (C.A.)

14. We do not find any reason to give a restricted meaning to the word "accident" as, suggested by Mr. Garg since its construction according to the settled rule in the light of the relevant facts undoubtedly shows that the word includes within its ambit all incidents involving the "death of or bodily injuries to persons arising out of the use of a motor vehicle or damages to any property of third party so arising or both". The word "understood" in its ordinary and popular sense by persons concerned indicates the same meaning. It is a matter of common knowledge that any incident resulting in such consequences and arising out of the use of a motor vehicle is described by all as an "accident". The moment such an incident takes place, it is described as an "accident" even by the on-lookers and label of "accident" is given to the incident even before there is time available to ascertain the real facts which could justify the inference of any negligence or rashness of the driver. The meaning has been so understood all along by everyone and it is for this reason that the "accidents" which result

without any negligence or rashness have come to be known as "inevitable accidents" which expression, as already pointed out, has assumed a definite meaning in the legal parlance. The conclusion we have reached is consistent with the intention of legislature and object of enacting the aforesaid provisions introduced by amendment while the meaning suggested by Mr. Garg would totally frustrate the same. It cannot be doubted that the amendments were made for achieving the object and not for frustrating it. It is, therefore the meaning which has the effect of achieving the object that has to be preferred against the one frustrating it.

15. In *Firmer v. Evertee* 1969 (3) AH E. R. 257 (H.L.); Lord Reid while reiterating the aforesaid rule of construction, also gave a warning to be remembered by the Court on such an occasion, in the following words, viz.

In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase. We have been warned again and again that it is wrong and dangerous to proceed by substituting some other words for the words of the statute.

The natural or ordinary meaning of the word "accident" in its context is as stated by us and the same being consistent with the intention of the legislature, there is no occasion for us to look for some other possible meaning of the word. Mr. Garg's argument, if accepted, would amount to substituting the words "inevitable accident" for the word "accident" occurring in the statute and this is the very thing which the Courts are warned to avoid in such a situation. We have no doubt that Mr. Garg's argument must be rejected as wholly fallacious.

16. Mr. Garg has also brought to our notice an unreported decision of Sohani J. sitting singly in *Darshansingh v. Lakhvirsingh* C.R. No. 143 of 1975 decided on 8-10-1975 wherein the words "accident" has been construed similarly in para. 6 of the decision. With respect, we are in agreement with the same.

17. As a result of the discussion aforesaid, this appeal has to be allowed. However, counsel's fee to the Appellant must be disallowed since we have received no assistance from counsel for the Appellant. We are further of the opinion that the remaining costs should also be borne by the Appellant since law on the point was not beyond doubt at the time when the suit was filed or even this appeal was filed in the year 1965. The Plaintiff has also incurred needless expenditure by payment of court-fees on the plaint so that he should not be burdened with the Appellant's costs.

18. Consequently, this appeal is allowed and the judgment and decree of the trial Court are set aside. The trial Court shall return the plaint for its presentation to the proper forum. The parties shall bear their costs throughout.