

(2014) 06 KL CK 0009
In the High Court Of Kerala
Case No : C.R.P. No. 409 of 2014

The Kerala State Road Transport Corporation	APPELLANT
Vs	
Reghunathan	RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 175

Citation : (2014) 4 ACC 698 : (2016) ACJ 141 : (2014) 3 ILR 218 : (2014) 2 KHC 783 : (2014) 3 KLJ 258 : (2014) 3 KLT 17

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : P.C. Chacko, Advocate SC, KSRTC, Advocate for the Appellant; K.B. Pradeep, Advocate for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—Has the civil court the jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the claims tribunal for that area?

2. The plaintiff alleged that his car parked on the extreme left side of the Holy Angels Convent Road within the city of Thiruvananthapuram was hit on its side by a bus at 8.30 a.m. on 11.08.2000. The bus belonged to the first defendant Corporation (The Kerala State Road Transport Corporation) and was driven by the second defendant at the material time during one of its routine trips. A portion of the bumper and the side glass of the car was damaged and the painting on its body was also scratched to a considerable extent due to the hit by the bus resulting in loss to the plaintiff. The plaintiff contended that the second defendant issued Ext.A1 receipt undertaking to bear the repair charges for the car to be done by its authorised maintenance centre - TVS workshop. The plaintiff asserted that he had spent a sum of Rs. 18,568/- towards repair charges evidenced by Exts.A7 and A7(a) cash bills issued by the maintenance centre. The suit for realising the sum of Rs. 18,568/- was filed on the basis that the second

defendant has not paid the repair charges as undertaken and that the first defendant is also vicariously liable.

3. The defendants filed a joint written statement denying the entire incident and also contended that the plaintiff had parked his car in a negligent manner on the busy road which could have been damaged. It was further contended that the signature of the second defendant was obtained in a blank paper as a condition for allowing the bus to continue its trip which was later fabricated into Ext.A1 receipt. The defendants maintained that they are not liable to make good the loss allegedly suffered by the plaintiff and that there is no obligation to pay the sum of Rs. 18,568/- demanded. The trial court dismissed the suit holding that Ext.A1 receipt has been executed against public policy obviously to overcome the registration of a criminal case for causing material damage to property. The lower appellate court in appeal by the plaintiff decreed the suit holding that the second defendant has shouldered his responsibility to meet the repair charges on the basis of Ext.A1 receipt. The first defendant was directed to pay the sum of Rs. 18,568/- with interest thereon to the plaintiff and the same was permitted to be realised from its employee the second defendant.

4. I heard Mr. P.C. Chacko, Advocate on behalf of the revision petitioners and also Mr. K.B. Pradeep, Advocate on behalf of the respondent. A Civil Revision Petition was filed since the subject matter of the original suit is for recovery of money not exceeding Rs. 25,000/-. The defendants assail the judgment of the lower appellate court in the Civil Revision Petition contending inter alia that it lacks jurisdiction.

5. A cursory look at the averments in the plaint reveals that the amount is claimed as compensation in respect of an accident involving damages to a property of a third party arising out of the use of motor vehicle. The relevant part of the averments in the plaint is extracted below:

The cause of action for the suit has arisen on 11.08.2000, the date on which the damage was sustained to the vehicle due to the negligence of the 2nd defendant, on 20.09.2000, the date on which the last demand for payment of the said amount was made by the plaintiff and continuously thereafter at Vanchiyoor village, where the accident took place, which is within the jurisdiction of this Honourable Court.

The road where the accident allegedly took place runs between the General Hospital junction and Vanchiyoor falling within the jurisdiction of the Motor Accidents Claims Tribunal, Thiruvananthapuram. The said tribunal constituted u/s 165 of the Motor Vehicles Act, 1988 (the "Act" for short) is clothed with exclusive jurisdiction to entertain any claim for compensation of the nature filed. There is infact a bar of jurisdiction for the civil court to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. A reference to Section 175 of the Act is apposite and is as follows:

175. 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.

6. The genesis of the claim in the instant case as revealed from the averments in the plaint is the damage allegedly sustained to the vehicle of the plaintiff due to the negligence of the second defendant. The fact that the second defendant had allegedly issued Ext.A1 receipt undertaking to bear the repair charges does not take the claim out of the purview of Section 165 of the Act. The suit cannot be viewed as one for realisation of money simplicitor on the basis of Ext.A1 receipt overlooking the damages allegedly sustained arising out of a motor vehicle accident. The decree passed by the civil court entertaining a claim for compensation ignoring the bar of jurisdiction u/s 175 of the Act is a nullity and nonest in the eye of law and it is a coram non judice. Nothing precluded the plaintiff from laying a claim for compensation for damages to his property before the Motor Accidents Claims Tribunal having jurisdiction over the area. I should immediately note that Ext.A1 receipt merely undertakes to bear the repair charges and does not specify the amount after owning negligence by the second defendant. The defect of jurisdiction strikes at the very authority of the civil court to pass a decree for Rs. 18,568/- with interest on the facts pleaded which cannot be cured even by consent or waiver. Even a claim for loss of diesel from a tanker lorry in an accident was held to lie in the tribunal only [See: New India Assurance Company Ltd. Vs. K. Sarvothama Kamath and other [2008 (4) KHC 769].

7. The Supreme Court in Dr. Jagmittar Sain Bhagat Vs. Dir. Health Services, Haryana and Others, had occasion to observe as follows as regards a decree passed by a court which has no inherent jurisdiction:

A decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of the Act and the common law of court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner". -

The law does not permit any court/tribunal/forum to usurp jurisdiction on any ground whatsoever, in case, such an authority does not have jurisdiction on the subject matter.

To the same effect are the decisions in Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., and Sarwan Kumar and Another Vs. Madan Lal Aggarwal, which apply to the present fact situation.

8. The upshot of the discussion is that the decree of the lower appellate court is liable to be reversed restoring the decree of the trial court thus dismissing the

suit although for reasons different. It is made clear that the right if any of the plaintiff to lay a claim for compensation on account of the damages suffered to his car in the accident u/s 165 of the Act is not in any way impaired.

The Civil Revision Petition is allowed. No costs.