

(1984) 02 KL CK 0035
In the High Court Of Kerala
Case No : M.F.A. No. 552 of 1981

The Oriental Fire and General Insurance Co. Ltd., Trichur
Vs

APPELLANT

Narayani Amma and Others

RESPONDENT

Date of Decision : 28-02-1984

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D(2)

Citation : (1984) KLJ 278

Hon'ble Judges : V. Bhaskaran Nambiar, J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : Mathew Jacob, for the Appellant; P. Chandrasekharan, Prabha K. Pillai, V. Parameswara Menon and M. Venugopal, for the Respondent

Final Decision : Dismissed

Judgement

Balagangadharan Nair, J.—Respondents 1 and 2 applied before the Motor Accidents Claims Tribunal, Ernakulam u/s 110A, Motor Vehicles Act for compensation for damages caused to their building in an accident by a bus, KLR 7785 driven by the 4th respondent. The Tribunal allowed their application and granted them compensation of Rs. 1546/- with interest from 21-12-1976 and costs from respondents 1 and 2 and the appellant, the Insurance Company which was the 3rd respondent. The Tribunal also directed that the Insurance Company would deposit the amount and that its liability would be limited to Rs. 2000/- if the amount exceeded it. The appellant has brought this appeal challenging its liability. Counsel for respondents 1 and 2 raised a preliminary objection that the appeal would not lie u/s 110D(2) on the ground that the amount in dispute in appeal is less than two thousand rupees. Counsel pointed out that the amount allowed by the Tribunal was only Rs. 1546/- and even with the interest at 6% from 21-12-1976, the amount would only be Rs. 1972/- at the date of the award. According to counsel, the amount in dispute in the appeal is Rs. 1546/- or at the best Rs. 1972/- and in either case the appeal is incompetent as the amount in dispute in the appeal is less than Rs. 2000/-. Counsel for the appellant

countered by arguing that at the date of the appeal the amount awarded with the interest was above Rs. 2000/- and that being the amount in dispute in the appeal, the appeal was competent in terms of Section 110D(2), As there was no direct decision on the point we heard the learned Government Pleader as well. He supported the respondents in the preliminary objection.

2. Section 110D(2) reads;

No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than two thousand rupees.

The appeal was admittedly brought challenging the amount awarded by the Tribunal. Unless the appellant gives up any portion of the amount awarded, the amount in dispute in the appeal is the amount covered by the award. That amount is under Rs. 2000/- and even with the interest till the date of the award it is still under Rs.2000/-. The question is whether the circumstance that the amount has swelled beyond Rs. 2000/- at the date of the appeal by accrual of interest will sustain the appeal. Although the Act and the Rules are silent thereon, the general principle in Court Fees Law is that in appeal court fee is not payable on the amount of future interest allowed by the decree unless the concerned Act specifically provides or the award of interest is challenged as a separate ground, for interest hangs upon the principal claim. The position is the same with respect to costs. These aspects which are more appropriate to the payment of court fees are not irrelevant for they help define the idea of "the amount in dispute in the appeal". In Court Fees Law, except where the Statute mandates otherwise, court fees is payable only on the amount in dispute in the appeal in other words the amount which the appellant disputes in the appeal. We must also mention that the appellant does not specifically challenge the award of the interest or the rate of interest. The result is that on the grounds taken by the appellant interest is outside the scope of dispute.

3. On the words "the amount in dispute in the appeal" we might refer to *State of Maharashtra v. Nishrilal Tarachand Lodha & Others*, AIR 1964 SC 457, In that case the respondent-defendant filed an appeal in the High Court valuing the claim for purposes of jurisdiction and court fee at the principal amount in the plaint but ignoring the future interest decreed by the trial court. The question before the Supreme Court was whether this was correct and in accordance with the expression "amount or value of the subject matter in dispute" in Article 1 of Schedule I of the Bombay Court Fees Act, 1959. The appeal memorandum did not deal with the award or rate of pendent lite interest. The amount on this account, the Supreme Court held, did not form the amount of the subject matter in dispute and that what the respondent did was correct. It is true that the Supreme Court was concerned with the amount of court-fee but the decision helps understand the content of the expression "amount in dispute". In the course of the decision the Supreme Court referred to a Privy Council case, *Doorga Doss Chowdry v. Ramananth Chowdry*, 8 Moo Ind. Appeal 262, which held that costs of a suit are not part of the subject matter in dispute in the

relevant provisions relating to the grant of leave by the High Court to appeal to the Privy Council. The Privy Council said:

if they were allowed to be added to the principal sum claimed, it would be in the power of every litigant, by swelling the costs, to bring any suit up to the appealable value.

After quoting this passage the Supreme Court commented:

It may also be said that a litigant's conduct may lead to a protracted trial and consequently to the increase in the amount of pendente lite interest which may raise the value of the subject matter in dispute in appeal to the appealable value.

The observations of the Privy Council and more particularly those of the Supreme Court lend support to our conclusion that the amount in dispute in the appeal in the amount actually in dispute, which in the present case is the amount awarded by the Tribunal irrespective of the future interest. The respondents' preliminary objection is right and has to be uphold.

We dismiss the appeal.