
(1992) 03 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Revision No"s. 819 to 827 of 1991

Union of India (UOI)

APPELLANT

Vs

Dr. Sewak Ram and Others

RESPONDENT

Date of Decision : 26-03-1992

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 140, 165, 166, 175

Citation : (1993) ACJ 366

Hon'ble Judges : R.S. Kejriwal, J

Bench : Single Bench

Advocate : R.N. Malhur, for the Appellant; G.C. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Kejriwal, J.—These revisions arise out of a common order dated 16.5.1991, passed by Motor Accidents Claims Tribunal, Jaipur, whereby the said Tribunal passed an interim award of pay merit of Rs. 25,000/- to the claimants in each case u/s 140 of the Motor Vehicles Act (for short "the M.V. Act").

2. The brief relevant facts of these cases are that on 7.8.1990, when a school bus No. RJ-14A-2611 was carrying students, it dashed with a train at railway level crossing. At the railway level crossing there was no gate and, therefore, the claimants claimed that the accident was due to negligence of drivers of the railway train and also of the bus.

3. A question was raised before the Motor Accidents Claims Tribunal that it had no jurisdiction to pass interim award against the railway as the train does not fall within the definition of motor vehicle. The Tribunal overruled the objection vide its order dated 16.5.1991 and passed an interim award as mentioned above. Against this order of the Tribunal, the Union of India has filed separate revisions in each case. As the Tribunal has passed one order in several cases, as such all these revisions are decided by one common order.

4. I have heard Mr. R. N. Mathur on behalf of the petitioner and Mr. G.C. Mathur

on behalf of the claimants non-petitioners. The only question argued by Mr. Mathur is that the Motor Accidents Claims Tribunal had no jurisdiction to pass interim award against the railway.

5. Section 165 of the M.V. Act reads as under:

165. Claims Tribunals.?(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter 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 damages to any property of 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.

Section 166 of the said Act provides for submission of applications for claims before the Claims Tribunal.

6. Section 2(28) of the Act defines the words "motor vehicle", which reads as under:

(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty-five cubic centimetres.

7. Mr. Mathur, counsel for the petitioner, argued that according to the definition of the "motor vehicle" in Section 2(28) of the aforesaid Act, it is apparent that a vehicle running upon fixed rails is not a motor vehicle and as such if there was an accident between a rail and bus, the case does not fall within the Motor Vehicles Act and the Tribunal constituted under the said Act has no jurisdiction to decide the compensation against the petitioner. He argued that the order passed by tire Tribunal, awarding Rs. 25,000/- to the claimants in each case, is without jurisdiction and deserves to be set aside. In support of his arguments, Mr. Mathur placed reliance on the following judgments: Oriental Fire and General Insurance Co. Ltd. v. Union of India 1975 ACJ 33 ; Union of India v. Bhimeswara Reddy 1988 ACJ 660 ; Rajpal Singh v. Union of India 1986 AC 344 (P&H); Union of India v. Hanunian Prasad Aganvalla 1989 ACJ 857 (Calcutta) and Union of India Vs. Smt. Sushila Devi and others,

8. On the other hand, Mr. G.C. Mathur, counsel for the claimants non-petitioners, argued that the claimants, in their claim petitions specifically alleged that the

accident took place on account of negligence of drivers of both the vehicles, i.e., the train and of the bus and as such the claim for compensation can be tried only by the Motor Accidents Claims Tribunal and not by the civil court. He argued that Section 175 of the M.V. Act bars the jurisdiction of civil courts. It reads as below:

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.

He further argued that the explanation attached to Section 165 of the M.V. Act expressly provides that "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. He argued that lower court has awarded compensation u/s 140 of the Act. In case a claim for compensation in respect of the accident involving the death or bodily injury is filed against the insurer, driver and the owner of the motor, vehicle before the Motor Accidents Claims Tribunal and a suit is filed against the driver of the railway or the railway administration in a civil court,, then there are possibilities of conflicting findings. He argued that Claims Tribunal has jurisdiction to v decide claims for compensation arising out of the motor accidents to give immediate relief to the claimants and in case a regular suit is filed, then it will take years. He argued that when a claim for compensation is filed against the insurer, owner and driver of the motor vehicle involved in the accident even though a stranger is also involved, still the only court which is competent to try the claim petition is the Motor Accidents Claims Tribunal. In support of his arguments, Mr. Mathur placed reliance on Union of India v. Bhagwati Prasad 1983 ACJ 13 Gujarat State Road Transport Corporation v. Union of India 1987 ACJ 734 and United India Insurance Co. Ltd. v. Premakumaran 1988 ACJ 597 .

In Oriental Fire and General Insurance Co. Ltd. v. Union of India 1975 ACJ 33 the Andhra Pradesh High Court took the view that the claims referred to in Section 110 are applicable only to cases of claims against the owner or the driver of the motor vehicle or the insurer, as the case may be and not as against strangers. It further held that the proper forum for adjudicating a claim against strangers was a civil court. It appears from para No. 10 of the judgment that this view by the Andhra Pradesh High Court was taken on the basis that the section for awarding "compensation occurred in the chapter dealing with insurance of motor vehicles against third party risks and further that when the accident took place in that case no Tribunal was constituted u/s 110 of the M.V. Act (old). But in the M.V. Act, 1988, Sections 165 and 166 do not fall within the chapter dealing with insurance of motor vehicles against third party risk, but fall under the chapter "Claims Tribunal". Furthermore, on the date of the accident, the Tribunal was also in existence. The case reported in Union of India v. Bhimeswara Reddy 1988

ACJ 660 is based on *Oriental Fire and General Insurance Co. Ltd. v. Union of India* 1975 ACJ 33.

The facts mentioned in *Rajpal Singh v. Union of India* 1986 ACJ 344 are not applicable to the facts of the present case. In this case the claim was filed against the railway authorities alone as the accident took place entirely on account of negligence of the driver of the train and the gateman and there was no allegation of negligence against the driver of the motor vehicle.

9. In that connection the Punjab High Court held that the Motor Accidents Claims Tribunal had not been conferred with the jurisdiction to deal with the claims of compensation in respect of all kinds of accidents. But in the present case, according to the claimants, the accident took place on account of negligence of the drivers of the train and also of the bus. The bus is a motor vehicle within the definition of Section 2(28) of the Act. The judgment reported in *Union of India v. Hanuman Prasad Agarwalta* 1989 ACJ 857 is not applicable to the facts of the present case. Neither such question was raised nor was decided by the Calcutta High Court in that case.

10. In *Union of India Vs. Smt. Sushila Devi and others*, the Full Bench of the Allahabad High Court held that when the accident was alleged to have been caused entirely by the negligence of any outside agency, then the Claims Tribunal had no jurisdiction to entertain the claim. But where it has been alleged in the claim petition that the accident was caused by the negligence of the driver of the motor vehicle as well as by some outside agency, the Claims Tribunal has jurisdiction.

11. In *Union of India v. Bhagwati Prasad* 1983 ACJ 13 a similar question arose, where the incident took place between a rail and tempo. The Allahabad High Court held as under:

In our opinion a complete adjudication of all the claims for compensation in respect of an accident arising out of the use of the motor vehicle was intended to be provided for under the Act and consequently unless all the parties involved in the accident are arrayed as opposite parties before the same forum and are heard on the question of negligence, the matter cannot be properly and effectively disposed of. For, otherwise, if the claimant is compelled to institute his claim before the Tribunal only against the owner and driver of the vehicle and insurer is left to sue the remaining persons responsible for the accident, the adjudication cannot be said to be complete and final. Under the circumstances, the only reasonable interpretation which has appealed to us is that suggested by the learned Counsel for the claimants, namely, that the claims were maintainable against the railway also.

In *Gujarat State Road Transport Corpn. v. Union of India* 1987 ACJ 734 the Gujarat High Court took a similar view and held as under:

Held further that in cases of accidents caused by rash and negligent use of motor

vehicles, when some outside agency has also contributed to the accident and such outside agency can be treated to be a joint tortfeasor if it is suggested that Claims Tribunal can pass award only against one of the joint tortfeasors, viz., driver of the motor vehicle, along with its owner and insurer, as the case may be, so far as other tortfeasors are concerned, the claimant must be driven to civil court for establishing his claim against other joint tortfeasors, it is likely to result into conflicting decisions of two competent forums in connection with the very same accident based on the same set of facts.

12. In *United India Insurance Co. Ltd. v. Premakumaran* 1988 ACJ 597 the Kerala High Court held as under:

Since the claimants alleged that, there was negligence on the part of the Railways, they are also necessary party to the claim petition. If the claim against the Railways is to be filed in a civil court, there will be two parallel proceedings in respect of claims arising out of the same accident. That would only lead to multiplicity of proceedings and may result in conflicting findings and the claimants will be put to undue hardship. Section 110A does not expressly prohibit any claim petition being filed against persons other than driver, owner and the insurer.

13. When an accident takes place by a motor vehicle, Section 175 of the M.V. Act bars the jurisdiction of civil court to entertain any question relating to any claim for compensation which may be adjudicated upon by a Claims Tribunal for that area.

14. In the present case, the claimants alleged that the accident took place on account of negligence of the driver of the bus and also of the rail. Under such circumstances, suit for compensation against the driver, owner and insurer cannot be filed in a civil court. The M.V. Act has been enacted to give immediate relief to the claimants. In the present case the petitioners/ claimants have alleged negligence of the drivers of the railway and also of the bus and as such a suit for compensation against railway administration can be filed in a civil court. But no suit for compensation can be filed against the driver, owner of the bus and the insurer in view of Section 175 of the M.V. Act. Furthermore, there are possibilities of conflicting findings. It is also possible that to arrive at a conclusion as to who was negligent, the presence of the driver of the train and the driver and owner of the bus is also required. Under these circumstances, in my view, the Tribunal has jurisdiction to try the claim petition even though a third party has also been involved.

15. In view of this, the lower court has not committed any illegality or irregularity in passing the impugned order.

16. Consequently, the revisions fail and are hereby dismissed.