

ALLAHABAD HIGH COURT

Union of India

Vs.

Bhagwati prasad

Civil Revns. Nos.310, 311, 314 to 321 and 333 to 337 of 1980

(Satish Chandra, C.J. and A.N. Varma, J.)

23.04.1982

JUDGMENT

A.N. Varma, J

1. These connected Civil Revisions have come before us upon reference made by a learned single Judge. The revisions are directed against identical orders passed by the Motor Accidents Claims Tribunal, Allahabad, disposing of certain preliminary issues. The main question which was debated before us was with regard to the decision of the court below on the issue whether a Claims Tribunal exercising powers under Section 110 of the Motor Vehicles Act (hereinafter referred to as the Act) has jurisdiction to entertain a claim against the Railway. The contention raised by the Union of India (the applicant herein) through the General Manager, Northern Railway was that the claims in question - all of which arise out of the same accident involving a Tempo-Taxi and the Allahabad-Saharanpur Passenger train - are not maintainable against the Railway as under the Act a decree can be passed only against the insurer or owner or driver of the motor vehicle involved in the accident. It cannot be passed against any one else.

2. Before we set out the rival contentions and deal with them we may briefly set out the relevant facts. The various claimants were travelling by a Tempo- Taxi No. UPZ 7184 which collided with the Allahabad-Saharanpur Passenger at Sarai Gopal Railway crossing on 28-7-1977 at 10-15 A.M. As a result, the claimants sustained bodily injuries. Thereafter they filed claim petitions before the aforesaid Tribunal against both the owner of the tempo-taxi as well as the applicant, namely, the Union of India represented by the General Manager, Northern Railway. In the claim petition it was alleged that the accident had

occurred due to the negligence of the employees of the Railway staff at the aforesaid level crossing. The employees had wrongly kept the level crossing wide open for the highway traffic to pass at a time when the aforesaid train happened to be passing through that point.

3. The applicant has filed written statements in all these claim petitions. The assertions in paragraphs 25 and 26 of the written statements are that the claim for compensation in respect of death or bodily injuries arising out of the use of a motor vehicle is entertainable only against the insurer, owner or driver of the vehicle. The Tribunal has no jurisdiction to entertain a claim against the Railway. A claim against the Railway is triable only by the civil Court.

4. On the aforesaid pleadings one of the preliminary issues framed by the Tribunal under the impugned order is whether the Tribunal has jurisdiction to adjudicate upon the claim as alleged on the applicant's written statement. The court below has answered this issue against the applicant. It has held that inasmuch as the claimants allege to have received injuries in an accident arising out of the use of motor vehicle, which the tempo-taxi undeniably is the Tribunal would clearly be entitled to entertain the claim under the Act and to award compensation.

5. The learned counsel for the applicant made Section 110-B of the Act the sheet anchor of his argument. He submitted that Section 110-B clearly points to the conclusion that the Tribunal has jurisdiction to make an award only against either the insurer or the owner or the driver of the motor vehicle involved in the accident and against no one else.

6. The learned counsel for the claimants, on the other hand, submitted that the extent of jurisdiction of the Tribunal is defined and outlined in Section 110 of the Act. It is therefore the language and interpretation of Section 110 which will be decisive of the controversy. Section 110 is sufficiently widely worded to include within its ambit any claim for compensation in respect of an accident involving death or bodily injury to persons arising out of the use of a motor vehicle. If the death or bodily injury has been caused in an accident arising out of the use of the motor vehicles, then a claim in respect of such an accident would lie before the Tribunal constituted under the Act even if the

compensation is claimed against persons other than the insurer or owner or driver of the motor vehicle.

7. Having given a careful consideration to the relevant provisions of the Act, we are of the opinion that the Tribunal is right in taking the view that the claims in question are maintainable against the Railway also.

8. The Motor Vehicles Act, 1939 is a comprehensive enactment having been passed to consolidate and amend the law relating to motor vehicles. Chapter VIII of the Act provides for compulsory insurance of motor vehicles against third party risks. It also defines the limits of liability of the insurer of the motor vehicles. Section 96 of the Act appearing in that Chapter imposes a duty on insurer to satisfy judgments and awards against persons insured in respect of third party risks. We have then the crucial provision, namely, Section 110 which is being re-produced in extenso. It reads thus :-

"110- 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 damages 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.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

(a) is, or has been a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a Judge of the High Court.

(4) Where two or more Claims Tribunals are constituted for any area, the

State Government may, by general or special order, regulate the distribution of business among them."

9. The next provision is Section 110-A which specifies the person or persons who are entitled to file an application for compensation arising out of the accident of the nature specified in sub-section (1) of Section 110. It also prescribes the period of limitation for filing an application for compensation in such cases. Sub-section (2) of Section 110-A lays down that an application under sub-section (1) of Section 110-A shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred. It further provides that it shall be in such form and shall contain such particulars as may be specified by the rules. It is significant that Section 110-A does not place any restriction as to the person or persons against whom an application for compensation may be made where the accident arises out of the use of a motor vehicles.

10. There is then Section 110-AA which gives an option regarding claims for compensation. It provides that where a person can claim compensation both under this Act and also under the Workmen's Compensation Act the person entitled to compensation may claim under either of those Acts but not under both. It is pertinent to note here that this option is not available in any other case. Indeed Section 110-F bars the jurisdiction of a civil Court to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area.

11. Then there is Section 110-B on which the applicant mainly relies. It reads thus :-

"110-B. Award of the Claims Tribunal - On receipt of an application for compensation made under Section 110A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an enquiry into the claim and may make any award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them as the case may be."

12. We are clearly of the opinion, upon an examination of the aforesaid statutory provisions and the scheme of the enactment as projected by these provisions, that the Claims Tribunal constituted under the Act is empowered to adjudicate upon all claims for compensation in respect of accident involving the death or the bodily injury to persons, where the accident arises out of the use of a motor vehicle and that in awarding compensation in respect of such an accident the Claims Tribunal is empowered to award compensation not only against the insurer and the owner and the driver of the motor vehicle but also against those on account of whose negligence the accident may have been caused. The words "in respect of accidents arising out of the use of the motor vehicle..... " occurring in Section 110(1) are words of the widest possible amplitude. We see no reason either on the plain language of Section 110 or in any other allied provisions or the scheme of the Act as manifested by the relevant provisions, which may have inhibited or barred the jurisdiction of the Claims Tribunal to entertain an application for compensation in respect of third parties - in the present case, the Railway.

13. As mentioned above, the Motor Vehicles Act is a comprehensive Code. The Claims Tribunals have been constituted in our opinion, to entertain all claims in respect of accidents arising out of the use of motor vehicle. It cannot be disputed that where the death or bodily injury is caused to the claimant in an accident arising out of the use of motor vehicle and as a result of the negligence of the owner or the driver of the motor vehicle as well as of a third party, the claim so far as the owner or insurer or the driver of the motor vehicle are concerned would lie before the Claims Tribunal under the Act in terms of Section 110. The Civil Court will indisputably have no jurisdiction to entertain the claim against the insurer or owner or driver in view of the express bar imposed by Section 110-F.

14. If, therefore, we were to accept the submission of the applicant it must follow as a necessary corollary that in regard to the same accident as against the third party, the claim would lie elsewhere, namely, the Civil Court. In that event it would not be difficult to see that two conflicting decisions are likely to come into existence. The Tribunal may hold the driver of the motor vehicle wholly at fault and responsible for the accident and on that ground award compensation

against the owner of the motor vehicle or the driver or the insurer. The Civil Court may, on the other hand, seized of the case against the third party in respect of same accident, may come to an exactly opposite conclusion and hold some one else responsible for the accident and bodily injuries to the claimant.

15. Such a result cannot have been intended by the legislature. On the plain language of Section 110, therefore, we have no hesitation in coming to the conclusion that the claims in question were maintainable against the Railway. 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 and 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.

16. We may now turn to Sec, 110-B to see whether there is anything therein which might be construed as restricting the ambit of Section 110. The first part of Section 110-B has been expressed in general terms. It provides that the Claims Tribunal shall after giving the parties an opportunity of being heard hold an enquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specify the person or persons to whom compensation shall be paid. In the first part, which is the substantive part, there is no indication that the Tribunal cannot award any compensation against persons other than the insurer or the owner or the driver of the motor vehicle. Stress was, however, made on the second part of Section 110-B which provides that in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or the owner or the driver of the vehicle in question. It was submitted that this limits the power of the Claims Tribunal only to these three classes of persons.

17. We are unable to accept the above contention. The second part of Section 110 comes into operation and is attracted only because it is necessary to apportion the liability between the insurer or the owner in accordance with the relevant provisions of the Act specifying the limits of liability of the insurer. It does not, in our opinion, in any way curtail or restrict the power of the Claims Tribunal to award compensation against a third party who may be found to have contributed to the accident involving the death or bodily injuries to persons arising out of the use of the motor vehicle. In our opinion the second part of Section 110-B enjoins the Tribunal to apportion the liability between the insurer and the owner of the vehicle, where the Tribunal holds the owner or the driver responsible for the injury caused to the claimant.

18. The learned counsel for the Railway cited three decisions in support of his contention. These are :-

(1) (*Swarnlata Dutta v. National Transport India Pvt. Ltd.*)¹

(2) (*Union of India v. P. Kailasan*).²

(3) (*Oriental Fire and General Insurance Co. Ltd. v. Union of India*).³

In all these cases the view taken is that the Claims Tribunal under the Act has no jurisdiction to entertain a claim against any one other than the insurer, owner or the driver of the motor vehicle. We have examined these cases. In each of them reliance has been placed principally on the provisions of Section 110-B of the Act. In the case of *Swarnlata Dutta v. National Transport India Pvt. Ltd.* (supra) the Gauhati High Court has observed that in view of Section 110-B of the Act there was no scope for inclusion of Railway administration in proceedings before the Claims Tribunal and that if it was proved that the accident arose out of any negligence or rashness in the use of the motor vehicle the petition will succeed - otherwise it will fail. In the case of *Union of India v. P. Kailasan* (supra). The Madras High Court was considering the question whether the non-joinder of the Railway in the claim petition was fatal to the proceedings. The Madras High Court also founded its decision entirely on Section 110-B of the Act and observed that the Claims Tribunal was not empowered to adjudicate on the liabilities of Railway even if it was held to be negligent. It held that the Railway was therefore not a necessary party. Even so,

the Madras High Court held that in order to enable the Tribunal to effectively and completely adjudicate on the question as to whose negligence contributed to the accident, the Railway was certainly a proper party. It may, however, be observed here that in the case before the Madras High Court the claimants had conceded that the Claims Tribunal was not empowered to adjudicate on the liability of the Railway. In the case of the Oriental Fire and General Insurance Company Ltd. v. Union of India (supra) the view taken is that Section 110 is applicable only to cases of claim against the owner or the driver of the motor vehicle or the insurer as the case may be and not against strangers.

19. We have examined these cases but with great respect we are unable to agree with the view taken therein. In all these cases the main provision which persuaded the learned Judges to take the view contrary to what has appealed to us is Section 110B.

20. We have already made our comments on the true ambit and purpose of Section 110-B. We reiterate that the latter part of Section 110-B appears to have been enacted for the simple reason that where the driver or the owner of the motor vehicle is found to have been negligent and the injuries are found to have been caused as a result of that negligence, the liability has necessarily to be apportioned between the insurer and the owner in view of the provisions already noticed hereinabove. The limits of the liability of the insurer have also been specified in the Act. The apportionment of the liability between the insurer and the owner thus becomes necessary. It was to give effect to this statutory requirement that the law requires that while awarding the compensation the liability must be apportioned. Section 110-B. Thus does not in our view curtail the width or amplitude of Section 110 which is the source of power of the Claims Tribunal under the Act.

21. The result of the aforesaid discussion, therefore, is that the court below has rightly held that the claim petitions are entertain able against the Railway also. As the applicant has not challenged the findings of the Tribunal on other preliminary issues, the revisions are liable to be dismissed in view of the above finding.

22. In the result all the revisions fail and are dismissed with costs.

Revisions dismissed.

Cases Referred.

1. AIR 1974 Gau 31
2. 1974 Acc CJ 488
3. AIR 1975 And Pra 222