

DELHI HIGH COURT

Thomas

Vs.

Hotz Hotels. (Delhi)

F.A.F.O. No. 32-D of 1959.

(Om Parkash, J.)

15.9.1967

JUDGEMENT

Om Parkash, J.

1. This appeal, by the plaintiff, is directed against an order returning the plaint filed in the suit, for the recovery of damages, for presentation to the Motor Accidents Claims Tribunal. The suit was based on the following allegations.

2. The plaintiffs Nos. 1 and 2, the employees of plaintiff No. 3, a limited company incorporated and functioning in London, were sent to India, by plaintiff No. 3, for assisting and supervising the installation of certain machinery in the mills of Messrs. Delhi Cloth and General Mills Co. Ltd., Delhi. Plaintiffs Nos. 1 and 2 had stayed in the Cecil Hotel, Delhi, owned by defendant No. 1. Plaintiffs Nos. 1 and 2 had hired a taxi on the 18th July, 1957 owned by defendant No. 1 and driven by defendant No. 2. The taxi was insured against third party risks by defendant No. 3. The taxi was hired for carrying plaintiffs Nos. 1 and 2 to the premises of the Delhi Cloth and General Mills Co. Ltd. from the Cecil Hotel. As the taxi had travelled a little beyond Bhargava Lane, a track, driven by defendant No. 5, had struck against the taxi. The truck then swung to the left, knocked down a cyclist and then banged against a tree felling it down. Defendant No. 5 was driving the truck rashly and negligently. The truck was owned by the defendant No. 4 and was insured against third party risks with defendant No. 6. As a result of the accident, plaintiffs Nos. 1 and 2 had sustained serious injuries and had to undergo medical treatment for a considerable time. They had incurred expenses in connection with the medical treatment. They had also suffered shock and pain. Plaintiffs Nos. 1 and 2 were not fit for completing the work for which they had been sent to India. Plaintiff No. 3 had, therefore, to send two other experts for

completing the job. Plaintiffs Nos. 1 and 2 claimed special and general damages to the extent of Rs. 24,098-66 paisa and Rs. 8,929-33 paisa, respectively, plaintiff No. 3 claims damages to the extent of Rs. 4,666-67 paisa as expenses incurred in connection with the sending of two other experts.

3. The suit of the plaintiffs was contested on behalf of the defendants. Besides controverting the various allegations made in the plaint, the defendants had taken up the preliminary objection that the jurisdiction of the Civil Court to try the suit was expressly barred by the provisions of the Motor Vehicles Act.

4. The Court framed a preliminary issue whether the Court had no jurisdiction to take cognizance of the suit in view of the provisions of Section 110-F of the Motor Vehicles Act. The Court held that the claim of plaintiffs Nos. 1 and 2 was barred under the provisions of that section and that though the claim of plaintiff No. 3 was not barred, yet as there was no prayer for splitting the claims, claim of plaintiff No. 3 could not be tried and the plaint as a whole was to be returned. On the basis of this finding, the Court ordered the return of the plaint to the plaintiffs.

5. Aggrieved by the order of the Court, the plaintiffs have come up in appeal.

6. For appreciating the points, canvassed in the appeal, it will be useful to note the relevant provisions of the Motor Vehicles Act (hereinafter referred to as 'the Act') and certain other facts bearing on those points. Sub-section (1) of Section 110 of the Act reads:

"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."

Section 110-A of the Act is -

"(1) an application of compensation arising out of an accident of the nature specified in sub-section (1) of Section 110 may be made -

(a) By the person who has sustained the injury; or

(b) Where death has resulted from the accident, by the legal representatives of the deceased; or

(c) by any agent duly authorized by the person injured or the legal

representatives of the deceased, as the case may be;

(2) Every application under sub section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed;

(3) No application for compensation under this section shall be entertained unless it is made within sixty days of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

Section 110-F of the Act lays down that -

"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 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 claims for compensation shall be granted by the Civil Court."

7. The material facts bearing on the point of jurisdiction are that the accident was alleged to have taken place on the 18th July, 1957, the Claims Tribunal was constituted for the Union Territory of Delhi on the 25th October, 1957, and the suit for the recovery of damages was filed by the plaintiffs on the 17th July, 1958.

8. It is well settled that, as provided in Section 9, Civil Procedure Code, Civil Courts have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is, further, well settled that the exclusion of jurisdiction of Civil Courts is not to be readily inferred and that such exclusion must be either explicitly expressed or clearly implied. In the present case, Section 110-F of the Act expressly bars the jurisdiction of a Civil Court to entertain any question relating to any Claims Tribunal (sic) for that area. The claim of plaintiffs Nos. 1 and 2 was for compensation in respect of a motor accident wherein the plaintiffs had sustained bodily injuries. The claim was tribal by the Claims Tribunal. The jurisdiction of the Civil Court was barred under Section 110-F of the Act to entertain the claims of plaintiffs Nos. 1 and 2.

The contention, on behalf of the plaintiffs, was that the Claims Tribunal for the Union Territory of Delhi was constituted on the 25th October, 1957 and that it could entertain only those claims which related to accident occurring after the 25th October 1957. The accident, in the present case, had occurred on the 18th July 1957; the Claims Tribunal

could not, therefore, entertain the claims of the plaintiffs and the jurisdiction of the Civil Court to try the suit for recovery of damages was not barred under Section 110-F of the Act. The argument, on behalf of the plaintiffs, was that the right to sue for compensation vested in the plaintiffs on the 18th July 1957 and that the subsequent constitution of the Claims Tribunal could not take away that vested right. It was, also, submitted that the period of limitation of 60 days, for applying to the Claims Tribunal, had already expired, so far as the plaintiffs were concerned, when the Claims Tribunal was constituted and that, obviously, the plaintiffs could not apply to the Claims Tribunals after the period of limitation.

9. The right to sue for the recovery of compensation for injuries sustained in an accident is, no doubt, a vested right and cannot be taken away retrospectively except by an express statutory provision. But the matter of enforcing that right in a Civil Court or in any other forum is only a matter of procedure. No person has a vested right in procedure and the change in the law of procedure operates retrospectively and is not only prospective. The constitution of the Claims Tribunal did not take away the right of the plaintiffs to claim compensation. It simply changed the forum for enforcing that right from the Civil Court to the Claims Tribunal. After the constitution of the Claims Tribunal, claim for compensation for injuries sustained in a motor accident could only be filed before the Claims Tribunal, even if the accident had occurred before the constitution of the Claims Tribunal.

Of course, if the claim had already been instituted in a Civil Court, before the constitution of the Claims Tribunal, the Civil Court will continue to have jurisdiction to dispose of the claim. In the instant case, the suit was instituted in the Civil Court after the constitution of the Claims Tribunal. The jurisdiction of the Civil Court to try the suit was barred under Section 110-F of the Act. So far as the contention of the plaintiffs that the period of sixty days for filing the claim before the Claims Tribunal had already expired when the Claims Tribunal was constituted, is concerned, it is sufficient to point out that the Claims Tribunal has jurisdiction to condone delay, for sufficient cause.

10. The question whether claim for compensation, in connection with the injuries, sustained in a motor accident, which had occurred before the constitution of the Claims Tribunal, is exclusively triable by the Claims Tribunal, was considered in *Palani Ammal v. Safe Service Ltd.*¹ and it was held that such a claim is triable only by the Claims Tribunal and that the Civil Court has no jurisdiction to entertain such a claim. It was observed:

"The Claims Tribunal constituted under Section 110 (1) of the Motor Vehicles Act has the exclusive jurisdiction to entertain claims even in respect of accidents that occurred before its constitution provided the remedy under the Civil law is alive and not barred by limitation, at the time of the constitution of the Tribunal."

It was further observed:

"Therefore, the intention of the Legislature must have been that the bar of the jurisdiction of the Civil Court enacted in Section 110-F must only be in regard to matters in respect of which claims had not been entertained by the Civil Court before the constitution of the Tribunal. The terms of that section which provide that no Civil Court shall entertain any question therefore mean that it cannot, after the constitution of the Tribunal under the Act, take cognizance of a suit or other proceeding in respect of such claims. If, before the constitution of the Tribunal, the Civil Court had entertained a suit or proceeding respecting such claim, there is nothing in the Motor Vehicles Act to take away its jurisdiction.....

But, in the present case, no suit or other proceeding has been filed in any Civil Court in respect of the claims for damages for the accidents in question before the constitution of the Tribunal. These accidents which gave rise to the causes of action in favour of the legal representatives of the deceased in the two cases took place before the constitution of the Tribunal. If those persons had so minded, they could certainly have instituted suits for damages in the ordinary Court of the land before the constitution of the Tribunal."

11. The Punjab High Court has, also, in *Unique Motor and General Insurance Co. Ltd. v. Kartar Singh*,² taken the view that where the accident had taken place before the constitution of the Claims Tribunal but no suit was filed in the Civil Court, then, after the constitution of the Claims Tribunal, the claim was exclusively entertainable by the Claims Tribunal and not by a Civil Court.

12. Reliance was placed, on behalf of the plaintiffs, on a decision of the Madhya Pradesh High Court in *Kumari Sushma Mehta v. Central Provinces Transport Services Ltd.*³ This authority supports the contention of the plaintiffs that a claim in respect of an accident occurred before the constitution of the Claims Tribunal can be tried by a Civil Court. With respect, I am unable to agree with the view expressed in the above authority. I have already given reasons for holding that a claim in respect of an accident occurred before the constitution of the Claims Tribunal is exclusively tribal

by that Tribunal after its constitution. I am in respectful agreement with the view expressed in Madras and Punjab cases.

13. Another case, relied upon by the plaintiffs was *Chaudhry Gursaran v. Akhouri Parmeshwari Charan*,⁴ This case was under the Chota Nagpur Tenancy Act and was not under the Motor Vehicles Act. The case has no application to the facts of the present case.

14. From the above discussion, it follows that the lower Court was right in holding that the claims for compensation of plaintiffs Nos. 1 and 2 was exclusively tribal by the Claims Tribunal and that the Civil Court had no jurisdiction to entertain the suit for recovery of compensation.

15. The claim of plaintiff No. 3 was not hit by the provisions of Section 110-F of the Act. But the three plaintiffs had made a joint claim. There was no prayer, either before the lower Court or before this Court, to split up the joint claim and try the claim of plaintiff No. 3 only. In the circumstances, the lower Court was right in ordering the return of the plaint.

16. The appeal fails and is dismissed with costs.

Appeal dismissed.

Cases Referred.

1. ACJ 1966 Mad 19,
2. (1964) 66 Pun LR 1083 ,
3. AIR 1964 Madhya Pradesh 133.
4. AIR 1927 Patna 203.