GUJARAT HIGH COURT

G.S.R.T. Corpn.

Vs.

Union of India

First Appeal No. 1168 of 1977 with Civil Appln. No. 1304 of 1986

(S.B. Majmudar and P.M. Chauhan, JJ.)

23.12.1986

JUDGMENT

Majmudar, J.

1. In this appeal, a short but interesting question regarding jurisdiction of the Motor Accident Claims Tribunal constituted under Section 110(1) of the Motor Vehicles Act, 1939 to adjudicate the claim for compensation filed against persons other than the driver, owner and insurer of the offending motor vehicle involved in the accident, falls for determination.

2. A few facts leading to this appeal can profitably be looked at, at the outset. In a vehicular accident that took place on 4-10-1974, a bus belonging to the appellant-S.T. Corporation driven by its driver-respondent No. 2 met with an accident at the railway level crossing at village Kakosi between Sidhpur and Mathan, in Mehsana district. When the S.T. bus was approaching the railway level crossing, gates on either side were found open and hence, the bus proceeded ahead. At that time, a railway engine was being driven by its driver one Kadar Ismail. It was proceeding from Patan side towards village Kakosi, Water tanker and a break-van were attached to that engine. There was a collision between the said engine and the aforesaid S.T. bus on the level crossing itself. Result was that the bus was dragged by, the speeding engine up to some distance and thereafter, the engine and the bus came to a halt. During the said collision, deceased Harijan Devabhai Kuberbhai who was sitting in the rear portion of the bus was thrown out of the bus and got seriously injured. He died on account of the injuries sustained by him in the said accident. He left behind him his widow Rajiben, one adult son Rayabhai, two minor sons Hirabhai and Kanabhai and one minor daughter Kantaben. All these legal heirs and representatives of the deceased moved a claim petition under Section 110 of the Motor Vehicles Act, 1939 before the M.A.C. Tribunal at Mehsana within whose jurisdiction the accident had taken place. They joined in the claim petition, the Union of India as opponent No. 1 representing the Western Railway, the engine belonging to which was involved in the accident along with the S.T. Bus. Gujarat State

Road Transport Corporation which was the owner of the offending bus in which the deceased was travelling was also joined as opponent No. 2; while driver of the S.T. bus was joined as opponent No. 3. The claim petition was registered as claim petition No. 65 of 1974. Compensation was claimed against the concerned opponents on the basis that both the engine driver as well as S.T. driver were negligent and because of their composite negligence, the accident in question was caused. Thus, on the principle of joint liability of both of them as joint tort-feasors, the claimants requested the Tribunal to adjudicate the claim of the claimants against the concerned opponents and to award proper compensation. They claimed, in all, Rs. 37,971/- from the concerned opponents.

3. The defence of the Union of India was to the effect that the Claims Tribunal had no jurisdiction to entertain any claim against the Union of India representing the Western Railway as the Tribunal was constituted only for adjudicating claims for compensation for accidents caused by use of motor vehicles and that any claim against the Union of India should be made subject matter of a civil suit, if any. In the alternative, it was contended that there was no negligence on the part of any of the servants of the railway and that the negligence of only S.T. driver had resulted in the accident. While so far as S.T. driver and the S.T. Corporation were concerned, they contended that the accident was caused not on account of negligence on the part of the driver of the bus but it was solely caused on account of the negligence of the servants of the Western railway as they had failed to close the gate at the relevant time and had kept the gate open which tempted the bus driver to enter the railway crossing. They also challenged the claim on merits.

4. The Tribunal framed issues out of the aforesaid pleadings covering the aforesaid contentions. So far as negligence of the driver of S.T. bus was concerned, it was held that the claimants prayed that the driver of the S.T. Corporation was, to some extent, negligent but not rash, in that, he did not stop the bus immediately after approaching the railway level crossing and to that extent, he was liable to make good the claim of the claimants. So far as negligence of the engine driver was concerned, it was held that the claimants proved that the engine driver, a servant in the employment of opponent No. 1 Union of India drove the engine rashly and/or negligently and thereby caused the death of the deceased Devabhai, in that, the accident took place on account of the negligence of the servant of Union of India in not closing the gate at the railway crossing. The Tribunal, on evidence, held that the accident was caused on account of composite negligence of both the S.T. driver as well as railway engine driver but the liability of the engine driver in causing the accident was much greater and was to the extent of 75% while the contribution of the driver of the S.T. bus in causing the accident, by his negligence, was only to the extent of 25%. However, the Tribunal took the view that it had no jurisdiction to grant any relief against the Union of India as the Tribunal could award compensation only against the driver and owner of motor vehicle viz. S.T. bus and not against the railway authorities. So far as the quantum of compensation was concerned, the Tribunal took the view that the claimants were entitled to recover as compensation of Rs. 21,000/- only. Ultimately, the Tribunal on its aforesaid finding,

directed original opponents Nos. 2 and 3 viz. S.T. Corporation and the driver of the S.T. bus to pay up the amount of Rs. 21,000/- to the claimants, by holding them jointly and severally liable to pay the same with proportionate cost and interest at 6% from the date of the petition till realisation, The claim petition against opponent No. 1 was dismissed. The aforesaid award dated 30-7-1977 has been brought in challenge by opponent No. 2 Gujarat State Road Transport Corporation by way of the present appeal.

5. to 10. xxx xxx xxx xxx

11. Statutory settings :- In the first place, it would be profitable to have a quick glance at the relevant statutory provisions in the light of which the controversy will have to be resolved. Relevant provisions for our consideration are found in Chapter VIII of the Act. This chapter deals with insurance of motor vehicles against third party risks. It must be stated that the accident in question occurred on 4-10-1974. Relevant statutory scheme as existing on that date will have to be examined for deciding the present controversy. It is true that chapter VII -A was added to the Motor Vehicles Act, 1939 by the Legislature by Act 47 of 1982 incorporating Sections 92A to 92E, providing for claims for compensation arising out of death or permanent disablements wherein no-fault liability is statutorily sought to be imposed on the owner or owners or any other person. The impact of the said provisions on Section 110(1) is not required to be considered by us on the facts of the present case and we, therefore, express no opinion on this aspect. Section 93 defines various terms employed in the remaining Sections of the said chapter VIII. Section 94 lays down necessity for insurance against third party risk. It prohibits user of any motor vehicle in a public place by a person other than a passenger except after getting such vehicle insured for compliance with the requirements of the Chapter. Section 95 lays down requirements of policies and limits of liability of the insurance company. Section 96 provides for duties of insurers to satisfy judgements against persons insured in respect of third party risks. Section 97 provides for rights of third parties against insurers on the insolvency of the insured. Sections 98 to 109 deal with other requirements centering round policy of insurance in connection with motor vehicles which are being used on the roads and public places and which are likely to result in any injury to third parties. Then we come to Section 110 which is relevant for our present purpose. Sub-Section (1) of Section 110 provides that a State Government may, by notification in the official gazette, constitute one or more Motor Accidents 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. We are not concerned with other Sub-Sections of Section 110. Section 110-A lays down procedure for filing applications for compensation and indicates persons who can move such applications for compensation before the concerned Tribunal. Section 110-A on which great store was placed by the learned Advocate for the Union of India is required to be noticed in extenso. It reads as under :-

"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 inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 109-B, may make an 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.

Provided that where such application makes a claim for compensation under Section 92-A in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter VII-A."

Section 110C provides for procedure and powers of the Claims Tribunal and lays down that the Claims Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for other purposes as may be prescribed. Other relevant Section is Section 110-E which prescribes mode of recovery of money under the award passed by the Claims Tribunal. It provides that where any money is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the money, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue. Then follows Section 110-F which bars the jurisdiction of the civil courts in connection with claims which can be entertained by the Claims Tribunal under the Act. The said Section is also material for the present purpose and, therefore, it is extracted herein in extenso :-

"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."

12. The aforesaid is the resume of the relevant statutory provisions in the light of which the preent controversy has to be resolved. Now, a mere look at Section 110(1) read with Section 110-F shows that specified Tribunals have jurisdiction to entertain and adjudicate upon claims for compensation in respect of the accidents which might have resulted in death or bodily injury to persons, provided such accidents are caused out of use of motor vehicles and in these circumstances, even claims for damages to property of third party can also be entertained if such damages have accrued as a result of such accident. Moment such claims can be entertained by the Claims Tribunals, jurisdiction of the ordinary civil court to entertain such claims would automatically get excluded by joint operation of Sections 110(1) and 110-F of the Act. It at once

becomes clear that the Legislature while providing for exclusion of jurisdiction of ordinary civil courts in connection with adjudication of claims from accidents arising out of use of motor vehicles, has nowhere indicated that such claims can be entertained only against a given set of persons or parties. The pivot or catch-words in Section 110(1) are "claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles". Therefore, the claims petitions must be arising out of accidents caused by use of motor vehicles. If that condition is satisfied, all such claims have to be lodged before the claims Tribunals and not before the ordinary civil courts. It must be kept in view that ordinarily, civil courts have full jurisdiction to decide any matter of civil nature as per Section 9 of the Civil Procedure Code. That power of the civil court pro tanto is circumscribed, excluded and handed over to the Tribunal under Section 110(1) once such Tribunal is established. In the absence of such Tribunal for a given area, jurisdiction would continue to inhere in the regular civil court. Now, it is well settled that the Claims Tribunal under Section 110(1) has to adjudicate about the claims for compensation arising out of accidents caused by motor vehicles provided such claims are based on tortious liabilities of the motor vehicle driver and on that basis on the principle of vicarious liability, against the owners of such motor vehicles and the insurance companies which would step in on the basis of contract of indemnity and also on account of the statutory liability as laid down by the Motor Vehicles Act. It is not as if that claims for compensation would lie even in cases of accidents caused by motor vehicles if motor vehicles were not negligently used at the given point of time. Even though legislature in Section 110(1) has employed the words "accidents arising out of use of motor vehicles" it is now well settled by the decision of the highest court that such use must be 'negligent use' as the claim for compensation entertained by the Tribunal under Section 110(1) is one on account of tortious liability of the driver of the motor vehicle. In the case of *Minu B. Mehta v. Balkrishna*[1], it has in terms been held by the Supreme Court speaking through Kailasam, J. that "the liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the law of tort. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he was negligent." While interpreting relevant provisions of the Act Sections 95 onwards, it was held by the Supreme Court in the aforesaid case, negativing the contention that claims Tribunal could adjudicate upon any claim for compensation not based on tortious liability of the other side, that :

> "This plea ignores the basic requirements of the owner's liability and the claimants' right to receive compensation. The owners' liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The claims Tribunal is a tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be

> compensated and the Tribunal is authorized to determine the amount of compensation which appears to be just. The plea that the claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to strange results".

It was further held in this connection that proof of negligence remains the linch pin to recover compensation. It is, therefore, obvious that the phraseology employed by the legislature in Section 110(1) laying down functions to be performed by the Claims Tribunal for adjudicating upon the claims for compensation in respect of accidents involving injuries to persons arising out of use of motor vehicles must necessarily be treated to mean that the Claims Tribunal will be entitled to adjudicate upon the claims for compensation in respect of accidents arising out of negligent use of the motor vehicles and not any innocuous use or in other words, it should be misuse of the motor vehicle or rash and negligent use of the motor vehicle which must have contributed to or must have caused the accident in question. Claims for compensation arising out of only such accidents can be entertained by the claims Tribunal under Section 110(1). It is also to be kept in view, as seen earlier, that Section 110(1) carves out an exclusive field of jurisdiction from the otherwise existing jurisdiction of the civil Court and confers it on the

[1] AIR 1977 SC 1248

specified Tribunal. Thus, all that Section 110-A does is to create a forum for adjudication of claims for compensation which may have otherwise fallen within the jurisdiction of ordinary civil Court and that exclusive forum which is created by Section 110(1) has to adjudicate upon the claims for compensation which must be based on pre-existing right and liability, like tortious liability of the concerned tortfeasor who might have caused the accident in question. Moment that conclusion is reached, it becomes obvious that when the claims Tribunal has to decide tortious liability of the tortfeasor viz. driver of the motor vehicle who might have caused the accident giving rise to the claim for compensation, it is just possible that the said tortfeasor may not be the sole tortfeasor but there may be other joint tortfeasor involved in the very same accident who might have also contributed by way of composite negligence in the causing of the accident in question. The question arises, as to whether the claimant before the claims Tribunal properly moved by him for adjudication of the claim for compensation, on account of the accident caused by the negligent use of the motor vehicle can urge that the accident in question was caused not only by rash and negligent use of the motor vehicle, but also by some outside agency' which contributed its mite and was also partly responsible for the causing of the accident, or in other words, can claimant legitimately urge that there was, in addition to the motor vehicle driver who was a tortfeasor, another joint tortfeasor being some other person who might not have used any motor vehicle but nonetheless who might have contributed to the causing of the accident ? As it is well settled that the claims Tribunal has to adjudicate upon claims on the basis of the tortious liability of the tortfeasor brought before it, of necessity, such disputed claims can encompass to the adjudication of claims even against all joint tortfeasors contributing to the accident in question as they would also remain in the domain of tortious liability. It is also well

settled that once it is decided that the accident in question has been caused by joint tortfeasor, two or more, each one of them would remain jointly and severally liable to meet the claim of the claimant. All these questions therefore, can legitimately fall within the scope and ambit of the jurisdiction of the Claims Tribunal under Section 110(1) moment it is shown that the accident in question, if not wholly, at least in part, is caused by negligent use of the motor vehicle. We do not find anything in the language co Section 110(1) or any other provision of the succeeding Sections to contra-indicate the legislative intention underlying conferment of exclusive jurisdiction of the Claims Tribunal for adjudication of claims for compensation in such cases. It is also interesting to note that Section 110-A which provides for procedure for applying for compensation before the Tribunal nowhere indicates as to against whom such application can be filed. As the claims before the Tribunal have to be based on tortious liability, as seen above, it necessarily follows that application can be filed against either sole tortfeasor viz. the driver of the offending motor vehicle causing the accident or against one or more of joint tortfeasors who are involved in the accident. Some of the joint tortfeasors might be agencies not utilising any motor vehicle in contributing to such accident. Consequently, claim petition can legitimately be filed not only against the driver, owner and insurer of the offending motor vehicle which has been rashly and negligently used at the relevant time for causing the accident but can also be filed against joint tortfeasors who might have contributed to the accident along with the driver of the motor vehicle and who by themselves may not have utilised any motor vehicle while so contributing to the accident. For example, a third party might have been injured on a public road on account of rash and negligent driving of the motor vehicle on the one hand and a horse-carriage or camel cart on the other and the drivers of both these types of vehicles might have jointly contributed by their negligence and rashness in injuring the third party pedestrian. If claim for compensation is moved by him before the claims Tribunal, as the accident caused to him can be said to have arisen partly out of negligent use of the motor vehicle viz. truck or car on the one hand, he cannot be told off the gates by saying that as other vehicle was non-motor vehicle, his claim for compensation against the driver or owner of the horse-cart or camel cart cannot be entertained by the Tribunal even though he was a joint tortfeasor along with the driver of the motor car or truck, simply on the ground that other vehicle is not a motor vehicle. No such contention can be countenanced on the express language of Section 110(1) read with Section 110-F of the Act.

13. We now turn to Section 110-B of the Act on which great reliance was placed by the learned Advocate for the Union of India in support of his contention that the claims Tribunal has jurisdiction to pass award only against owner or driver or the insurer of the offending vehicle and against no one else. So far as the first part of Section 110-B is concerned, it nowhere lays down any such proposition. On the contrary, it clearly indicates that on receipt of an application for compensation, the Tribunal shall, after giving the parties an opportunity of being heard and holding injury, determine the amount of compensation which appears to it to be just and specify the person to whom it shall be paid. As we have already seen earlier, Section 110-A nowhere indicates that only the driver owner or insurer of the offending motor vehicle have to be joined as parties. In cases where rash or negligent use of the motor vehicle only has not caused the

accident but some other agencies have also contributed to the causing of the accident by way of their composite negligence, such agencies can legitimately be brought before the Tribunal on the principle of their liability as joint tortfeasors. If such composite application can be filed against joint tortfeasors under Section 110 A, the first part of Section 110-B would spring into action and the Tribunal would get enjoined to hold inquiry in the matter and after having given an opportunity to the parties of being heard, the Tribunal has to determine the just compensation to be payable to the claimant on account of tortious act of the concerned joint tortfeasor. Thus, the first part of Section 110B does not support the learned counsel for the Union of India in his submission that the Tribunal cannot adjudicate upon such claims arising out of composite negligence of joint tortfeasors. However, he was more sanguine about the later part of Section 110-B. All that the second part of Section 110-B provides is that in making the award for compensation, the 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. We fail to appreciate how this part of Section 110-B in any manner can be said to have whittled down the wider scope of Section 110(1) which confers exclusive jurisdiction on the Claims Tribunal to adjudicate upon such claims. It is interesting to note the legislative history underlying insertion of the later part of Section 110-B in its present form. Before Section 110-B later part was amended by Act 56 of 1969 with effect from 2-3-1970, later part of the then existing Section 110-B read as under :-

> "in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer".

The words "or owner or driver of the vehicle involved in the, accident or by all or any of them, as the case may be" were inserted by Amending Act 56 of 1969. Thus, in case of road accidents that took place prior to 2-3-1970, the Tribunal while passing awards under the Act had to specify, because of the legislative mandate, the amount which was to be paid by the insurer of the offending vehicle. But only on that basis, it could not have been urged with any emphasis that, therefore, the Claims Tribunal had not to pass any award against the insured of the motor vehicle or its driver that it would lead to an impossible situation. It is obvious that before any direction can be issued against the insurer of the offending vehicle to pay any compensation to the claimant, it must be first shown that the driver of the motor vehicle was rash and negligent in driving the same and it had resulted into the accident and that the driver in the first instance should be made liable to pay compensation and the owner of the motor vehicle, on the principle of vicarious liability also, has to be roped in, unless it is shown that the driver had driven the offending motor vehicle at tire relevant time contrary to the express direction of the owner and consequently it would snap the link of owner's liability on the basis of vicarious liability. Except in such cases, in all other cases arising out of rash and negligent use of the motor vehicle, the driver and the owner of the motor vehicle have first to be held to be responsible on the basis of tortious liability for the accident and then only insurer would come in via contract of indemnity or an account of its statutory obligation under Section 95 read with Section 96 of the Act.

Consequently, even though the later part of Section 110-B prior to 2-3-1970 mentioned that the Tribunal had only to specify the amount which shall be paid by the insurer, it could not have been urged with any emphasis that the Tribunal was absolved of its obligation in passing the award first against the owner or driver of the motor vehicle involved in the accident. It must therefore, be held that question of specification of the amount which is to be paid by the insurer or owner or driver of the motor vehicle involved in the accident as mentioned in Section 110-B only means that when the tortfeasor is the driver of the motor vehicle, either sole or joint, with any one else. so far as *inter se* liability of the driver of the offending motor vehicle, owner of the motor vehicle and the insurer is concerned, it is to be specified by the Tribunal so that their respective shares in the contribution of compensation can be clearly demarcated. In same cases, driver of the motor vehicle may be found to be negligent in driving the motor vehicle which caused the accident, but owner may be exonerated as it might be shown that the driver had driven the vehicle at the relevant time, contrary to the instructions of the owner. Thus, on the principle of vicarious liability, owner may not be roped in. Still, insurer of the vehicle may remain responsible on account of wider coverage of the insurance policy concerning such accident on account of rash and negligent driving by the driver. In such cases, the Tribunal may have to specify the liability of the driver and the insurer and has to determine whether the owner is liable at all to meet the claim. In some other cases, driver of the motor vehicle may be liable to make goad the claim on account of the rash and negligent driving. Owner may also be liable on the principle of vicarious liability. Still, the insurance company may get exonerated on account of its any of the statutory defences under Section 96(2) of the Act, being found established on record or limits of its statutory liability under Section 95 being found to be operative in a given case and there being absence of any wider contractual coverage for covering additional liability. In such cases, it becomes necessary to specify the extent of liability of the insurer vis-a-vis liability of the owner and driver of the offending motor vehicle. It is for this purpose that the last part of Section 110-B has been enacted. But that does not mean that legislature wanted to rule out joinder of other tortfeasors in the proceedings for adjudication of claims before the Tribunal under Section 110(1) when the accidents are caused not only by negligent use of the motor vehicle but also by negligent use of any other vehicle or object which contributed to such accident by way of composite negligence. It is, therefore not possible to agree with the contention of the learned counsel for the Union of India that last part of Section 110-B whittles down or curtails the scope and ambit of Section 110(1) of the Act read with Section 110-F of the Act. In this connection, it is also interesting to note Section 110E of the Act. The said Section was amended by Act 56 of I969 with effect from 2-3-1970. Earlier in the said Section, it was provided that where any money is due from an insurer under an award, the claims Tribunal may, on an application made to it by the person entitled to the money, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same manner as an arrear of land revenue. By the very Amending Act by which words "or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be" were inserted in last part of Section 110-B, the words 'an insurer' in Section 110-E were substituted by the words "any person". It, therefore, becomes obvious that the very same legislature which called upon the Tribunal to specify in the award the

amount to be paid by not only the insurer but by owner and driver of the motor vehicle under Section 110-B, instead of using the very same wards in Section 110-E, laid down that money due from any person under the award can also be recovered as arrear of land revenue. If the legislature had meant to confine the jurisdiction of the Tribunal to award compensation only against the insurer, owner or driver of the motor vehicle and against no one also even though there might be joint tortfeasors, then the legislature would not have used the words 'money due from any person under the award' and instead would have used the same phraseology as it employed in Section 110-B viz. "the insurer or owner or driver of the vehicle'. It must, therefore, be held that legislative intention reflected by Section 110E itself suggests that under the award, money can be due from any person and not necessarily from insurer or driver or owner of the offending motor vehicle only, as tried to be suggested by the learned advocate for the Union of India. It is, therefore, obvious, on the express scheme of the relevant provisions of the Act that the Claims Tribunal can entertain claim petitions not only against the sole tortfeasors who are driver and owner of the motor vehicles and against the insurer of such vehicles but can also entertain claim petitions arising out of the accident which might have been caused not only by rash and negligent use of the motor vehicle but also by rashness and negligence of other agencies which might have jointly contributed to the causing of such accident. However, one aspect of the matter must be clearly kept in view. If the accident in question is alleged to have been caused on account of rash and negligent use of any vehicle other than motor vehicle and if no negligent use of any motor vehicle is at all alleged to be involved in the causing of the accident in question, then, on the express language of Section 110(1). such claim petitions would go out of the sweep of Section110(1) of the Act and the Claims Tribunal cannot entertain such petitions.
However, if the accident is alleged to have been caused not only by rash and negligent use of the motor vehicle but also by some other vehicle or any other agency which might have contributed to the accident, then on the principle of tortious liability arising on account of being a joint tortfeasor, such agency can legitimately be made to stand before the Tribunal to answer the claim and once that happens and once the Tribunal gets jurisdiction to entertain and to adjudicate upon such composite claim it would be incongruous to urge that the Tribunal can go that for and no further and after adjudicating such claims and after hearing such joint tortfeasors, it cannot pass any award against such joint tortfeasors on the principle of joint and several liability once it proceeds to pass award against tortfeasor who has rashly and negligently used the motor vehicle and caused the accident at least partly.

14. It is also necessary to keep in view at this stage one salient feature viz. that in cases of accidents caused by rash and negligent use of motor vehicle 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 vehicles, 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. Apart from

such result that may follow, it would also result in the possibility of parallel litigations in connection with the very same accident based on the same facts and unnecessary complications would arise and the claimants would naturally stand to suffer for no fault of theirs. On the express scheme of relevant provisions of the Act, we do not find that legislature intended to create any such anomalous situation or it intended to put the claimants in such a precarious position. On the contrary, the legislative scheme appears to be clear that in case of claim for compensation arising out of accident involving dealt or bodily injury to person due to negligent use of the motor vehicle, it is the claims Tribunal which can finally decide the matter from all perspectives and can pass proper awards against all concerned so that suffering claimant may get the relief at the earliest and may not be driven from pillar to post. That is precisely the reason why under Section 110-C, it has been laid down that the claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. If this is the legislative intention, we fail to appreciate how part of the claim arising out of the very same accident can be adjudicated by the Tribunal and the rest of the claim against other joint tortfeasors can be left to be decided by ordinary civil court leading to complications as aforesaid. At least the scheme in question does not compel us to come to such a conclusion and on the contrary it contraindicates such a situation.

15. The view which we have taken on the aforesaid statutory scheme really puts an end to the controversy in question. However, it would be necessary for us to look at a few relevant judgments of different High Courts which were pressed in service by the learned Advocates of respective parties in support of their rival contentions :-

> Decisions of High Courts : We must at the outset note that the question which is posed for our consideration is not concluded by any binding decision of either the Supreme Court or this Court or Bombay High Court before 1960. At least, no such decision was brought to our notice. We have, therefore, approached the question treating it as res integra and have come to the aforesaid conclusion on the statutory scheme. However, there are certain decisions of the High Courts including a decision of one learned single Judge of this Court to which our attention was drawn. We may briefly refer to these decisions. We must mention that a Division Bench of the Allahabad High Court in the case of *Union of India v. Bhagwati Prasad*[2], has taken the same view which we have taken on the relevant scheme. The question before the Allahabad High Court in the aforesaid case arose in the context of claim for compensation that was moved on account of an accident which took place between a tempo-taxi and the Allahabad-Saharanpur passenger

[2] AIR 1982 All 310

> train at the railway crossing. The contention before the Allahabad High Court was that in such compensation case moved before the Tribunal, Union of India representing the railway would not be a necessary party as the Claims Tribunal under Section 110-B can adjudicate upon claims for compensation only against the driver, owner or insurer of the motor vehicles and against no one else. Rejecting this contention, A.M. Varma, J. who

spoke for the Division Bench held that Union of India representing Railway would be a necessary and proper party in such cases and the Claims Tribunal can award appropriate compensation against such party. Allahabad High Court in terms negatived the contention of the learned Advocate for the Union of India based on Section 110-B and held that "Second part of Section 110-B 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 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. Considering the scheme of the Act, the following observations were made by Varma, J. speaking for the Division Bench in the aforesaid case :-

"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".

16-17. The next decision which takes the same view as we have taken in the present case is found in the case of *Rajpal Singh v. Union of India*[3], A Full Bench of Punjab and Haryana High Court speaking through S.P. Goyal, J. who spoke for the majority consisting of himself and P.C. Jain, C.J. in the aforesaid case took the view that the statutory scheme of the Act permits the Claims Tribunal to entertain claims arising out of accidents which might have resulted on account of composite negligence not only of the motor vehicle driver but even of other agency like driver of the railway engine. The facts of the case before the Punjab and Haryana High Court were to the effect that claimant Rajpal was driving his car at the relevant time and while he was crossing level crossing No. 121 on Panchkula-Zirakpur road which was open at that time, a railway train suddenly approached the said manned railway crossing, engine whereof said to be without lights, struck against the car of the claimant and caused him injuries and damaged his car. The claimant moved the claim petition on the allegation that the accident was

[3]1986 Acc CJ 344 : (AIR 1986 Pun and Har 239)

caused entirely due to the carelessness and negligence of railway authorities including the driver

of the train and the gateman. The question was whether such claim could be entertained by the Claims Tribunal. While upholding the preliminary objection raised on behalf of the railway authorities, S.P. Goyal, J., speaking for the majority having considered the scheme of the Act, held as under :-

> "The claim petition would be entertain able by the Tribunal under the Act only if the accident is alleged to have taken place because of the negligent driving of the motor vehicle, though in the alternative the plea may be that the accident took place because of the composite negligence or the negligence of an agency other than the driver of the motor vehicle. If primarily the accident is alleged to have taken place because of the negligent driving of the motor vehicle, the claim would be maintainable even against the agencies other than the driver, the owner and the insurer of the motor vehicle if compensation is claimed against them in the alternative or jointly with the former because of composite negligence".

We respectfully concur with the aforesaid view of the majority of the Punjab and Haryana High Court and the view expressed by the D.B. of Allahabad High Court.

18. We may now briefly mention other side of the judgments of other High Courts on which strong reliance was placed by the learned advocate for the Union of India, and which have been noted in the aforesaid two decisions of the Allahabad and Punjab and Haryana High Courts. In the case of *Swarnalata Dutta v. National Transport India Pvt. Ltd*[4]*.,* the accident had taken place between a bus and the railway train at the railway crossing. A claim was filed against the owner of the bus and the insurance company alleging that the accident had taken place because of the negligence of the driver of the bus. One of the pleas raised in defence was that the accident took place not due to the negligent driving of the bus but because of the negligence on the part of the railway authorities in leaving the gate at the level crossing unmanned. An objection, ancillary to this plea, raised was that the railway authority was a necessary party and in its absence the claim petition could not be tried. After noticing Sections 110B and 110-F, the Division Bench of the Gauhati High Court overruled the objection. While doing so, the Division Bench placed implicit reliance on Section 110B and observed that the Tribunal had got no jurisdiction to enforce any such claim against any other person or authority except the owner, the driver and insurer of the motor vehicle involved in the accident as would be evident from the provisions of Section 110-B. That being the legal position, there was no scope for the petitioners to implead the railway administration in these proceedings before the Claims Tribunal. With respect, it is not possible for us to agree with the aforesaid observations of the Division Bench of Gauhati High Court. We have already considered in details the limited scope and ambit of Section 110B of the Act and shown how the later part of that provision does not whittle down the express words of Section 110(1) of the Act. Even otherwise, we must mention that even the learned Advocate for the railway administration fairly conceded before us that it is not his submission that in cases of such alleged composite negligence of engine driver as well as motor vehicle driver, the railway

administration would not be a necessary party before the Tribunal and that he agreed that in such cases, for adjudicating such claims, railway administration would be a necessary party.

[4] AIR 1974 Gauh 31

19. The next decision which was pointed out to us was rendered by the Madras High Court in *Union of India v. P. Kailasan*[5], The Madras High Court in the said case was concerned with a case in which the accident had occurred on account of collision between the railway engine and the motor vehicle. The Madras High Court based its decision on Section 110-B 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, therefore, held that the railway was 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 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 our view, with greatest respect, the observations of the Madras High Court on the interpretation of Section 110-B cannot be accepted in the light of our construction on Section 110-B as aforesaid. Even apart from the fact that the decision of the High Court proceeded on concession made by the claimants that no claim against railway can be adjudicated.

20. We were then taken to the Andhra Pradesh High Court judgement in the case of *Oriental Fire and General Insurance Company Ltd. v. Union of India*[6], In that case, the collision had taken place between a goods train and a lorry on account of which the owner of the lorry and the insurance company had to deposit certain amounts under the Workmen's Compensation Act for the death of some labourers and the injuries to the others. Later on, the owner and the insurance company filed a suit for recovery of those amounts from the Union of India alleging that the accident had taken place because of the negligence of the employees of the railway. At the appellate stage, an objection was raised that the claim having arisen out of the use of the motor vehicle was liable only by the tribunal and not by the civil Court. The Division Bench overruled the said objection. While overruling the objection, it was observed that the scheme of the Act indicated that the claim referred to in the Section viz. Section 110 can have reference only to claims against the owner or the driver of the motor vehicle concerned in the accident. It could not have been the intention of the framers of the Act to include claim against other persons as well. With respect, it is not possible to agree with the aforesaid view expressed by the Division Bench of the Andhra Pradesh High Court on the scheme of the Act, though it must be held that on the facts of the case before the Andhra Pradesh High Court, ultimate decision that such claim could not be entertained by the Tribunal was quite justified for the simple reason that the claim was solely based on the negligence of the employees of the railway. It was not a case of composite negligence of not only the employees of the railway but also of the joint negligence of driver of the motor vehicle.

21. We were then taken to the decision of Himachal Pradesh High Court in the case of *Bhola*

Ram v. State of Himachal Pradesh[7], In that case, a truck belonging to the Himachal Government fell down into a deep Khud near Ganasidhar resulting in the death of the driver and the owner of the goods. The claim petition filed before the Tribunal was dismissed on the finding that the accident had happened on account of giving way of false projection of the road which was supported on wooden logs and not due to the negligence of the truck driver. In the appeal before the High Court, an alternate plea was raised that

[5]1974 Acc CJ (Mad) 488 [7]1982 Acc CJ 99

[6]1975 Acc CJ 33

even if the accident be taken to have occurred on account of sagging of the road, the State would be liable in tort to pay the compensation being owner of the road. The plea was turned down holding that the Tribunal has no jurisdiction to entertain any claim against the State as owner of the road. It has to be kept in view that in the case before the Himachal Pradesh High Court, the accident had not resulted on account of rash and negligent driving of the motor vehicle. On the contrary, the driver of the motor vehicle was the victim and the allegation was that there was mishap only on account of bad roads and on that basis, the State as owner of the road, was sought to be made liable. Such a claim obviously could not have been entertained by the Claims Tribunal, as the accident was not alleged to have resulted on account of any rash and negligent use of any motor vehicle. This was not a case of composite negligence of the motor vehicle driver and outside agency resulting into the accident. The ratio of the Himachal Pradesh High Court decision cannot be of any assistance to the learned Advocate for the Union of India.

22. We were also taken to the decision of the Delhi High Court in the case of *Madanlal Jain v. Municipal Corporation of Delhi*[8], The case before the Delhi High Court was almost parallel to the case before the Himachal Pradesh High Court in the aforesaid decision. A scooterist who was the claimant before the Delhi High Court had alleged that (sic) while going on his scooter on the ring road at about 10 p.m. the front wheel of the scooter fell in a pit on the road and overturned resulting in grievous injuries to him. His contention was that he should be compensated by the Municipal Corporation which had failed to maintain road in proper condition. His claim for compensation of Rs. 25,000/- was against the Municipal Corporation. This decision obviously cannot be of any assistance to the learned Advocate for the Union of India as the Delhi High Court in that case was concerned with the claim for compensation arising out of the accident which was not caused on account of any rash and negligent use of the motor vehicle. On the contrary, the scooterist was the alleged victim who had suffered from the accidental injuries on account of alleged non-maintenance of proper roads by the Corporation. Such claim obviously on the very language of Section 110(1) would be outside the scope of jurisdiction of the Claims Tribunal.

23. We may also in this connection refer to the judgement of five Judges Bench of the High Court of Australia in *Government Insurance Office of New South Wales v. R.J. Green and Lloyd Pvt. Limited*[9], The words which came up for interpretation before the said bench were as under :-

"injury caused by or arising out of the use of the vehicle".

Winderyer, J. while agreeing with the judgement written by Barwick, C.J. observed as under :-

> "The words 'injury caused by or arising out of the use of the vehicle postulate a cause relationship between the use of the vehicle and the injury, 'caused by' connotes a 'direct' or 'proximate' relationship of cause and effect. 'Arising out of' extends this to a result that is less immediate; but it still carries a sense of

[8]1982 Acc CJ 374

[9]1967 Ace CJ 329 (HC, Aus)

> consequence. It excludes cases of bodily injury in which the use of the vehicle is a merely casual concomitant, not considered to be, in a relevant causal sense, a contributing factor".

The aforesaid judgment of the High Court of Australia comes very apposite in interpreting the words used by the provisions in Section 110(1) of the Act conferring jurisdiction on the Tribunal for adjudicating claims for compensation in respect of accidents arising out of use of motor vehicles. That would, therefore, naturally mean that a motor vehicle involved in the accident must be the cause of accident, meaning thereby, there must be causal connection by way of whole or part contribution of the offending motor vehicle towards the accident. The claims for compensation arising out of such accidents would clearly be covered by the scope and ambit of Section 110(1). We may also refer to the decision of another Division Bench of the Madras High Court in the case of *Ellammal v. Govt. of Tamil Nadu*[10], In the said case, a Division Bench consisting of Sathiadev and Maheswaran, JJ. had to decide the question whether the Claims Tribunal had jurisdiction to entertain the claim for compensation moved by heirs and legal representatives of the owner of a motor lorry who died in the accident due to the tyres of lorry getting punctured and lorry dashing against tree on account of the fact that a police constable had flung plank containing number of nails in it before the speeding lorry driven by the deceased. These iron nails in the plank resulted into puncture of tyres of the lorry. The vehicle went out of control resulting in the death of the owner of the lorry. The Division Bench of the Madras High Court took the view in the aforesaid case that such claim for compensation on the aforesaid facts cannot be entertained by the Claims Tribunal. In our view, no exception can be taken to the conclusion reached by the Madras High Court on the aforesaid facts. On these facts, the claim for compensation cannot be said to have arisen out of the accident caused by any rash and negligent driving of the motor lorry. On the contrary, the sole wrong allegation was that of the police constable who had thrown plank containing a number of nails in the way of lorry and, therefore, the lorry owner was made the victim of the accident and not the cause thereof. However, the interpretation of Section 110-B as put up by the Division Bench to the effect that it made it clear that claim referred to under Section 110 can have reference only to the owner or driver of the vehicle as the case may be and not against strangers, with greatest respect, cannot be agreed to by us and we respectfully differ from the said interpretation for the reasons which we have already detailed above while interpreting the limited scope of Section 110-B of the Act.

24. Before parting with discussion on the judgments of different High Courts we must mention one decision of this High Court rendered by A.P. Ravani, J. on 6th October 1986 in First Appeals Nos. 1119, 1120, 1121, 1122, 1123 and 1124 of 1986. In these appeals, Union of India representing railway administration had come in appeal against the awards passed by the Claims Tribunal, Mehsana in claims petitions arising oat of an accident that took place due to collision between a bus and the railway engine. The claims Tribunal had held on facts that both the driver of the motor vehicle as well as railway engine were jointly responsible for the accident and that negligence of the engine driver was to the extent of 30% while the rest was the negligence of the motor vehicle driver. While summarily rejecting these appeals on behalf of the Western Railway, A.P. Ravani, J. relying upon the express language of Section 110(1) made the following observations in

[10](1986) 11 Reports (Mad) 5 (Specimen)

the speaking order dismissing these appeals :-

> "When the motor bus was crossing the railway track, the accident took place. The accident did take place because the motor bus was being used. By no stretch of reasoning, it can be said that the accident has not arisen on account of user of motor vehicle".

In our view, the final conclusion to which the learned Judge reached viz. there was no substance in the appeals moved by the Union of India was quite justified as the facts revealed that the accident had occurred on account of composite negligence of the engine driver as well as bus driver and thus, this case clearly fell within the network of Section 110(1) of the Act. However, the reasoning adopted by the learned Judge on the interpretation of Section 110(1) appears to us, with respect, to be rather too wide. Merely because the accident took place because motor bus was being used, it would not necessarily fallow that the claim petition would be maintainable. In a case in which it is not alleged that motor bus was being misused viz. that it was being used in a rash or negligent manner, the claim petition would not be maintainable under Section 110(1). In that extent, we do not subscribe to the wide and broad observations made by the learned single Judge as aforesaid. In our view, Section 110(1) can be attracted in a case where accident takes place because motor vehicle is rashly or negligently used and not merely because it is used at the relevant time. To that extent, we respectfully dissent from the observations of Ravani, J. in the aforesaid judgment and hold that those observations will have to be read down as aforesaid.

25. Let us now take stock of the situation. On the aforesaid discussion of the relevant provisions of the Act and various decisions of the High Courts, it appears clear to us that following four types of cases can give rise to claims for compensation :-

> I. Claims for compensation in cases where it is alleged that motor vehicle driver was solely responsible for causing accidental injuries giving rise to the claims for compensation;

II. Claims for compensation in cases of accidents where it is alleged that accident is caused not on account of rash or negligent driving of driver of the motor vehicle but is solely caused on account of rashness or negligence of any outside agency who might have rashly or negligently used any vehicle other than the motor vehicle causing the accidental injuries or who might have been solely responsible for the accident even otherwise.

III. Claims for compensation in case where it is alleged that the accident giving rise to the claim is being the result of composite negligence not only of the driver of the motor vehicle but also of outside agency or driver of another vehicle which may not be motor vehicle but who night be found negligent contributing to the causing of the accident, meaning thereby, claims for compensation against joint tort-feasors, one of which at least is the driver of a motor vehicle.

IV. Cases where it is alleged that accidental injuries have been Caused on account of composite negligence of driver of the motor vehicle as well as any other person who might be jointly responsible for causing the accident. But when ultimately, on evidence, it is found by the Tribunal that driver of the motor vehicle was not at all responsible, not even to the slightest extent and that sole responsibility for causing of the accident rested on the shoulders of the driver of the vehicle which is not a motor vehicle or on the shoulders of any other agency.

It becomes at once clear that so far as first type of cases are concerned, it is the Claims Tribunal alone which can entertain such claims under Section 110(1) of the Act and can adjudicate upon the same and if ultimately it is found that motor vehicle driver was negligent, proper compensation can be awarded against the driver, owner and insurer of the vehicle as the case may be. But if it is found on evidence that allegations in the petition were not made out and the motor vehicle driver was not negligent at all, then obviously, the claim would fail on merits.

26. So far as second type of cases are concerned, on the very allegation in the claim petition to the effort that the accident is caused solely on account of the negligence of any other person who may not have used any motor vehicle at the relevant time in causing the accident, the claim petition would not be maintainable before the claims Tribunal as even from the allegations in the claim petition it would appear obvious that the claim for compensation is not based on any accident resulting out of use or negligent use of any motor vehicle. Such a claim petition will have to be rejected on the threshold by the Claims Tribunals.

27. So far as third type of cases are concerned, because composite negligence is alleged both against the driver of the motor vehicle as well as driver of any other vehicle, or any other outside agency such claim petition would be maintainable before the Tribunal on the principle that outside parties are allowed to be joined as tortfeasors who have contributed to the causing of the accident and, their *inter se* liability can be adjudicated upon by the Tribunal and the Tribunal can obviously pass proper orders fixing just compensation and making it payable by the joint tortfeasore jointly and serverally and also indicating *inter se* liability of the concerned joint

tortfeasors for completing adjudication between the concerned parties so that future litigation *inter se* joint tortfeasors for contribution can be avoided and in such cases, award can be passed against all joint tortfeasores even though some of them may not be drivers of motor vehicles but still they might have contributed alongwith driver of the motor vehicle in causing the accident.

28. So far as last type of cases are concerned on the allegations in the petition that the accident has been caused on account of composite negligence of the driver of the motor vehicle and driver of any other vehicles or outside agency application for claim would be maintainable by the Claims Tribunal but ultimately, if after hearing the parties, the tribunal comes to the conclusion that the accident has been caused not on account of the rash and negligent driving by the driver of the motor vehicle but solely on account of rashness and negligence of other person who might have driven the vehicle other than motor vehicle like railway engine, horse cart or camel cart etc., or solely on account of negligence of outside agencies, then on the said finding, the case would get out of provision of Section 110(1) at that stage as the Tribunal will have to hold on facts as a consequence of its finding as aforesaid that the accident was not caused on account of any rash and negligent use of any motor vehicle. Once that consequential finding is reached, the Tribunal would lose jurisdiction for passing appropriate orders against such tortfeasor who gets outside the network of Section 110(1) and consequently, claim against such outsider meaning thereby, other than driver of the motor vehicle, owner or insurance company, will have to be dismissed as not maintainable at that stage despite the finding of the Tribunal that such outsider is 100% responsible for the accident in question.

29. It, therefore, becomes obvious that cases falling under first and third categories can effectively be tried by the Claims Tribunal and proper awards can be passed against the concerned parties while in cases falling under second and fourth categories, claim petitions will have to be rejected either at the threshold or on merits on the ground of absence of jurisdiction either initial jurisdiction to entertain such claim petitions or ultimate jurisdiction to pass awards against such outsiders, as the case may be.
Order accordingly.