
Manoj Kumar Mundi and others Vs Hari and others

F.A. No. 34 of 1976

Court: Madhya Pradesh High Court

Date of Decision: Jan. 21, 1977

Acts Referred:

Motor Vehicles Act, 1939 " Section 110D

Citation: (1977) JLJ 270

Hon'ble Judges: U.N. Bhachawat, J; S.R. Vyas, J

Bench: Division Bench

Advocate: B.G. Apte, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.R. Vyas, J.

This is an appeal u/s 110-D of the Motor Vehicles, 1939 (hereinafter referred to as the Act) against the award made by the

Additional Motor Accidents Claims Tribunal, Gwalior in case No. 11/1975 dated 8th July, 1976.

2. Briefly stated, the facts giving rise to this appeal are these:--

The appellant 1, Manoj Kumar is the minor son of appellant 2, Keshavrao. An application under S. 110-A of the Act was filed by the appellants

before the Tribunal on the following allegations:--

On 30-1-1975, two trailers bearing registration numbers M.P.W. 5234 and 5192 belonging to some of the respondents were Parked on a public

lane known as Jatar Sahab-ki-Gali" in the town of Lashkar in such a negligent manner that one trailer was placed over the other in a tilting position.

At about 10 15 A.M. when the appellant Manoj Kumar a minor boy aged about 10 years, passed by the side of these two trailers placed in the

above position, one of the trailers bearing registration No. MP.W. 5234 slipped from above the trailer on which it was placed, and, fell down on

the person of the appellant Manoj Kumar with the result that he was seriously injured. He was rushed to the hospital and examined by the doctors

and it was ultimately decided that his life could be saved only if the left leg, which was completely crushed because of the fall of the trailer, would

be amputated. On the advice of the doctors the left leg was amputated and the boy thus suffered a permanent injury of the loss of one of his two

legs. A claim was, accordingly, made against the respondents, some of whom were the owners, for a total compensation of Rs. 1.30.500/- on

different counts.

3. The claim was denied both on merits as well as on the ground that such an application under S. 110-A of the Act was not maintainable in as

much as no injury was suffered by the appellant Manoj Kumar on account of the use of a motor vehicle. The learned Tribunal upheld the

preliminary objection and came to the conclusion: that such an application was not maintainable. The application was, accordingly, rejected.

4. Feeling aggrieved by the aforesaid order the present appeal has been filed It was urged on behalf of the appellants that the learned Tribunal

erred in rejecting the application on the objection raised by the respondents; that under the Act the definition of a motor vehicle in sub-section (18)

of section 2 of the Act includes a trailer; that according to the allegations made in the application the accident was due to the use of a motor vehicle

and that the application should have been decided on its own merits.

5. Having considered these contentions in the light of the relevant provisions of the Act, we have come to the conclusion that the learned Tribunal

was justified in rejecting the application as not maintainable.

6. The provisions of the Act which are relevant for the decision of the question raised in this appeal are these:--

S. 2 In this Act, unless there is anything repugnant in the subject or context,--

(1)

to

(17)

(18) "Motor Vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted

thereto from an external and internal source and includes a chassis to which a body has not been attached and a trailer ; but does not include a

vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises;

(18-A)

to

(31)

(32) "trailer" means any vehicle other than a side car, drawn or intended to be drawn by a motor vehicle;

(33)

to

(35)

S. 110. (1) A State Government may, by a notification in the official Gazette constitute one or more other Accidents Claims Tribunal (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 vehicle or damages to any property of a

third party so arising or both:

Provided

(2)

(3)

(4)

S. 110-A. (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of S. 110 may be made--

(a)

(b)

(c)

(2)

and

(3)

7. From the aforesaid provisions, it therefore, becomes clear that though according to sub-section (18) of section 2 of the Act a trailer, as

separately defined in subsection (32) of section 2 is included in the definition of a Motor Vehicle, an application for compensation, as contemplated

by sub-section (1) of section 110 of the Act, can be made only for 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 damage to any property of a third party so arising or both. In other

words the basis of an application for adjudication upon a claim for compensation must be an accident to a person arising out of the use of a motor

vehicle.

8. In the instant case, even on the allegations made in the application by the appellants the accident did not arise out of the use of the two trailers

which were parked on a public lane. It is not alleged that at the time of the accident the two trailers, one of which caused injuries to the appellant 1,

were in use as a motor vehicle. All that is contended is that the two trailers, placed one over the other, were parked on the side of a public lane

and were not in motion or used as a motor vehicle at the time when the accident took place. On the contrary, the allegation is that the trailer which

caused the injury, was placed in such a negligent manner that it slipped and caused injuries to the appellant I. In these circumstances, it cannot be

contended that the accident involving the bodily injury to the appellant I, arose out of the use of a motor vehicle.

9. The appellants may be having any other remedy in law for claiming damages on account of the alleged negligence of the owners of the trailers

but, certainly, an application under S. 110 A of the Act was not the proper remedy to be availed of by the appellants. To illustrate our view, we

may take the following instance. A motor vehicle which is a mechanically propelled vehicle has a complete break down while on the road. In order

to get it repaired, the vehicle is being carried mounted on a bullock cart and while being so carried-" it accidentally fails either because of some

negligence or because of some other reason, and causes an injury to a person going on the road. The injury in these circumstances, though may be

attributed to the motor vehicle, but, certainly, is not caused because of the motor vehicle as a motor vehicle, and if an application is made under S.

110-A of the Act for award of compensation the same would not be entertainable

10. The learned Tribunal has relied upon a decision in 964553--> Rajthan. In that case, the chassis of a truck without engine was being pushed by

a couple of boys and while it was so being pushed one of the boys fell down and was run over. An application was made for award of

compensation and it was urged that the bodily injury was caused because of the accident resulting from the use of the motor vehicle. The learned

Judge took the view that it was not a case where it could be said that the accident was because of the use of a motor vehicle. It was also held that

unless the vehicle is mechanically propelled and an accident takes place because of the use of such a mechanically propelled vehicle, any claim for

compensation for injuries arising from such an accident would not be maintainable. We fully agree with the view taken by the learned judge in the

above mentioned case.

11. Accordingly, in our opinion, a claim for compensation under S 110 read with S. 110-A of the Act would not be maintainable unless the

allegation in the application is that the accident involving bodily injury to the applicant " arose out of the use of a motor vehicle as a motor vehicle.

The words ""arising out of the use of motor vehicle"" occurring in sub-section (1) of S. 110 of the Act are very material and the jurisdiction of the

Tribunal to adjudicate upon a claim for compensation under this section can be exercised only when the application is based on the allegation that

the bodily injury occurred because of the accident arising out of the use of the motor vehicle.

12. In the instant case, as we have already stated above there is no allegation that the accident took place because of the use of the trailers as a

motor vehicle. The appellants may, if they so desire, pursue their remedy under any other law. If they are entitled to, put, so far as the present

application is concerned it was rightly rejected by the learned Tribunal.

13. Accordingly, in our opinion, the claim made by the appellants was Tightly rejected by the learned Tribunal We find no justifiable grounds to

entertain this appeal which is hereby dismissed summarily.