APPELLATE CIVIL

Before H. R. Sodhi, J.

JASWANT KAUR AND OTHERS,—*Appellants.*

versus.

RATTI RAM, AND OTHERS,—*Respondents.*

First Appeal from Order No. 151 of 1968.

August 11, 1970.

Motor Vehicles Act (IV of 1939)—Section 110—Damages for loss of property caused in a motor accident—Claims Tribunal—Whether has jurisdiction to award—Assessment of compensation for loss of life in a motor accident—Some important principles as to—Stated.

Held, that a reading of sub-section (1) of Section 110 of the Motor Vehicles Act 1939, shows that a Claims Tribunal has to adjudicate claims for compensation in respect of accidents. Before this jurisdiction of a Tribunal can be invoked, the accident must arise out of the use of a motor vehicle and must involve the death of, or bodily injury to some person. This prerequisite does not, however, imply that compensation can be claimed only in respect of personal injuries. The Legislature has clothed Motor Accidents Claims Tribunals with a special jurisdiction to decide the totalality of claims for compensation in respect of a motor accident provided that the accident involves death or bodily injury to some one. If in an accident only loss to property is caused, the claimant cannot approach the Tribunal and has to seek his remedy in an ordinary Civil Court. It is only when an accident has resulted in death of, or bodily injury to a person that the jurisdiction of the Tribunal is attracted and a claim for injuries as well as for less of property in a composite form can be made before it, instead of going to a Civil Court. This interpretation on the terms of the statute does not in any way derogate from the principle that a Civil Court will have jurisdiction to try all civil causes unless its jurisdiction is expressly or impliedly barred by a competent legislation. Section 110 has a specific purpose of providing a speedier remedy for settlement of claims for compensation arising out of a motor accident and any interpretation to the contrary requiring severance of claims leaving a part of the same regarding loss of property to be settled by Civil Court and that for personal injuries only by the Tribunal will be a complete negation of the very object of enacting this provision. When the two claims are so bound up together, it is the Tribunal alone that will have jurisdiction in respect of both of them. (Para 12).

Held, that for assessing compensation for loss of life in a motor accident, the following are some important principles :—(a) The normal span of

an Indian's life can no doubt be expected to be 70 years but the family history is also very relevant to determine the expectation of life of a particular individual; (b) It is the status of the deceased at the time of his death that alone can be reasonably taken into consideration for assessment of compensation. The claim on account of the chances of promotion of the deceased if he was a government servant at the time of the accident is highly speculative. If there can be promotions, there can also be chances of reversions, reduction in rank and removal from service for reasons unforeseen; (c) There is no absolute rule that in every case, deduction from the amount of compensation awarded must be made on account of uncertainties of life or the fact that the amount of compensation is to be paid in lump sum. It depends upon the circumstance of each case. (Para 11).

First Appeal from Order of the Court of Shri Gurbachan Singh Bajwa, Chairman, Motor Accidents Claims Tribunal, Punjab, Chandigarh, dated 8th March, 1968 awarding the applicants Rupees ninety four thousands and four hundred only as compensation under section 110-B of the Motor Vehicles Act against the respondents and also awarding costs of the applications, Counsel's fee Rs. 500, and also ordering that the State of Punjab as owners of the motor vehicle milk van involved, the Diary Development Corporation in whose charge the milk van at the time of the accident was and the driver Ratti Ram will all be liable severally and jointly to pay the amount within a period of 3 months from the date of award failing which the amount will carry interest at the rate of 6 per cent P.A. and also ordering that out of the amount awarded rupees ten thousands be paid to applicant No. 2 Harjinder Kaur, the major daughter of the deceased and the remaining amount of rupees eighty four thousands and four hundred be paid to Shrimati Jaswant Kaur applicant in her own right and as guardian of her minor children applicants Nos. 3 to 7.

L. M. Suri and R. K. Mittal, Advocates, for the appellants.

H. L. Sibal Advocate-General Punjab with R. K. Chhibber, Advocate, for the respondents.

JUDGMENT

H. R. Sodhi, J.—(1) This judgment will dispose of two connected appeals filed against the order of the Motor Accidents Claims Tribunal, Punjab, passed on 8th March, 1968, whereby it awarded to Jaswant Kaur and her children a sum of Rs. 94,400 as compensation for the loss by motor accident of the life of Gurcharan Singh husband of Jaswant Kaur appellant in F.A.O. No. 151 of 1968. The other appeal (F.A.O. No. 113 of 1968) has been filed by the State of Punjab against the award of the said amount.

(2) Gurcharn Singh deceased was a Sub-Divisional Officer in the Public Works Department (Irrigation Branch) and on 6th

October, 1966, at about 2/2-15 P.M., he was returning on a motor cycle to city Rupar after attending a meeting in the office of the Executive Engineer. When he reached the crossing of the two roads near the Court of the Sub-Divisional Magistrate a milk van No. PNQ 641 owned by the Dairy Development Corporation, a State undertaking and driven by Ratti Ram respondent, came from the side of Canal Head Works and is alleged to have struck against the motor cycle killing Gurcharan Singh on the spot. Before the van could stop it covered a distance of about 60 feet and the motor cycle was heavily damaged. A case was registered with the police which later ended in the conviction of Ratti Ram.

(3) Smt. Jaswant Kaur widow of the deceased and her minor children then filed claim No. 367/CTP/66 in the Court of the Motor Accidents Claims Tribunal, Punjab, claiming compensation to the tune of Rs. 1,50,000. The respondents admitted the happening of the accident but denied their liability to pay any compensation as it was alleged that the accident resulted not from any rash and negligent driving by Ratti Ram driver of the van but on account of such driving of the motor cycle by the deceased himself. On the pleadings of the parties, the following issues were struck :—

(1) Was the accident due to any negligent act on the part of the driver of the Milk Van involved or that of the deceased himself or that of both and with what effect ?

(2) What is the quantum of compensation due if any and from whom to whom?

(3) Has this Tribunal jurisdiction to entertain claim with regard to damages to the motor cycle and other property and can the claimants claim any damages with regard to these things ?

(4) Relief ?

(4) Under issue No. 1 it was held by the Tribunal that the accident was entirely due to the rash and negligent driving by Ratti Ram respondent. Gurcharn Singh deceased was 44 years of age at the time of his accident and an amount of Rs. 94,400 was fixed as the quantum of compensation payable to Smt. Jaswant Kaur and her children. The applicants had also laid a claim for compensation on account of damage to the motor cycle and a wrist watch

which the deceased was said to be wearing at the time of the accident but the Tribunal rejected this claim on the ground that it had no jurisdiction to award such compensation.

(5) Being aggrieved by the award, the heirs of the deceased, Smt. Jaswant Kaur and her children and the State have come up in these appeals.

(6) After hearing the learned counsel for the parties, I am of the view that the finding of the Tribunal on issue No. 1 must be upheld nor is there any ground to interfere with the amount of compensation awarded to the heirs of the deceased. I am further of the opinion that the Tribunal was in error in holding that it had no jurisdiction to entertain claim with regard to damage to the motor cycle and the wrist watch, though in the instant case the applicants have not been able to establish the extent of loss and in the absence of any evidence the same cannot be awarded in mere conjectures.

(7) To establish rash and negligent driving on the part of Ratti Ram respondent, the applicants produced four witnesses in addition to the police officer who investigated the case. The circumstances as disclosed in this case leave no manner of doubt that Ratti Ram was wholly responsible for the accident. The accident took place at a crossing of the two roads which meet at right angle near the Court of the Sub-Divisional Magistrate. The presiding officer of the Tribunal himself inspected the spot in presence of the counsel for the parties. The two roads, as stated by the Tribunal, had almost the same width and were so situated that it could not be said which of them was the main road. The road from which the deceased was coming was on the right side and Ratti Ram respondent while sitting in the vehicle must have seen the motor cycle coming from that side or at least he should have been careful enough to see if any vehicle was coming from that side. It is admitted by him as R. W. 2 that his brakes did not work when he tried to apply them. What seems to be the correct position is that he was probably driving the vehicle when its brakes were not in order. The impact that took place was so great that the deceased and his motor cycle were dragged about at least 60 feet. The argument that there were Akk shrubs forming a hedge about 6 feet high along the road from which the milk van was coming and also on the left side of

the road from where the motor cyclist was approaching the crossing, and that the height of such hedges made it difficult for the drivers of both the vehicles to have a view of each other from a reasonable distance, is without substance. The driver of the milk van, even if there were any Akk shrubs, should have easily seen the motor cyclist and in fact he was duty bound to have slowed down the vehicle near the crossing lest some other vehicle coming from the right-hand road bumped into it. An extra caution is called for on the part of a driver of a vehicle when entering intersection of the road and in the instant case, we find that there was gross negligence in putting the van on the road without caring to attend to the brakes which, according to the showing of Ratti Ram himself, were not in order. The evidence of eye-witnesses Gurbachan Singh A. W. 2, Pyara Singh A. W. 3, Gurdev Singh A. W. 4 and Bant Singh A. W. 5 who are all independent and disinterested, establishes beyond doubt the rashness and negligence on the part of Ratti Ram who violated statutory regulations as well. Regulations 6 and 7 as given in the tenth Schedule of the Motor Vehicles Act, 1939, lay down that the driver of a motor vehicle shall slow down when approaching a road corner and shall not enter any such intersection, road junction or a road corner until he is satisfied that he could do so without endangering safety of persons thereon. The driver of a vehicle is equally required to give way to all traffic approaching the intersection from his right-hand side. The deceased had approached the crossing of the two roads from the right-hand side of the driver of the milk van and in these circumstances, it was obligatory on Ratti Ram to give way to him I am in full agreement with the Tribunal that the accident was due to rash and negligent driving by the driver of the milk van and that the deceased was not guilty of any contributory negligence.

(8) The main question that has been agitated before me is about the quantum of compensation. The deceased was working as a Sub-Divisional Officer in the Public Works Department (Irrigation Branch) drawing total emoluments at Rs. 485 P.M. The normal age of retirement is 55 years though a Government employee can be retained even upto the age of 58 years. We have in evidence that the family of the deceased was quite long lived inasmuch as his grandfather lived up to the age of 85 years. His father is still alive at the age of 65 years though his brother had died at the age of 40 years. There is no evidence that the deceased was not

keeping good health nor are any circumstances pointed out which could possibly affect the longevity of his life. The Tribunal keeping in view the family history, came to the conclusion that in all reasonableness the deceased could be expected to live up to the age of 65 years till which time he would have supported his wife and children. I do not find any reason to differ from this finding.

(9) Mr. L. M. Suri, learned counsel for the appellants; has however; invited my attention to some cases where the normal expectation of life has been held to extend to 70 years Each case depends on its own facts and circumstances and no cogent reasons have been advanced by the learned counsel to persuade me to take a different view from that of the Tribunal that the normal age in the present case should be taken to be beyond 65 years which certainly is not on the lower side.

(10) The deceased at the time of his death was, as already stated, drawing Rs. 485 p.m. out of which Rs. 375 were his basic salary. The scale of pay of Sub-Divisional Engineer/Assistant Engineer/ Sub-Divisional Officer was revised and, according to the revised scale as appearing in the Punjab Government Gazette (Extraordinary), dated 30th January, 1969; an officer of this rank was entitled to an enhanced salary in the grade of Rs. 400—1.100 instead of Rs. 250—25—550/25—750 which the deceased was getting at the time of his death. The dearness allowance had also been enhanced. The Tribunal calculated compensation for a period of 11 years on the assumption that the deceased would have continued in service up to the age of 55 years and drawn the usual increments and the revised pay scale. The total average emoluments of the deceased for a month would have come to Rs. 675 after the revised pay scale came into force with effect from 1st February, 1968. According to the Tribunal, the deceased would have certainly contributed at least Rs. 450 every month towards the maintenance of his family even if he had kept Rs. 225 per month with him for his personal expense. In the matter of personal expense, the Tribunal has already taken a very liberal view as in our society the bread-winner would always contribute the maximum towards the maintenance of the family and I doubt if the deceased would have kept Rs. 225 per month for his own expense only. Be that as it may; no fault can be found with the approach made by the Tribunal. The Tribunal has also taken into consideration what would have been the pension of the deceased on his retirement at the age of 55 years and in assessing compensation treated the deceased entitled to only Rs. 250 per month as

pension. In the opinion of the Tribunal, the deceased was a technical hand and even after his pension, he could not sit idle and would have continued to contribute Rs. 300 per month towards the maintenance of his family till the last day of his life namely, the attainment of the age of 65 years. It is in this manner that the amount at Rs. 94,400 has been worked out,

(11) Neither counsel has found any fault with the mathematical calculations as made by the Tribunal and the only contention of Mr. Suri, learned counsel for the appellants, is that the Tribunal erred in not allowing compensation by holding the life span of the deceased to be 70 years and also not keeping in view the fact that the deceased would have earned promotions in service from the rank of Sub-Divisional Officer to that of the Executive Engineer if not more. I am afraid it is not possible to accept the contention of Mr. Suri. The normal span of an Indian's life can no doubt be expected to be 70 years but the family history is also very relevant. I have already held that in the case before us the conclusion of the Tribunal awarding compensation on the basis of expectation of life of the deceased up to the age of 65 years is quite reasonable and no interference is called for. As regards the chances of promotion, the claim is highly speculative. If there could be promotions, there could be chances of reversions, reduction in rank and removal from service for reasons unforeseen. It is the status of the deceased at the time of his death that alone can be reasonably taken into consideration and the amount has been correctly assessed.

(12) The last contention of Mr. Suri is that compensation for damage to the motor cycle and the wrist watch should also have been allowed. The Tribunal was of the view that it had no jurisdiction to award damages for loss to property caused in a motor accident. According to the Tribunal, the Legislature did not contemplate that all claims for compensation including that of loss to property in an accident fall within the jurisdiction of such a Tribunal. A Tribunal is constituted under section 110 of the Motor Vehicles Act, 1939. Sub-section (1) of section 110 reads as under :—

> "110. (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."

The Claims Tribunal is thus constituted by the State Government for the purpose of adjudicating all claims for compensation in respect of accidents "involving the death of, or bodily injury to, persons arising out of the use of motor vehicles". The words which call for interpretation have been placed by me within inverted commas. A reading of sub-section (1) of section 110 shows that a Tribunal has to adjudicate claims for compensation in respect of accidents. Before this jurisdiction of a Tribunal can be invoked, the accident must arise out of the use of a motor vehicle and must involve the death of or bodily injury to some person. This pre-requisite does not, however imply that compensation can be claimed only in respect of personal injuries. The Legislature intended to clothe a Motor Accidents Claims Tribunal with a special jurisdiction to decide the totality of claims for compensation in respect of a motor accident provided that the accident involved death or bodily injury to some one. In other words, if in an accident only loss to property was caused, the claimant could not approach the Tribunal and had to seek his remedy in an ordinary Civil Court. It is only when an accident has resulted in death of or bodily injury to a person as well that the jurisdiction of the Tribunal is attracted and a claim for injuries in a composite form has to be made before it, instead of going to a Civil Court. It could not, possibly be intended that when death or bodily injury has taken place in the course of a motor accident that the claim for compensation in respect of damage to property should be severed and determined by a Civil Court whereas that for compensation for death or injury should be settled separately by the Tribunal on almost the same evidence. The interpretation that I am placing on the terms of the statute does not in

any way derogate from the principle that a Civil Court will have jurisdiction to try all civil causes unless this jurisdictions is expressly or impliedly barred by a competent legislation. Section 110, as already stated, has a specific purpose of providing a speedier remedy for settlement of claims for compensation arising out of a motor accident and any interpretation to the contrary requiring severance of claims leaving a part of the same to be settled by Civil Court and that for personal injuries only by the Tribunal will, to my mind, be a complete negation of the very object of enacting this provision. With utmost respect, I am unable to persuade myself to agree with Veeraswami J., who has in *R. Celvaraj* v. *Jagannathan and another*, (1), observed that there is no indication in section 110 that any claim other than that for personal injury could fall within the jurisdiction of the Tribunal. I cannot share the view of the learned Judge that where claim in respect of loss to the property is inextricably mixed up with the claim in respect of personal injury, it is the Civil Court that will have jurisdiction to take cognizance of the entire claim. In my opinion, the real position is the other way about. When the two claims are so bound up together, it is the Tribunal alone that will have jurisdiction in respect of both of them. The view that I am taking is supported by a Division Bench of Madhya Pradesh High Court in *Dr. Om Parkash Mishra* v. *National Fire and General Insurance Co. Ltd. and others*, (2). In *Dr. Om Parkash Mishra's case*, (2) the Tribunal dismissed the claim with regard to compensation for damage to the car caused by its collision with a motor bus and entertained the claim of the owner of the car with regard to personal injuries only. The High Court on appeal directed the Tribunal to proceed to enquire into and adjudicate on the claim on account of damage to the car as well. It was held that the class of cases where death or personal injury may have resulted and at the same time there may be loss or damage suffered in property by the person who had suffered personal injury or by the deceased or by the legal representative of the deceased, a claim for compensation in such a case is of composite nature triable by the Claims Tribunal.

In the instant case, there is no evidence about the monetary assessment of the damage caused to the motor cycle or the wrist watch except the bald statement of Jaswant Kaur. In the absence

(1) 1969 A. C. J. 1.

(2) A. I. R. 1962 M. P. 19.

of there being any evidence, no compensation can, therefore, be awarded for loss of property said to have been caused in the same accident.

(13) The learned counsel for the State contended that some deduction ranging between 10 to 20 per cent be made from the total amount of compensation on equitable considerations as the family of the deceased was to get the amount in lump sum and that on account of uncertainties of life, the deceased might have met a natural death earlier. He submitted that the Tribunal was in error in not allowing any such deduction. As already observed by me in *Himachal Government Transport, Simla, and another* v. *Joginder Singh and another,* (3), there is no absolute rule that in every case, deduction must be made on account of uncertainties of life or the fact that the amount is to be paid in lump sum. In my opinion, the circumstances of each case have to be taken into consideration. The accident took place on 6th October, 1966, and the compensation in a sum of Rs. 94,400 was awarded on 8th March, 1968. The payment of compensation to the extent of one-half was stayed by this Court on 8th August, 1968. If the full amount of compensation had been made available to the claimants, they could have deposited the same in some bank, and secured interest at the rate of 6 per cent per annum. The loss of interest from the date of the award up to date on the unpaid amount alone comes to about Rs. 6,000 and earlier as well since the date of the accident, the claimants remained deprived of any source of income. An overall amount of interest could not, in any case, be less than Rs. 9,000. If any deductions were allowed at the rate of 10 per cent, that would hardly come to Rs. 9,000. In the circumstances of the present case, the difference is hardly of any substance and an approach on these lines was made by the Chief Justice Mehar Singh in *Oriental Fire & General Insurance Co. Ltd. New Delhi and others* v. *Chuni Lal and others,* (4), *with* which I am in respectful agreement.

(14) In the result, both the appeals stand dismissed. In F.A.O. 151 of 1968, there is no order as to costs whereas costs of the respondents will be paid by the State in F.A.O. 113 of 1968, and counsel's fee in latter case is fixed at Rs. 500.

(3) 1970 A. C. J. 37.
(4) 1969 A. C. J. 237.

B. S. G.