

CASE NO.:
Appeal (civil) 431-446 of 1988

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
BHAGWATI PRASAD (DEAD) & ORS.

DATE OF JUDGMENT: 07/03/2002

BENCH:
G.B. Pattanaik, S.N. Phukan & S.N. Variava

JUDGMENT:

PATTANAIAK, J.

The Union of India through General Manager, Northern Railways is in appeal against the Revisional order of the High Court of Allahabad. By the impugned order, the High Court has upheld the order of the Claims Tribunal on preliminary issue as to whether the Motor Vehicle Claims Tribunal has jurisdiction to entertain claim for compensation against Railway Administration, in the event it is held that for the accident in question there was no negligence on the part of the Railway Administration. A taxi came in collision with Allahabad-Saharanpur Passenger Train as a result of which passengers died and some sustained bodily injuries. For sustaining such bodily injuries arising out of the accident, applications were filed claiming compensation under Section 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as 'The Act'), against the insurer of the taxi as well as against the Railway Administration. It was alleged that the accident occurred due to the negligence of the employees of the Railway staff at the railway crossing, the railway crossing having been kept open for the high-way traffic at a time the train was to pass through the point. The Railway Administration filed written statement taking the plea that application for compensation under the Motor Vehicles Act can be filed against the insurer, owner or driver of the Motor Vehicle and the Tribunal has no jurisdiction to entertain the claim against the Railway Administration. In view of the aforesaid stand, a preliminary issue was framed by the Tribunal and the Tribunal held that if claimants have sustained injuries in an accident arising out of the use of a Motor Vehicle then the Tribunal will have the jurisdiction to entertain application for claim not only against the owner or insurer of the vehicle but also against any other vehicle which came in collision, and in the case in hand, against the Railway Administration. Against the aforesaid order of the Tribunal Revision having been filed a learned Single Judge of Allahabad High Court referred the matter to the Division Bench and by the impugned judgment the Division Bench having upheld the order of the Tribunal, the present appeals have been preferred by the grant of Special Leave. When these appeals were taken up for hearing on 14th February,

2002 before a Bench of two learned Judges of this Court, the decision of this Court in the case of Union of India vs. United India Insurance Company (1997) 8 Supreme Court Cases 683, was placed before the Court. The conclusion of the Court recorded in paragraph 41 of the aforesaid judgment did not find favour with the two learned Judges who were hearing the matter and accordingly it was directed that the matter be referred to a larger Bench and that is how it has come before us.

Mrs. Indira Sawhney, learned counsel appearing for the appellant Railway Administration contends that in respect of an application for compensation filed under Section 110-A of the Act, the Tribunal constituted under sub-section (1) of Section 110 can pass an award under Section 110-A against the insurer or owner or driver of the vehicle involved or by all or any of them, as the case may be. A passenger train not being a Motor Vehicle, no application for claim of compensation against Railway Administration could be entertained by the Claims Tribunal constituted under sub-section (1) of Section 110 if the death or injury has occurred on account of a collision between a Motor Vehicle and a Passenger Train. The impugned judgment of the High Court, therefore, according to the learned counsel is unsustainable in law. In support of this contention reliance has been placed on the decision of the Court in the case of Union of India vs. United India Insurance Co. Ltd. and Others (supra). It is contended on behalf of the respondent, however, that on account of a collision between a Motor Vehicle and a Train if death or injury is resulted to several passengers then the accident must be held to have arisen out of the use of Motor Vehicle. In such a case, therefore, the jurisdiction of the Tribunal cannot be said to be ousted merely because the collision took place between a Motor Vehicle and a Passenger Train. It is further contended that the Railway Administration cannot be absolved of its liability on the plea that the employees of the train were not negligent.

On account of the rapid development of road transport and increase in number of Motor Vehicles on the road the incidence of road accidents by Motor Vehicles having increased enormously the Motor Vehicles Act enacted by the Parliament was amended and the provisions were inserted for payment of compensation in certain cases of accidents without proof or fault or negligence on the part of the driver of the vehicle. The claim for compensation in respect of the accidents involving death or bodily injury to persons arising out of the use of Motor Vehicles as well as the insurance of the Motor Vehicles against the third party risk and the liability of the insurer are contained in Chapter VIII of the Motor Vehicles Act. The State Government has been empowered under Section 110(1) of the Act to constitute one or more Motor Vehicles Accidents Claim Tribunals by notification in the Official Gazette. Section 110-A provides for filing an application for compensation and Section 110-B is the power of the Claims Tribunal to pass an award on receiving an application for compensation made under sub-section (A) of Section 110. The procedure and powers of the Claims Tribunal are enumerated in Section 110-C of the Act. It is not necessary for adjudicating the point in issue to examine and notice any other provision of the Act. In the case of Union of India vs. United India Insurance Company (supra) applications for compensation had been filed either by the injured passengers or the dependant of the deceased passengers travelling in the ill-

fated Motor Vehicle both against the insurer of the Motor Vehicle as well as against the Railway Administration and one of the contention which had been raised before this Court by the Railway Administration was whether a claim for compensation would at all be maintainable before the Tribunal against other persons or agencies which are held to be guilty of composite negligence or are joint tortfeasors, and if the same arose out of the use of the Motor Vehicle. On consideration of different provisions of the Motor Vehicles Act this Court ultimately came to hold that, "We hold that the claim for compensation is maintainable before the Tribunal against other persons or agencies which are held to be guilty of composite negligence or are joint tortfeasors, and if arising out of use of the motor vehicle. We hold that the Tribunal and the High Court were right in holding that an award could be passed against the Railways if its negligence in relation to the same accident was also proved." The Court also came to hold that the views expressed by Gauhati, Orissa, and Madras High Courts to the effect that no award can be passed against others except the owner/driver or insurer of the motor vehicle are not correct, and on the other hand the view taken by the Allahabad, Punjab and Haryana, Gujarat, Kerala and Rajasthan High Courts to the effect that the claim lies before the Tribunal even against another joint tortfeasor connected with the same accident or against whom composite negligence is alleged. We are in respectful agreement with the aforesaid conclusion of the Court in the aforesaid case. Having said so it was further held that if it is ultimately found that there is no negligence on the part of the driver of the vehicle or there is no defect in the vehicle but the accident is only due to the sole negligence of other parties/agencies then on that finding the claim would go out of Section 110 of the Act because the case would become exclusive negligence of Railways and again if the accident had arisen only on account of the negligence of persons other than the driver/ owner of the motor vehicle the claim would not be maintainable before the Tribunal. It is this observation of the Court in the aforesaid case which is strongly relied upon by Mrs. Indira Sawhney, the learned counsel appearing for the Railway Administration and it is this observation with which the two learned Judges hearing the appeal did not prima facie agree with for which the reference has been made to this larger Bench. The question that arises for consideration, therefore, is whether an application filed before a Claims Tribunal for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of Motor Vehicle and the claim is made both against the insurer, owner and driver of the motor vehicle as well as the other joint tortfeasors, if a finding on hearing is reached that it is solely the negligence of the joint tortfeasor and not the driver of the Motor Vehicle then would the Tribunal lose the jurisdiction to award compensation against the joint tortfeasor. It is not disputed, and as has been already held by this court in the case of Union of India vs. United India Insurance Co. Ltd. (supra) that a claim for compensation on account of the accident arising out of the use of a Motor Vehicle could be filed before a Tribunal constituted under the Motor Vehicles Act not only against the owner or insurer of the Motor Vehicle but also against another joint tortfeasor connected with the accident or against whom composite negligence is alleged. A combined reading of Section 110, 110-A, which deal with the Constitution of one or more Motor Accidents Claims Tribunal and application for compensation arising out of an accident, as specified in sub-section (1) of Section 110 unequivocally

indicates that Claims Tribunal would have the jurisdiction to entertain application for compensation both by the persons injured or legal representatives of the deceased when the accident arose out of the use of Motor Vehicle. The crucial expression conferring jurisdiction upon the Claims Tribunal constituted under the Motor Vehicles Act is the accident arising out of use of Motor Vehicle, and therefore, if there has been a collision between the Motor Vehicle and Railway train then all those persons injured or died could make application for compensation before the Claims Tribunal not only against the owner, driver or insurer of the Motor Vehicle but also against the Railway Administration. Once such an application is held to be maintainable and the Tribunal entertains such an application, if in course of enquiry the Tribunal comes to a finding that it is the other joint tortfeasor connected with the accident who was responsible and not the owner or driver of the Motor Vehicle then the Tribunal cannot be held to be denuded of its jurisdiction which it had initially. In other words, in such a case also the Motor Vehicle Claims Tribunal would be entitled to award compensation against the other joint tortfeasor, and in the case in hand, it would be fully justified to award compensation against the Railway Administration if ultimately it is held that it was the sole negligence on the part of the Railway Administration. To denude the Tribunal of its jurisdiction on a finding that the driver of the Motor Vehicle was not negligent, would cause undue hardship to every claimant and we see no justification to interpret the provisions of the Act in that manner. The jurisdiction of the Tribunal to entertain application for compensation flows from the provisions contained in Section 110-A read with sub-section (1) of Section 110. Once the jurisdiction is invoked and is exercised the said jurisdiction cannot be divested of on any subsequent finding about the negligence of the tortfeasor concerned. It would be immaterial if the finding is arrived at that it is only other joint tortfeasor who was negligent in causing accident and not the driver of the Motor Vehicle. In our considered opinion the jurisdiction of the Tribunal to entertain application for claim of compensation in respect of an accident arising out of the use of Motor Vehicle depends essentially on the fact whether there had been any use of Motor Vehicle and once that is established the Tribunal's jurisdiction cannot be held to be ousted on a finding being arrived at at a later point of time that it is the negligence of the other joint tortfeasor and not the negligence of the Motor Vehicle in question. We are therefore, of the considered opinion that the conclusion of the Court in the case of Union of India vs. United India Insurance Co. Ltd. (supra) to the effect

"It is ultimately found that there is no negligence on the part of the driver of the vehicle or there is no defect in the vehicle but the accident is only due to the sole negligence of the other parties/agencies, then on that finding, the claim would go out of Section 110(1) of the Act because the case would then become one of the exclusive negligence of Railways. Again if the accident had arisen only on account of the negligence of persons other than the driver/owner of the motor vehicle, the claim would not be maintainable before the Tribunal" is not correct in law and to that extent the aforesaid decision must be held to have not been correctly decided.

In the aforesaid premises, we do not find any infirmity with the impugned judgment of the Division Bench

of Allahabad High Court requiring interference of this Court. These appeals fail and are dismissed.

.....J.
(G.B. PATTANAIAK)

.....J.
(S.N. PHUKAN)

.J.
(S.N. VARIAVA)

March 07, 2002.