

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****FIRST APPEAL NO.3273 OF 2017**

Anitadevi Anil Jinda
And Others

.. APPELLANTS

VERSUS

Union of India, Through General Manager,
Railway, (South Central Railway)
Andra Pradesh State And Others.

..RESPONDENTS

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Advocate for Appellants : Mr. M.R.Sonwane

Advocate for Respondent Nos.1 and 2 : Mr. S. B. Deshpande

Advocate for Respondent No.3-A : Mrs. Nima R. Suryawanshi

Advocate for respondent No. 4 : Mr. Dhananjay Deshpande

Advocate for Respondent Nos. 5 and 6 : Mr. M.S. Kulkarni

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CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ

DATE : 28th FEBRUARY, 2019.

ORAL ORDER :-

Appeal is admitted. Notice after admission made returnable forthwith. Both the sides heard finally for final disposal.

2. The appeal is filed to challenge the Judgment and award of Motor Accident Claim Petition No. 152 / 2009 which was pending in the Motor Accident Claims Tribunal, Jalna. Claim Petition filed by the present appellant is dismissed by the Tribunal mainly on the point of jurisdiction.

3. The learned counsel for the appellant took this Court through the observations made by the Apex Court in the case reported (2002)3 Supreme Court Cases 661 (Union of India Vs. Bhagwati Prasad (Dead) And Others). This Court has carefully gone through the ratio of

this case. The relevant observations can be found on page No. 665 and they are as under :-

" 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 a 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 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 Sections 110, 110-A, which deal with the constitution of one or more Motor Accidents Claims Tribunals and application for compensation arising out of an accident, as specified in sub-section (1) of Section 110 unequivocally indicates that the 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 a motor vehicle. The crucial expression conferring jurisdiction upon the Claims Tribunal constituted under the Motor Vehicles Act is the accident arising out of the use of a motor vehicle, and therefore, if

there has been a collision between the motor vehicle and railway train then all those persons injured or legal representatives of the deceased 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 Accidents 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 the other joint tortfeasor who was negligent in causing the 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 a 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 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 (at SCC Page 712, para 47) 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 exclusive negligence of the Railways. Again if the accident had arisen only on account of the negligence of person 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.

4. The aforesaid observations are very clear and in unequivocal terms the Apex Court has laid down that in a case when motor-vehicle and Train are involved and the matter is entertained by the Tribunal, even if at the end only the motor-man of the Railway train is found

negligent and responsible for the accident, the tribunal has jurisdiction to decide point of compensation and the jurisdiction is not taken away only due to such finding. The present case is on much better footing in view of the evidence discussed by the Tribunal. Due to all these circumstances, this Court holds that the appeal needs to be allowed and the matter needs to be remanded back to the Tribunal.

5. In the result, the appeal is allowed. The Judgment and award of the Tribunal is hereby set-aside. The matter is remanded back to the Tribunal. This Court has answered the point of jurisdiction in the affirmative in favour of the claimant and the remaining points involved are to be decided by the Tribunal. The decision must be taken within four months from today. For both the sides the date fixed for appearance is 15th March, 2019. Record and Proceeding to be sent back immediately to the Tribunal.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

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