

(1974) 08 MAD CK 0016

In the Madras High Court

Case No : A.A.O. No. 206 of 1972 and (Memo. of Cross-Objections)

Govind Singh and Others

APPELLANT

Vs

A.S. Kailasam and Another

RESPONDENT

Date of Decision : 01-08-1974

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 110C, 96(1)

Citation : AIR 1975 Mad 65 : (1978) 87 LW 851

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Natarajan, J.—The unsuccessful petitioners before the Additional Motor Accidents Claims Tribunal, Madras (Court of Small Causes,

Madras) are the applicants.

2. One Heera Bai, the wife of the first appellant and mother of appellants 2 to 4, sustained a minor injury on her left foot on 4-6-1967 due to being

knocked down by the first respondent's car. But unfortunately, she developed tetanus despite receiving medical attention at the Government

Royapettah Hospital for the injury and died on 22-6-1967. The appellants alleged that the accident was due to the negligent driving of the car by

the first respondent and claimed a compensation of Rs. 10,000. The second respondent was impleaded a party as it happened to be the insurer of the vehicle.

3. The first respondent resisted the claim and contended firstly, that the accident was not due to any negligence on his part, secondly, that the death

of Heera Bai was not due to the injury sustained by her in the accident but due

to novus actus interveniens and thirdly, the compensation claimed was excessive.

4. The second respondent contended that the policy of insurance granted by it in respect of the car and was in favour of one Radhakrishnan Pai,

that the said Radhakrishna Pai sold the vehicle to the first respondent on 28-3-1967 without intimation to the second respondent, that the policy

was effectively transferred to the name of the first respondent only with effect from 26-6-1967, that, as such, no contractual liability under the

policy of insurance existed on the date of the accident and, therefore, any liability for the accident has to be met solely by the first respondent.

5. The Tribunal held that the accident was not due to the rash and negligent driving of the car by the first respondent and the death of Heera Bai

was not in consequence of the injury sustained by her in the accident. The Tribunal, thereafter, went into the hypothetical question as to what

compensation the petitioners would be entitled to if their claim was to be upheld and whether the insurance company would not be liable to answer

the claim. The finding of the Tribunal was that the petitioners would be entitled to a compensation of Rs. 6,500 and the insurance company was not

entitled to opt out of the policy of insurance granted by it.

6. To canvass the correctness of the finding of the Tribunal regarding the cause of accident and the cause of death, the petitioners have filed the

civil miscellaneous appeal. For its part, the insurance company has preferred a memorandum of cross-objections to dislodge the finding of the

Tribunal that, in the event of the petitioners being entitled to compensation, the insurance company would be liable to answer the claim.

7. Mr. G. Rangaratnam, learned counsel for the appellants, contends that the Tribunal has failed to apply its mind to certain clinching factors in the

evidence adduced in the case and such failure has resulted in the Tribunal arriving at a wrong conclusion about the cause of the accident. To

appreciate this contention, it is necessary to make reference to the evidence that has been adduced by both sides on this aspect of the case. On

behalf of the appellants, P.W. 3, has given evidence stating he was an eyewitness to the accident and that he saw the first respondent viz., R.W. 1

driving the car fast and knocking down Heera Bai. Against such evidence, R.W. 1 and another witness, i.e. R.W. 3 have stated that the car was

not driven fast and the accident happened when Heera Bai carelessly attempted to pass a stationary cycle without waiting for R.W. 1's car, which was coming from behind, passing her. It may be stated here that the accident took place on the Paripoorna Vinayakar Koil Street which is only 16 feet broad. Admittedly the accident took place during day-time and, it is common ground that, the place of impact was about 3" .8"" from the northern end of the road. Heera Bai was walking west to east along the road and R.W. 1 was also driving in the same direction. It would appear that near the place of impact R.W. 3's cycle had been left on the road and the accident took place when Heera Bai attempted to pass the stationary cycle. On account of being hit by the car, Heera Bai fell down and the only injury sustained by her was an abrasion, about 10 c. m. x 1 c. m., on the lateral border of the left foot. The Tribunal did not place any reliance on the evidence of either P.W. 3 or R.W. 3, but nevertheless, concluded that R.W. 1 had not driven the car negligently, because the car was on the correct side of the road when the accident took place and the injury sustained by Heera Bai was of a trivial nature.

8. On a consideration of the evidence, it is rendered clear that the Tribunal has missed several significant factors and it is on account of it, it has reached the erroneous conclusion that the accident was not due to the negligence of R.W. 1. In his evidence, R.W. 1 has tried to contend that he drove the car at a speed of five miles per hour and even less, that he was intermittently tooting the horn of the car, that in spite of it, Heera Bai, foolishly started deflecting her course to pass a stationary cycle on the road, that seeing her movements, he applied the brake of his car and stopped the vehicle, that at that time, Heera Bai came and fell on his vehicle, that only her right foot came into contact with the car and that as such, the injury which she sustained on her left foot must have been caused due to her left foot coming into contact with the cycle. As stated earlier, the Tribunal has been carried away by the fact that R. W. 1 could not have driven the car fast in a narrow road like Paripoorna Vinayagar Koil Street and that the trivial nature of the injury sustained by Heera Bai lent support to this view. The Tribunal has, however, overlooked the statement, Exhibit P-10, given by R.W. 1 to police authorities soon after the accident. Therein, R.W. 1 has stated that the car hit the lady near the right leg,

that the lady then fell down and that as the road surface was very rough, her left leg received a small injury on its rear aspect. Thus, it may be seen

that the earliest version of R.W. 1 is at variance with his evidence in Court and that version is to the effect that the car hit the pedestrian. More

significant is the fact that, when R.W. 1 was prosecuted for an offence u/s 337, I.P.C., he has voluntarily pleaded guilty to the charge framed

against him. After having admitted before the Criminal Court that the accident took place due to his rash and negligent driving of the car, there is

hardly any force in the present contention of R.W. 1 that he did not drive the car rashly or negligently and that he was not to be blamed for the

accident. It is no doubt seen that R.W. 1 has attempted to reconcile the conflicting positions by projecting a story that his plea of guilt before the

Criminal Court was not one of truth, but was one of the convenience, viz., to avoid making frequent visits to the Court to defend the case. This

explanation is hardly convincing and, at any rate, cannot be allowed to be successfully projected by R.W. 1. An admission against his interest

made by R.W. 1 either before the Tribunal or elsewhere, has got to be taken into account in rendering a decision on the relative stands taken by

the parties in the controversy. In the face of his own admission in connected proceedings arising out of the same incident, it is futile for R.W. 1 to

contend that the accident was not due to his negligence. This important aspect of the case has been totally lost sight of by the Tribunal. In view of

this conclusion, it is unnecessary to make any probe into the veracity of the testimony of P.W. S and R.W. 3. Moreover, even according to R.W.

1 no one else present on the road witnessed the accident, and this admission also waters down the contention of P.W. 3 and R.W. 3 that they

were witnesses to the accident.

9. The finding that the accident was due to the negligence of R.W. 2 necessitates the further question concerning the cause of Heera Bai's death. It

is common ground that Heera Bai sustained only a simple injury, viz., a laceration on her left foot and the injury, by itself, was not at all fatal. The

evidence discloses that Heera Bai developed tetanus in spite of receiving treatment at the hospital as an out-patient till 20-6-1967 and thereafter,

as an in-patient till her death on 22-6-1967. The learned counsel for the first respondent would argue that tetanus infection must have occurred due

to other causes than the injury sustained by Heera Bai in the accident and therefore, her death ought not to be held consequential to the injury

sustained by her in the accident. In support of this contention, the first respondent's counsel points out that, while Heera Bai sustained only one

injury in the accident, viz., a lacerated wound, 10 c.m. x 1 c.m. along the lateral border of left foot, as described in Exhibit P-7, the appellants have

set out as many as seven injuries in their petition and therefore, it must be concluded that the other injuries described in the petition must have been

caused subsequent to the accident and a further inference drawn that tetanus infection must have been caused by one of those supervening injuries.

This contention is devoid of any merit. It is, no doubt, true the appellants have described in the petition that Heera Bai had seven injuries on her

person at the time of her death. But, some of those injuries, cannot really be considered injuries in the strict sense of the term, and, at any rate, the

enumeration of the several injuries is clearly ascribable to the anxiety of the appellants to buttress their case in as many ways as possible. Another

contention of the first respondent's counsel is that P.W. 5 has stated that Heera Bai's wound had become infected and therefore she was given a

course of five injections and as such, it must be inferred that the negligence of Heera Bai must have caused infection to set in the wound. This

contention is without any basis. It is not in evidence that Heera Bai did anything by herself to the wound and such foolish act resulted in the wound

becoming infected. Lastly, it was argued that no autopsy had been done on Heera Bai's dead body and therefore, it is not possible to give a

definite finding that her death was due to tetanus resulting from the injury sustained in the accident. Here too, the contention must be disregarded

because the definite evidence of the doctors is that Heera Bai's death was due to tetanus and the infection had been brought about by the injury

sustained in the accident. A stray answer from P.W. 5 in cross-examination that he cannot correctly set out the cause of death without a post-

mortem certificate is clutched at by the first respondent's counsel to contend that there is no conclusive evidence in the case to prove that Heera

Bai's death was only due to tetanus. This answer cannot be availed of because innumerable clinical circumstances lead to the irresistible conclusion

that the death was solely due to tetanus infection. The out-patient chits, Exhibits P-3 and P-4, as well as the case-sheet Exhibit P-8, disclose that

Heera Bai complained of symptoms of lock-jaw, which is attributable only to tetanus from 19-6-1967 onwards. She had complained of inability to

speak and on 20-6-1967, the doctors found that she was unable to open her mouth fully and swallow solids or liquids. From about 19-6-1967

she was also found to have spasms. The doctors had diagnosed her complaint as one of tetanus infection and treated her for that. There can,

therefore, be no doubt as regards the cause of death. In a case where the patient had been clinically diagnosed as suffering from tetanus or lock-

jaw and had succumbed to the disease despite treatment, on autopsy is not an indispensable test to determine the cause of death.

10. Learned counsel for the first respondent, arguing in this behalf, would contend that since Heera Bai had been given anti-tetanus serum on the

date of the accident itself, it is improbable that she would have developed tetanus and on that score also, a doubt must be entertained as to

whether her death was due to tetanus resulting from the injury sustained by her in the accident. This is also a fallacious argument. P.W. 4 the

Casualty Medical Officer and P.W. 5 the Surgical Registrar, have both stated that there is always a possibility of tetanus infection setting in despite

administration of anti-tetanus serum, and in the face of such evidence of competent witnesses, it is a vain contention of learned counsel that there

was every possibility of Heera Bai having died due to natural causes or other unforeseen causes than due to tetanus infection. Incidentally, it may

be stated here that since Heera Bai sustained an open wound in the accident, the wound was vulnerable to the setting in of tetanus as the affliction

is always associated with any bleeding injury. In these circumstances, there is no difficulty whatever in reaching the conclusion that the tetanus

infection which brought about the death must be directly attributed to the injury sustained by Heera Bai in the accident. The cause of death is not a

remote or unconnected one with the injury sustained by the deceased, but is a foreseeable and not an uncommon development. It is needless to

say that if the cause of death is integrally connected with the injury sustained in the accident and is one in the chain of causa causans the cause of

death must be attributed to the injury sustained in the accident, however trivial or minor the injury, by itself, may be. I may only refer to a few

decisions on this aspect of the matter.

11. Injury sustained in one accident may be the cause of a subsequent injury. The injury sustained by accident by victims on the operation table is

an example of such a situation. So too are cases of suicide resulting from a mental condition produced by an accident (*Pigney v. Pointer*

Transport Service Ltd., (1957) 2 All ER 807). *Smith v. Leech Brain and Co. Ltd.*, (1961) 3 All ER 1159, was a case where the plaintiff had been

injured by a splash of molten metal which burnt his lip. He later contracted cancer, underwent operation and died. The defendants were found to

be negligent, in causing the burn and the burn was the promoting agency which promoted cancer in the tissues which already had a pre-malignant

condition. Lord Parker, C. J., attributed the death to the original accident and found the defendants liable to in respect of that death. *Wieland v.*

Cyril Lord Carpets Ltd., (1969) 3 All ER 1006 was a case where the plaintiff suffered an injury caused by the admitted negligence of the

defendants. After attending the hospital, she felt shaken and the movement of her head was constricted by a collar which had been fitted to her

neck. In consequence, she was unable to use her bifocal spectacles with her usual skill and she fell while descending stairs, sustaining further

injuries. It was held that the injuries and damage suffered because of the second fall were attributable to the original negligence of the defendants so

as to attract compensation from them. *Bloor v. Liverpool Darricking & Co. Ltd.*, (1936) 3 All ER 399 was a case where the deceased employed

as a derrickman, volunteered to act temporarily as a shipper on another barge, stumbled" and fell into the hole and sustained minor injuries. He was

removed to the hospital and given an anaesthetic under which he collapsed and died. The post-mortem examination revealed that he had a

diseased heart. Three learned Judges of the Court of Appeal held that the administration of anaesthesia cannot be deemed to be *novus-actus*

interveniens such as to break the chain of causation between the accident and the death and consequently the death must be attributed to the

injuries sustained in the accident. A Bench of this Court had to consider in *Mrs. C. P. Francis v. K. S. Shivaji & Co.*, C. M. A. No. 96 of 1970 of

this Court judgment dated 11-2-1974 (Mad.), whether an accident victim who sustained a hit on the right part of his stomach, but did not sustain

any visible injury on the abdomen could be deemed to have died as a result of the injury sustained in the accident when, a few days later, his

abdomen had to be opened for surgical treatment of his stomach-pain and it was then found that the greater omentum was covering up the loops of

intestines going down to pelvis causing an obstruction, a membrane was covering the jejuno-ilial junction and further exploration revealed

perityphlitic abscess and lacerated appendix. The victim was operated, but he died of peritonitis. This court held that, in the absence of independent

evidence to show that the victim was suffering from appendicitis earlier, the court was justified in presuming that the death of the deceased was the

result of appendicitis caused by the rash and negligent act of the driver of the motor vehicle at the time of the accident. The principle in cases of this

kind can best be described in the words of Lord Denning, M. R. in *Statment v. West African Terminals Ltd.*, (1954) 2 LR371:

..... it is not necessary that the precise contention of circumstances should be envisaged. If the consequence was one which was within the general

range, which any reasonable man might foresee (and was not of an entirely different kind which no one would anticipate) then it is within the rule

that a person who had been guilty of negligence is liable for the consequences"".

Having regard to the fact that the setting in of tetanus is a foreseeable and likely consequence of any bleeding injury and in the absence of evidence

to show that any other supervening cause brought about the tetanus infection there is absolutely no possibility of Heera Bai's death being caused

by *novus actus interveniens*. The Tribunal's reasoning and conclusion on this aspect of the matter is clearly erroneous and I have no hesitation in

holding that Heera Bai's death was due to causes directly connected with the injury sustained in the accident.

12. Having held that the accident was due to the negligence of the first respondent and Heera Bai's death was a result of the injury sustained by

her in the accident, the immediate question for consideration is whether the second respondent is, in any way, liable to answer the claim of the

appellants for compensation. It is not disputed that though the first respondent purchased the car from Radhakrishna Pai on 28-3-1967, the

second respondent endorsed the insurance policy in favour of the first respondent only with effect from 26-6-1967. Adopting a wrong line of

reasoning, the Tribunal has held that the policy, being one and the same, remained in force throughout the insurance period, viz., 24-18-1966 to

23-12-1967, and consequently, the policy would be operative even prior to the date of endorsement in first respondent's favour. It is by now well

settled that in motor vehicle's insurance policies, the motor vehicle is the subject-matter of the insurance and the policy of insurance will be

subsisting and will be operative only so long as the insured has the ownership of the vehicle. The moment there is any change in circumstances,

such as the insured parting with the ownership of the vehicle, the contractual liability of the insurer will cease to be operative and enforceable.

Insurance policies, being *uberrimae fidei* contracts, are governed by utmost faith in each of the contracting parties, and once the insured ceases to

be the owner of the subject-matter of the insurances, viz., the motor vehicle, there is an automatic cessation of the liability of the insurer from the

moment the insured ceases to be the owner of the vehicle. It is fully realising this state of affairs that the first respondent hesitantly projected a

contention before the Tribunal that he informed the second respondent of his acquisition of the vehicle, even on 26-6-1967 under the original of

Exhibit R-1. The second respondent has, however, denied the receipt of the original of Exhibit R-1, and there is no reason to suspect the statement

of the second respondent in this behalf. Whatever it be, the first respondent has accepted the endorsement of the insurance policy in his favour only

with effect from 26-6-1967 as borne out by Exhibit R-3 and it is not, therefore, open to the first respondent to contend that, notwithstanding the

endorsement, Exhibit R-3, the policy of insurance was enforceable by him during the anterior period.

13. To safeguard its interest, the second respondent has filed the memorandum of cross-objections and raised the contention therein that, in any

event, the second respondent is not liable to meet the claim of the appellants. A feeble objection was raised by the counsel for the appellants as

well as the first respondent about the maintainability of the memorandum of cross-objections. This objection is certainly untenable. In *The Union*

Co-operative Insurance Society Ltd., Madras Vs. Lazarammal Ravel and Others, a Bench of this court has held that, as an appeal against the

order of the Tribunal lies to the High Court and not to any other Tribunal constituted under the Statute, all the rules in CPC would be applicable to

such an appeal and consequently, the right to file a memorandum of cross-objections against the impugned order is available to any of the

aggrieved respondents. Such being the case, the memorandum of cross-objections has to be allowed and the second respondent exonerated from

any liability to pay compensation to the appellants for the death of Heera Bai.

14. The only question left over for consideration is, what is the compensation amount to be awarded to the appellants. The appellants have made

an avaricious claim of Rs. 10,000. The circumstances and evidence really stand in the way of the appellants being granted such a high

compensation. Heera Bai must have been aged about fifty years at the time of her death, though P.W. 1 has stated in his evidence that she was

forty years of age when she died. In the hospital records Heera Bai's age has been noted as fifty years and this information must have been

furnished to the authorities by Heera Bai herself. I therefore fix the age of Heera Bai as fifty years at the time of her death and further hold that, but

for the accident she would have lived for another ten years more. When she was alive, she was carrying on trade as a vegetable and fruit-vendor.

To sustain the claim for Rs. 10,000 P.W. 1 has stated that Heera Bai was earning Rs. 10 to Rs. 12 per day and the entire family was being

supported with her earnings. Here again, the falsity of his evidence is proved by the entries in the hospital records. Those records show that Heera

Bai's monthly income was only Rs. 60. Deducting a sum of Rs. 25 for her own expenses, it can be held that she would have been providing the

family only a sum of Rs. 35 per mensem. At that rate, the total benefit the family would have received during a period of ten years would be about

4,200. Deducting a sum of Rupees 1,200 for lump sum payment, uncertainty of life etc. the net compensation that can be awarded to the

appellants will be Rs. 3,000. The Tribunal has not fixed the age of Heera Bai correctly, nor has it made any deduction for lump sum payment,

uncertainties of life etc. Therefore, the quantification of the compensation by the Tribunal at Rs. 6,500 cannot be upheld.

15. In the result, the appeal as well as the memorandum of cross-objection will stand allowed. The appellants are held entitled to a net

compensation of Rs. 3,000 from the first respondent for the death of Heera Bai in the accident. The first respondent will be solely liable to pay this

amount. Each of the four appellants will divide the amount equally among themselves. Time for payment of the compensation amount, three

months. There will be no order as to costs in the appeal as well as in the memorandum of cross-objections.