

(1980) 10 MAD CK 0041

In the Madras High Court

Case No : Appeal Against Order No. 621 of 1977

Oriental Fire and General Insurance Company Limited

APPELLANT

Vs

Valliammal and Others

RESPONDENT

Date of Decision : 27-10-1980

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 110AA
Workmens Compensation Act, 1923 — Section 3(5)

Citation : (1982) ILR (Mad) 18

Hon'ble Judges : Sengottuvelan, J;Ramanujam, J

Bench : Division Bench

Advocate : K.C. Jacob and Raju K. Lukose, for the Appellant; Syeed Ahmed, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—This appeal is filed by the Insurance Company against the award of the Motor Accidents Claims Tribunal, Madras in Original Petition No. 106 of 1976 awarding a compensation of Rs. 18,320 in favour of Respondents 1 and 2 herein, who were the claimants before the Tribunal.

2. On 2nd August, 1972 at about 3.30 p.m. at G.S.T. Road, Chrompet, Madras the lorry T.M.C. 8842 which belonged to the third Respondent herein and which was driven rashly and negligently went out of the road and capsized. In that process it knocked down one Krishnan and another who, were by the side of the road on account of which they sustained multiple injunctions and died. The dependents of the said Krishnan filed Original Petition No. 106 of 1976 claiming compensation of Rs. 45,000 on the ground that the accident was due to the rash and negligent driving of the lorry by its driver.

3. The owner of the lorry as well as the insurance company resisted the said claim petition on the ground that there was no negligence or rashness on the part of the lorry driver, that the accident occurred was an inevitable one, that the left front tyre of the lorry suddenly burst and the lorry was pulled to the left side

of road that when the driver applied the brakes, the lorry was dragged further to the left side of the road and that on account of the gradient and slope of the road at that place the lorry hit against the deceased Krishnan and ultimately capsized and fell on the left side. Thus accordingly to them, the accident was due to reasons beyond the control of the driver and, therefore, it should be taken to be an inevitable accident. They also contended that the compensation claimed was highly excessive.

4. On the above pleadings, the Tribunal set down the following two questions for consideration:

(i) Whether the accident occurred due to the rash and negligent driving of the lorry? and

(ii) to what amount of compensation the claimants are entitled?

5. The Tribunal after analysing the evidence adduced by the parties, held that the accident was purely due to the rash and negligent driving of the lorry by its driver and that it was not an inevitable accident and that the fact that the lorry has gone on a wrong course and outside the road would prima facie attract the principle of *res ipsa loquitur* and that the alleged tyre burst as reason for the accident has not been established. On the question of quantum of compensation the Tribunal held that as the deceased was 45 years of age and has been working as a Wireman in the Madras Electricity System at the time of the accident and earning Rs. 250 per month his contribution to the family every month can be taken to be Rs. 130 and, therefore, the actual dependency can be taken at Rs. 560 per year. Adopting 12 as the multiplier, the total dependency and the loss of pecuniary benefit was taken at Rs. 18,720. However, the Tribunal, deducting a sum of Rs. 400 out of the said amount towards acceleration of the gratuity amount of Rs. 8,000 said to have been paid to the claimants by the Electricity Board, fixed the total compensation at Rs. 18,320. Aggrieved against the award, the Insurance Company has filed this appeal mainly seeking deducting of a sum of Rs. 8,000 received by the claimants subsequent to the filing of the claim petition before the Tribunal through the Commissioner of Workmen's compensation as compensation for the death of the deceased on the ground that the award of compensation of Rs. 18,320 in addition to Rs. 8,000 paid to the claimants by the employer under the Workmen's Compensation Act in relation to the same accident cannot legally be sustained in view of Section 3(5) of the said Act. The learned Counsel for the Respondents has raised a preliminary objection that the appeal by the insurance company without making the owner of the lorry as a co-Appellant is not maintainable. It is true, it has been held in a series of decision that the insurance company, without impleading the insured as a co-Appellant cannot question the quantum of compensation awarded by the Tribunal though it may question the finding of the Tribunal on the question of rashness and negligence. In this case the insurance company does not question the quantum of compensation awarded by the Tribunal, but merely states that the claimants cannot have the benefit of the two reliefs, one u/s 110-A of the Motor

Vehicles Act and the other under the Workmen's Compensation Act, in view of the prohibition contained in Section 3(5) of the Workmen's Compensation Act. We are of the view that the Appellant insurer can maintain the appeal, if there has been a double payment in respect of the same accident which is prohibited not only by Section 3(5) of the Workmen's Compensation Act, but also u/s 110-AA of the Motor Vehicles Act which has been introduced with effect from 2nd March 1970.

6. Section 3(5) of the Workmen's Compensation Act, 1923 is as follows:

Nothing herein contained shall be deemed to confer any right to compensation on workmen in respect of any injury, if he has instituted in a civil Court a suit for damages in respect of the injury against the employer or any other person and no suit for damages shall be maintainable by workmen in any Court of law in respect of any injury:

(a) If he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workmen and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

Section 110-AA of the Motor Vehicles Act is set out below:

Notwithstanding anything contained in the Workmen's Compensation Act, 1923, where the death or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may claim such compensation under either of those Acts, but not under both.

As per the above provision of the Motor Vehicles Act where the death or bodily injury to any person gives rise to a claim for compensation under the Motor Vehicles Act and also under the Workmen's Compensation Act, the person entitled to compensation may claim such compensation under either of these Acts, but not under both. Section 3(5) of the Workmen's Compensation Act also states that, if a workman has instituted a suit in a civil Court for damages in respect of the injury against the employer or any other person, he cannot claim any right to compensation under the Workmen's Compensation Act and that a workman cannot maintain a suit for damages in a civil Court in respect of any injury, if he has instituted a claim to Compensation in respect of the injury before the Commissioner for Workmen's Compensation, or if an agreement has been come to between the workmen and employer providing for compensation in respect of the injury according to the provisions of the Workmen's Compensation Act. The object of the above provisions appears to be to ensure that in respect of death or bodily injury to a person, there can be a claim either under the Motor Vehicles Act or under the Workmen's Compensation Act, but not under both. In the notes of clauses appended to the Bill which brought in the amendment of

Section 110-AA says:

At present it is open to a workman to file a claim before a Commissioner for compensation under the Workmen's Compensation Act, 1923 even though he had preferred a claim earlier under the Motor Vehicles Act to a Motor Accidents Claims Tribunal and that claim had been adjudicated upon by that tribunal. It was never intended, nor is it desirable, to allow a workman to claim relief under the both the Acts. Hence this proposed amendment.

The above notes on clauses clearly indicate that the object of the Legislature in bringing in Section 110-AA is to ensure that a workman does not claim relief under both the Acts. Even though the learned Counsel for the Appellant contend that in this case the claim petition cannot be maintained after the claimants had received a sum of Rs. 8,000 through the Commissioner of Workmen's Compensation from the employer, we are not inclined to hold that the claim petition which has been filed long before the award of compensation by the Commissioner for Workman's Compensation suddenly ceases to be maintainable. However, having regard to the object of the above provision, we are inclined to hold that the benefit of the deduction of compensation paid through the Commissioner for Workmen's Compensation by the employer can be taken into account while fixing the compensation payable by the owner of the vehicle which caused the accident.

7. In this case, even before the Tribunal the Insurance company brought to its notice that a sum of Rs. 8,000 has been received by the claimants from the employer through the Commissioner for Workmen's Compensation. But the claimants represented before the Tribunal that the said amount represented the gratuity amount and not the compensation payable under the Workmen's Compensation Act. Accepting that stand, the Tribunal merely deducted a sum of Rs. 400 for the acceleration of the payment of gratuity amount as a result of the death of the deceased. However, before us the learned Counsel for the Respondent claimants concedes that the amount of Rs. 8,000 was paid by only as compensation under the Workmen's Compensation Act and not as gratuity amount. As a matter of fact, the actual order passed by the Commissioner for Workmen's Compensation has been produced before us. Therefore the question is whether the sum of Rs. 8,000 which the claimants have received as compensation in respect of the same accident which caused the death of the deceased is to be deducted from the compensation directed to be paid by the Tribunal. Even apart from the above provisions which prevent the claimants from claiming the benefit under both the Acts, it is well established that while fixing the compensation in respect of bodily injury or death sustained in a motor accident, all the benefits which the claimants got as a result of the death of the deceased from all other sources should be taken into account. This principle has been recognised by the Supreme Court in one of the earliest decisions rendered by it under the Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, . Therefore, the amount got by the claimants from the employer through

the Commissioner for Workmen's compensation cannot be lost sight of while fixing the compensation under the Motor Vehicles Act. Reference has been made to a decision of Sethuraman J., reported in *Abdul Salam v. Jaleel* (1978) T.L.N.J. 489 by the learned Counsel for the Respondents, in support of his submission that so long as the vehicle had been insured, the insurance company cannot claim restriction of its liability for the amount paid under the Workmen's Compensation Act. After a close perusal of the said judgment, it is seen that the learned Judge was concerned with the question as to whether the liability of the insurance company should be restricted only to the sum payable under the Workmen's Compensation Act or where it is liable to pay the amount for which the insurance has been made. The learned Judge held that merely, because a lesser liability has been fixed under the Workmen's Compensation Act, the insurance company cannot take advantage of the same for restricting its liability to the sum payable under the Workmen's Compensation Act. According to the learned Judge the Tribunal constituted under the Motor Vehicles Act is competent to award the appropriate amount as compensation or damages, even in excess of what has been contemplated under the Workmen's Compensation Act. If the insurance company does not restrict the liability of the insurer to what is contemplated under the Workmen's Compensation Act, then they will have to bear the larger liability they had undertaken under the policy. In *Venkataraman v. Abdul Munaf Sahib* (1971) A.C.J. 77 this Court has held that where the liability of the insurance company is restricted under the contractual terms to the amount payable under the Workmen's Compensation Act, then the amount due under the Workmen's Compensation Act could be awarded and this could be done by the Tribunal constituted under the Motor Vehicles Act. The same view has also been taken in *General Assurance Society td. v. Jayalakshmi Ammal* (1975) 1 M.L.J. 114.

In this case we are holding the insurer liable for the full amount of liability undertaken under the policy of insurance but we are only making a deduction for the amount which the claimants had received from the employer under the Workmen's Compensation Act treating it as a benefit arising in respect of the same accident.

8. In this view of the matter, the appeal is allowed and the compensation awarded by the Tribunal is reduced to Rs. 10,320/ after deducting a sum of Rs. 8,000 received by the claimants under the Workmen's Compensation Act. There will, however be no order as to costs.