
(1973) 08 MAD CK 0009

In the Madras High Court

Case No : Civil Revision Petition No.1767 of 1972

P. Shanmugham and Others

APPELLANT

Vs

Madras Motor and General Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 18-08-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 10, Order 13 Rule 3, Order 13 Rule 4, Order 13 Rule 5, Order 13 Rule 6
Criminal Procedure Code, 1973 (CrPC) — Section 195
Motor Vehicles Act, 1988 — Section 110C, 110C(2)
Tamil Nadu Motor Accidents Claims Tribunal Rules, 1961 — Rule 18

Citation : AIR 1974 Mad 363 : (1978) 87 LW 312

Hon'ble Judges : Venkataraman, J;Maharajan, J

Bench : Division Bench

Judgement

Kailasam, J.—This petition is filed by claimants 3 to 6 in a claim petition before the Motor Accident Claims Tribunal, Coimbatore East. The

Claimants filed an application under Order XXVI, Rule 4 and S. 151. Civil P. C. for the issue of a commission to examine witnesses at Madras.

The petition was filed for compensation for the loss of life of persons and injuries to one of the petitioners. The petitioners claimed to be the heirs of

two of the deceased. The application was taken for the issue of a commission to examine four medical officers and one nurse, all stationed at

Madras, to speak with reference to the treatment given to Rukmani, who sustained injuries in the accident and for which compensation had been

asked for which compensation had been asked for in the petition. The Insurance Company filed a counter statement attacking the maintainability of

the application and stating that the respondents would be put to much expenses and inconvenience if the witnesses were to be examined at

Madras. The District Judge has declined to issue a commission on the ground that the applicability of the provisions of the CPC to an enquiry is

limited and there is no special provision which gives power for the issue of a commission for examination of witnesses. The revision petition is filed

against the said order. On the merits there could be no doubt that it is desirable that a commission is issued otherwise there would be unnecessary

expense and the time of the doctors will be taken up which is avoidable if a commission is issued.

2. On behalf of the petitioners it is submitted that the power conferred on the tribunal u/s 110-C of the Motor Vehicles Act is wide enough to

include the power to issue a commission. Section 110-C (2) of the Act runs as follows :

The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of

witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed

and the Claims Tribunal shall be deemed to be a Civil Court for all purposes of Section 195 and Ch. XXXV, Criminal Procedure Code. 1898.

The other purpose contemplated in the section is found in Rule 18 of the Madras Motor Accidents Claims Tribunal Rules, which provides-

The following provisions of the first Schedule to the C. P. Code, 1908, shall so far as may be, apply to proceeding before the Claims Tribunal, O.

RR. 9 to 13, and 15 to 30: Order IX, Order XIII, Rules 3 to 10; Order XVI, Rules 1, 2, 21; Order XVII and O. XXIII, R.R. 1 to 3.

Rule 18 does not include Order XXVI which relates to issue of a commission by Civil Courts. The power, if any, will have to be looked for in

Section 110-C of the Motor Vehicles Act. Section 110-C (2) provides that the Claims Tribunal shall have all the powers of a Civil Court for the

purpose of taking evidence on oath and enforcing attendance of witnesses. No other clause in the section is applicable and therefore may be left

out of account. The question is whether all the powers of a Civil Court for the purpose of taking evidence on oath and enforcing attendance of

witnesses would include the power to issue a commission. Normally, the powers of taking evidence on oath by a Civil Court would comprise the

powers under the relevant rules in Order X, Order XVI and Order XVIII. All the powers that a Civil Court can exercise for the purpose of taking

evidence and enforcing attendance of witnesses on oath are admittedly conferred on the tribunal. The question that will include a power to issue a commission to examine a witness.

3. Under Order XXVI, Rule 4, C.P.C., a commission may be issued to any court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the court issuing the commission may appoint. When such commission is issued, the court receiving the commission under Order XXVI, Rule 6 shall examine him or cause him to be examined pursuant thereto. Where a commission has been duly executed the court shall return it together with the evidence taken under it to the court from which it was issued. In order to enjoin a court to which a commission is issued to execute the commission, the authority issuing commission should be vested with the power.

The powers conferred on the Claims Tribunal, namely, all the powers of a civil court for the purpose of taking evidence on oath and enforcing attendance of witnesses would not prima facie include a power to issue commission for examination of witnesses.

4. The learned counsel for the petitioners brought to my notice a decision of this court in M. Krishnan Vs. Pankaj Jethalal Sha, . It has been held in that decision that the substance of this power is that the Claims Tribunal will have all the powers related to taking of evidence on oath and of enforcing attendance of witnesses, including the power to have evidence recorded on commission. For the reasons stated earlier, it is difficult to construe that the powers conferred u/s 110-C of the Motor Vehicles Act, would also include a power to issue a commission.

5. It may be stated that the power to examine witnesses on commission is absolutely necessary. It is desirable that the Government frames rules enabling the Tribunal to issue commission under the powers vested in it by Section 110-C of the Motor Vehicles Act.

6. As I am unable to agree with the view taken by the learned Judge, it is desirable that the matter is placed before a Bench for disposal.

JUDGMENT OF DIVISION BENCH

Venkataraman, J.

7. The question involved in this revision petition is whether the Motor Accidents Claims Tribunal, Coimbatore East at Erode, has power to issue a

commission for the examination of some witnesses in Madras. There was an accident which resulted in the death of one Kumarasami Gounder and

injuries to his wife Rukmani. Rukmani and others filed a petition M. C. O. P. 7 of 1971 before the Tribunal claiming damages for the death of

Kumaraswami Gounder and injuries to Rukmani. Rukmani had been examined in Madras by some doctors and attended by some nurses.

Claimants 3 to 6 in the claim petition filed an appeal under Order XXVI rule 4 and Section 151, C.P.C. before the Tribunal for the issue of a

commission to examine the said doctors and nurses. The Claims Tribunal (District Judge) dismissed the application on the ground that there was no

specific provision permitting him to issue a commission and that it would be rather impracticable to examine the witnesses on commission.

Claimants 3 to 6 filed this revision petition against that order. It came up before Kailasam, J. It was brought to the notice of the learned Judge that

in a prior decision of this court in M. Krishnan Vs. Pankaj Jethalal Sha, . Veeraswami J. (as he then was) had held that the Motor Accidents

Claims Tribunal had power to have evidence recorded on commission. Kailasam J., however, was not inclined to agree with that decision and

referred the matter to a Bench, and that is how the civil revision petition has come up before us.

8. Section 110 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) enacts that the State Government may constitute one or more

Motor Accidents Claims Tribunal for the purpose of adjudicating upon claims for compensation in respect of accidents arising out of the use of

motor vehicles. Section 110-A specifies the persons by whom the application for compensation may be made. Section 110-B enacts that on receipt

of an application for compensation, the Claims Tribunal, shall, after giving the parties an opportunity of being heard, hold an enquiry into the claim

and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom

such compensation shall be paid. Section 110-C is important and, so far as it is relevant, runs thus:

110-C (1) In holding any inquiry u/s 110-B, the Claims Tribunal may, subject to any rules that may be made in this behalf follow such summary

procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of

witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed;

and the Claims Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXXV, Crl. P. C. 1898.

9. Rule 13 of the Madras Motor Vehicles Claims Tribunal Rules, 1961, says that the Claims Tribunal shall, as the examination of witnesses

proceeds, make a brief memorandum of the substance of the evidence of each witness and that the medical evidence shall be taken down as nearly

as may be word for word. Rule 15 says that, after considering any written statement, the evidence of witness examined and the result of any local

inspection, the Tribunal shall proceed to frame and record the points for decision. Rule 18 runs thus:--

The following provisions of the First Schedule to the C. P. Code, 1908, shall, so far as may be, apply to proceedings before the Claims Tribunal,

namely, Order V, Rules 9 to 13 and 15 to 30, Order IX, Order XIII, Rules 3 to 10; Order XVI, Rules 1, 2, 21; Order XVII and Order XXIII,

Rules 1 to 3.

The relevant portion of the decision of Veeraswami, J. (as he then was) runs thus:--

The only point in this petition is whether the Motor Accidents Claims Tribunal possesses the power to appoint a commission for recording

evidence of a witness in Bombay. The Tribunal held that it had the power in view of Section 110-C(2) of the Motor Vehicles act. In my view, the

Tribunal was right. No doubt, Rule 18 of the Madras Motor Vehicles Claims Tribunal Rules, 1961, does not mention Order 26 of the C.P.C.

Even so, sub-section (2) of Section 110-C is sufficiently wide to include the power. It speaks of the power of a civil court for the purpose of

taking evidence on oath and of enforcing the attendance of witnesses. The substance of this power is that, for the purpose of disposing of a claim

before it, the Tribunal will have all the powers related to taking of evidence on oath and of enforcing attendance of witnesses, including the power

to have evidence recorded on commission.

In differing from the above decision, Kailasam J. starts by pointing out that Rule

18 which mentions the provisions of the CPC does not include

Order XXVI which relates to the issue of a commission by civil courts. He therefore says that the power, if any, will have to be looked for in

Section 110-C of the Motor Vehicles Act. But, according to him, Section 110-C(2) does not specifically include the power to issue a commission

for the recording of evidence. He however, observes that in this particular case it was absolutely essential that a commission should issue, because,

otherwise, there would be unnecessary expenses to the parties and the time of the doctors also would be unnecessary expenses to the parties and

the time of the doctors also would be taken up unnecessarily. Under the circumstances, he suggested that the Government might frame rules

enabling the Tribunal to issue a commission. Since he differed from Veeraswami J. he has referred the matter to a Bench.

10. With respect, we think that Veeraswami J. (as he then was) is right. Our main reason is that Section 110-C(2) of the Act which has invested

the Tribunal with all the powers of a civil court for the purpose of enforcing the attendance of witnesses, will include within it the lesser power of

having the evidence of witnesses recorded on commission. It is obviously to the advantage of a witness to have his evidence recorded at his own

place instead of his being obliged to travel all the way to the place of the sitting of the Tribunal, particularly in a case where the witness lives far

away viz., 250 miles away, as in this case, and sometimes even further away. The power to enforce the attendance of witnesses is obviously a

larger power than the power to have their evidence recorded on commission, because if a witness is forced to attend the court, to that extent his

liberty and convenience are interfered with, whereas, if he is examined on commission, he can remain at his place without his regular work being

interfered with. The lesser power of having the evidence of a witness taken on commission must therefore be held to be included within the larger

power of enforcing the attendance of a witness. If we were to deny the Tribunal the lesser power, it would mean that the Tribunal is obliged to

enforce the attendance even though it is prepared to have the evidence of the witness taken on commission which will be more inconvenient to the

witness.

11. It will be seen that we have reached the above result on a consideration of

the terms of Section 110-C(2) of the Act, alone, and it is not necessary to invoke the provisions of Rule 18 of the Madras Motor Accidents Claims Tribunal Rules, 1961. But, if necessary, support may be derived also from Rule 18, because it has made the provisions of Order XVI, Rules 1 and 2, C. P. C applicable. Order XVI, Rule 1 says that at any time after the suit is instituted the parties may obtain on application to the court summonses to persons whose attendance is required either to give evidence or to produce documents. This power, on the reasoning indicated above, would include the lesser power to have the evidence of the witnesses recorded on commission.

12. So far, we have proceeded on the footing that it will be open to the Tribunal to enforce the attendance of a witness, wherever he is, and on that footing the power to have the evidence of a witness recorded on commission is a lesser power which is contained in the larger power. There is however, one possible contingency which has to be considered, viz., whether the power to examine a witness on commission will have to be implied if the express power of enforcing the attendance of a witness given u/s 110-C of the Act fails. To explain what we mean, it is necessary to refer to Order XVI, Rule 19, which says-

No one shall be ordered to attend in person to give evidence unless he resides-

(a) within the local limits of the court's ordinary original jurisdiction, or (b) within such limits but at a place....less than 200 miles distance from the court-house.

One possible view is that the limitation contained in Order XVI, Rule 19 also must be read into the provisions of Section 110-C(2) of the Act.

Another possible view is that Section 110-C(2) of the Act (or even Rule 18) does not specifically refer to Order XVI, Rule 19 and therefore the

limitation of Order XVI, Rule 19 will not apply at all to the Tribunal. In support of the view that the limitation of Order XVI, Rule 19 will have to

be imported into Section 110-C(2) of the Act, it may be urged that the Tribunal is given all the powers of a civil court for the purpose of enforcing

the attendance of witnesses, that the powers of a civil court will have to be looked for in Order XVI, C.P.C., that that contains a limitation in Rule

19, and that therefore that limitation also will apply to the Tribunal. If this is correct view of the matter, it would mean that the Tribunal cannot

enforce the attendance of a witness residing outside the local limits of the jurisdiction of the Tribunal and beyond a distance of 200 miles. In such a case we think that the power to have the evidence of such a witness recorded on commission is necessary implied, for otherwise it would mean that the Tribunal can neither enforce the attendance of the witnesses nor have their evidence recorded on commission; that is to say, their evidence will not at all be available to the Tribunal and injustice might result to the claimant. Surely we must avoid a construction which would result in such injustice.

13. The doctrine of implied power is nothing new. It is expressed in Maxwell in Interpretation of Statutes in Chapter XII, Section 2 under the heading "Implied Powers and Obligations" (page 350 of the 11th Edn.) thus- Where an Act confers a jurisdiction, it is impliedly also grants the power of doing all such acts or employing such means as are essentially necessary to its execution.

Their Lordships of the Supreme Court have quoted this very principle from Maxwell and applied it in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, . That was a case where some workers made an application to the Labour Court u/s 33-C(2) of the Industrial Disputes Act. It is necessary to quote Section 33C:--

1. Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman may without prejudice to any other mode of recovery make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

2. Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may subject to any rules that may be made under this Act be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in sub-sec (1).

3. For the purpose of commuting the money value of a benefit the Labour Court

may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

The claim of the workman was disputed by the management and they took a preliminary objection that Section 33-C(2) would only apply to a case where a workman is admittedly entitled to the benefit which he claims and approaches the Labour Court merely for quantification of the benefit. This contention was repelled by their Lordships who held that, even though the claim was disputed, the Labour Court had jurisdiction to decide the claim. They observed-

The appellant's construction would necessary introduce the addition of 'admittedly or admitted to be' in that clause and that clearly is not permissible. Besides, it seems to us that, if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to avail himself of the remedy provided by sub-section (2) because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim u/s 33-C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-section (2). As Maxwell has observed, 'where an Act confers a jurisdiction' it impliedly also grants the power of doing all such acts or employing such means as are essentially necessary to its execution.'" We must accordingly hold that Section 33-C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by their employers. Incidentally it may be relevant to add that it would be somewhat odd that under sub-section (3) the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-section (2). On the other hand,

sub-section (3) becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour

Court under sub-section (2).

14. The doctrine of implied power was also recognised by a Bench of the Bombay High Court in *Zakeria Suleman Vs. The Collector, Yeotmal*

and Others, . There the owner of a house filed a petition for eviction of the tenant under the provisions of the Central Provinces and Berar Letting

of Houses and Rent Control Order. He was absent on a particular day of hearing. His application was dismissed or default. On his application it

was restored. The tenant filed an appeal to the Collector. The Collector held that the Rent Controller could not have dismissed the case for default

because there was no specific provision therefor, nor could he have restored the petition, because there was no specific provision therefore in the

Rent Control Order. There were two cases. It was against the said order that the revision petitions were filed to the Bombay High Court. The

learned Judges agreed with the Collector that there was no inherent power in the Rent Controller to dismiss the application for default or to restore

it, but they proceeded to observe that the Rent Controller had implied power to dismiss the application for default and to restore it, because the

Rent Controller was given the power to decide the application and for the necessary discharge of that duty he must have the power to dismiss the

application for default and equally the power to restore it. The learned Judges quoted with approval the following passage from Craie on Statute

Law (page 105 of 5th Edn. and page 111 of 7th Edn.):

If a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some details which is of great importance (if

not actually essential) to the proper and effectual performance of the work which the statute has in contemplation, the courts are at liberty to infer

that the statute by implication empowers that detail to be carried out".

We may usefully continue the quotation from Craies which is as follows-

Thus in *Cookson v. Lee*. (1853) 23 LJ Ch. 473, a private Act vested certain lands in trustees for the purpose of enabling them to sell the lands for

building purposes. but the Act contained no express power to expend any portion of the purchase moneys in setting out the roads or in making

roads. In these circumstances the court held that, having regard to the object of

the Act, namely the sale of the property as building land-such power ought to be implied. 'In point of fact' said the court 'the Act of Parliament did not contain that which Acts of Parliament of a similar nature generally do contain, namely, power to apply a portion of the purchase money in the making of roads and giving facilities for putting the property in a state in which it is capable of being sold and immediately used for building purposes. It did not do that expressly.....We must take it (the Act) as we find it and one very natural question is-whether, if it does not in terms do so, it does not do it by implication-whether we must infer from the powers given, the Legislature considered that they had given the power which is contended for, or whether directing something to be done, they must not be considered by necessary implication to have empowered that to be done which was necessary in order to accomplish the ultimate object.

15. For a cleared understanding of the passage, we may briefly refer to the facts in (1853) 23 LJ Ch 473, *Certain estates near the town of Leeds*

has been settled on one for life with the remainder to an infant, two years old. It was felt convenient for everybody concerned that the estates

should be parcelled out and sold for building purposes. Accordingly, a private Act of Parliament was passed in 1837. The Act, however, did not

provide for any expenditure to be laid out on the making of roads, though that was essential for breaking up the estates and selling them as plots for

building purposes. The plaintiffs sold some of the plots to some persons bearing the surname of Lee. They in turn sold the plots at a profit. Messrs.

Lee were really the solicitors of the plaintiffs. The plaintiffs sued to have the sales set aside and to have the profits made by Lee restored to them.

On the principle that a solicitor could not purchase his client's property, the sales were set aside. But M/s. Lee claimed reimbursement of the

amount spent on the laying of roads and it was in that connection that the court held that it was necessary to imply the power of expenditure on

roads in the Act of Parliament of effectuate the purpose of the Act, and they granted M/s. Lee the right of reimbursement of the moneys spent on

roads. The Lord Chancellor Observed-

.....The Legislature must have intended that it should be competent to the trustees to do that, without doing which it was impossible for them to

effect the sale for the purposes and in the manner and with the object which this Act of Parliament pointed out....it must be understood that the

Legislature meant in some way or other that the trustees should have the power of doing that which was necessary, namely, making the roads and

dividing the land in the reasonable mode in which it was necessary to be divided, in order that it might be sold.

16. In 36 Halsbury 436 (Simonds Edn.) the principle of implied power is thus stated-

Powers conferred by an enabling statute include not only such as are expressly granted, but also, by implication, all powers which are reasonably

necessary for the accomplishment of the object intended to be secured.

Cookson v, Lee, 23 LJ Ch 473 is one of the cases cited as authorities. Other cases are also cited, but we shall refer only to two of them : Oath

Before Justices case, (1611) 12 C.R. 130 = (1611) 77 ER 1405, and Bane v. Mathuen, (1824) 2 Bing 63. In oath Before Justices, 77 ER 1405,

what was decided is thus correctly stated in the head note:--

When the statute gave power to justices of peace to require any person or persons and to take the oath, the law implicits gave them power to

make a warrant to have the body before them, for *quando lex aliquid alicui concedit, conceditur et id sine quo res ipsa non potest*..... So, where a

statute gives a justice jurisdiction over an offence, it impliedly gives him power to apprehend any person charged with such offence"".

Here the Tribunal is authorised to administer oath to witnesses. That itself implies the power to enforce their attendance. That power has expressly

been given and would include within it and imply the power to have them examined on commission.

In (1824) 2 Bing 63 the same principle is thus stated:

It is clear that when an Act of Parliament gives a justice jurisdiction over an offence, it impliedly gives him a power to make out a warrant and

bring before him any person charged with such offence.

This decision is, of course, useful only by way of analogy.

17. To sum up, the power to enforce the attendance of witnesses includes within it the lesser power to have the witnesses examined on

commission. In one contingency the power to enforce the attendance of witnesses may not be available where the witness resides more than 200

miles away from the place of the sitting of the Tribunal, if Order XVI, Rule 19, C. P. Code is held to apply. In that case the power to have the witness examined on commission is implied.

18. We therefore allow the revision petition and direct the Tribunal to issue a commission for the examination of the witnesses. The commission can be issued following the provisions of Order XXVI, C. P. Code. If need be even an advocate Commissioner can be appointed. It is left entirely to the Tribunal. The parties will bear their costs before us.

19. Petition allowed.