

(2011) 09 KAR CK 0129
In the Karnataka High Court
Case No : MFA No. 20108 of 2009 (MV)

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Dyamavva Goudar and Others

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 142
Workmens Compensation Act, 1923 — Section 10, 8

Citation : (2013) 1 AKR 401

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : G.N. Raichur, for the Appellant; Sunil S. Desai, for M/s. Goulay Associates for R1-R4, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—This appeal is filed by the insurance company assailing the judgment and award passed in MVC No. 314/2003 dated 15.07.2008 by the Fast Track Court No. 2 & Motor Accidents Claims Tribunal No. IX, Bagalkot [for short "the Tribunal"]. Respondents 1 to 4 herein, who are the claimants, are the legal representatives of the deceased, Yalgurdappa Goudar. He was working as a Pump Operator in Mormugoa Port Trust, Mormugoa. His legal representatives filed a claim petition seeking compensation on account of his death in a road traffic accident that occurred on 19.04.2003 at about 8.15 p.m. when the deceased was proceeding as a pillion rider on the Scooty motor-cycle bearing registration No. GA-02/L-8479 driven by his friend near Gate No. 9 of MPT Port. When time a Tipper bearing registration No. TN-07/V-4548 came from opposite direction in a rash and negligent manner and dashed against Scooty on which the deceased was travelling as a pillion rider and caused grievous injuries. On account of the injuries, he succumbed to the same.

2. After service of notice from the Tribunal, the appellant herein appeared and filed the written statement and contested the matter. Respondent No. 5 was

placed *ex parte*.

3. On the basis of the rival pleadings, the Tribunal framed the following issues for its consideration:-

(i) Whether the petitioners prove that Yalgurdappa Balappa Goudar died in the motor vehicle accident that occurred on 19.04.2003 at about 20.30 hours behind the MPT Gate No. 9, due to rash and negligent driving of Tipper bearing registration No. TN-07A/-4548 by its driver?

(ii) Whether the petitioners are entitled to the compensation? If yes, for how much and from whom?

(iii) What order or award?

4. In support of their case, the respondents/claimants examined the 1st respondent herein as PW-1 and produced eight documents which were marked as Exs.P-1 to 8. The appellant/insurance company let-in the evidence of RW-1 and produced two documents which were marked as Exs.R-1 and 2. On the basis of the evidence on record, the Tribunal awarded compensation of Rs. 11,44,440/-. Having regard to the fact that the Commissioner for Workmen's Compensation, Goa, had awarded compensation of Rs. 3,26,140/- to the respondents/claimants, the Tribunal deducted the said amount from the total compensation awarded by it and held that the respondents/claimants were entitled for compensation of Rs. 8,18,300/- with interest at the rate of 6% per annum from the date of the petition till realisation. The said judgment and award is assailed by the insurance company in this appeal.

5. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents/claimants.

6. On behalf of the insurance company, the learned counsel has raised two contentions. The first contention of the insurance company is that the claim petition before the Tribunal was not at all maintainable, having regard to the fact that the respondents/claimants had been granted compensation by the Workmen's Compensation Commissioner and therefore, in terms of Section 167 of the Motor Vehicles Act, 1988 [hereinafter referred to as "the MV Act" for short], the Tribunal had to dismiss the claim petition rather than determining the compensation under the MV Act and thereafter, awarding compensation by deducting the compensation which had been awarded under the provisions of the Workmen's Compensation Act, 1923 [hereinafter referred to as "the WC Act" for short]. He, therefore, submitted that the judgment and award of the Tribunal has to be set aside.

7. In support of his submission, he has placed reliance on Section 167 of the MV Act and also the decision of the Apex Court in the case of National Insurance Co. Ltd. Vs. Mastan and Another, .

8. The other contention of the learned counsel appearing for the insurance

company is that the driver of the vehicle at the time of the accident was intoxicated and under the influence of alcohol and therefore, there was violation of the terms and conditions of the policy and under the circumstances, the insurance company was not at all liable to satisfy the award.

9. Per contra, the learned counsel appearing for the respondents/claimants has drawn my attention to the copy of the order passed by the Commissioner for Workmen's Compensation produced at Ex.P-8 and has stated that the respondents/claimants in the instant case have not at all exercised any option to file the claimant petition under the provisions of the WC Act. In fact, the Port Trust which is the employer of the deceased had deposited the compensation amount with the Workmen's Compensation Commissioner, ["WC Commissioner" for short] and on receipt of the said compensation, notice was issued to the respondents/claimants to appear for an enquiry in terms of the provisions of Section 8 of the WC Act and on being satisfied that the respondents/claimants were entitled to receive the compensation, the same was disbursed by order dated 29.04.2004 [Ex.P-8] and in that view of the matter, the bar stated u/s 167 of the MV Act would not at all apply to the present case, since the respondents/claimants had not exercised their option to file a claim petition u/s 10 of the WC Act. He, therefore, submitted that the Tribunal was justified in deducting the compensation received by the respondents/claimants under the provisions of the WC Act and awarding the balance compensation to them, which order would not call for any interference in this appeal.

10. With regard to the other contention of the learned counsel for the appellant is concerned, the submission is that in the absence of there being any evidence to the effect that the driver was intoxicated, the insurance company cannot escape its liability.

11. Having heard the learned counsel on both the sides and on perusal of the material on record, the following points would arise for my consideration:-

(i) Whether the respondents/claimants were disentitled from filing the claim petition before the Tribunal in respect of the death of Yalagurdappa Goudar in view of Section 167 of the MV Act?

(ii) Whether the insurance company is entitled to avoid its liability on the ground that the driver of the vehicle was intoxicated at the time of accident?

(iii) Whether the insurance company is entitled to pay the compensation and recover the same from the insured?

(iv) What order?

12. From the material on record, it is not in dispute that Yalgurdappa Goudar who was working as a Pump Operator in Mormugao Port Trust, died in a road traffic accident that occurred on 19.04.2003 at about 8.15 p.m. during the course of and arising out of his employment. The respondents/claimants as his legal representatives, filed claim petition in MVC No. 314/2003 before the

Tribunal. Even prior to filing of the said claim petition, the respondents/claimants had received compensation of Rs. 3,26,110/- by virtue of order dated 29.04.2004 passed by the Workmen's Compensation Commissioner, Goa.

13. Now, the question that arises for my consideration is as to whether the respondents/claimants having received the said compensation under the provisions of the WC Act could not have filed the claim petition under the provisions of the MV Act before the Tribunal, having regard to Section 167 of the MV Act.

14. Section 167 of the Motor Vehicles Act, 1988 reads as under:

167. OPTION REGARDING CLAIMS FOR COMPENSATION IN CERTAIN CASES.- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, 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 without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

15. The object of providing Section 167 of the MV Act is to ensure that the persons entitled to compensation under two enactments are not doubly benefited in respect of the very same cause of action. Therefore, the Parliament in its wisdom has given an option to the claimants to seek compensation either under the provisions of the WC Act or under the provisions of the MV Act as they deem fit and not under both the enactments in respect of the very same claim.

16. Section 167 of the MV Act has been considered by the Apex Court in *MASTAN*'s case referred to supra, in the following terms:-

34. On the establishment of a Claims Tribunal in terms of Section 165 of the Motor Vehicles Act, 1988, the victim of a motor accident has a right to apply for compensation in terms of Section 166 of that Act before that Tribunal. On the establishment of the Claims Tribunal, the jurisdiction of the Civil Court to entertain a claim for compensation arising out of a motor accident, stands ousted by Section 175 of that Act. Until the establishment of the Tribunal, the claim had to be enforced through the Civil Court as a claim in tort. The exclusiveness of the jurisdiction of the Motor Accidents Claims Tribunal is taken away by Section 167 of the Motor Vehicles Act in one instance, when the claim could also fall under the Workmen's Compensation Act, 1923. That Section provides that death or bodily injury arising out of a motor accident which may also give rise to a claim for compensation under the Workmen's Compensation Act, can be enforced through the authorities under that Act, the option in that behalf being with the victim or his representative. But Section 167 makes it clear that a claim could not be maintained under both the Acts. In other words, a claimant who becomes entitled to claim compensation both under the Motor Vehicles Act 1988 and under the Workmen's Compensation Act because of a motor vehicle accident has the choice of proceeding under either of the Acts before the concerned forum. By

confining the claim to the authority or Tribunal under either of the Acts, the legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned. In other words, he has to elect whether to make his claim under the Motor Vehicles Act 1988 or under the Workmen's Compensation Act 1923. The emphasis in the Section that a claim cannot be made under both the enactments, is a further reiteration of the doctrine of election incorporated in the scheme for claiming compensation. The principle "where, either of two alternative tribunals are open to a litigant, each having jurisdiction over the matters in dispute, and he resorts for his remedy to one of such tribunals in preference to the other, he is precluded, as against his opponent, from any subsequent recourse to the latter" [see R.V. Evans (1854) 3 E & B 363] is fully incorporated in the scheme of Section 167 of the Motor Vehicles Act, precluding the claimant who has invoked the Workmen's Compensation Act from having resort to the provisions of the Motor Vehicles Act, except to the limited extent permitted therein. The claimant having resorted to the Workmen's Compensation Act, is controlled by the provisions of that Act subject only to the exception recognized in Section 167 of the Motor Vehicles Act.

35. On the language of Section 167 of the Motor Vehicles Act, and going by the principle of election of remedies, a claimant opting to proceed under the Workmen's Compensation Act cannot take recourse to or draw inspiration from any of the provisions of the Motor Vehicles Act 1988 other than what is specifically saved by Section 167 of the Act. Section 167 of the Act gives a claimant even under the Workmen's Compensation Act, the right to invoke the provisions of Chapter X of the Motor Vehicles Act 1988. Chapter X of the Motor Vehicles Act 1988 deals with what is known as "no fault" liability in case of an accident. Section 140 of the Motor Vehicles Act, 1988 imposes a liability on the owner of the vehicle to pay the compensation fixed therein, even if no fault is established against the driver or owner of the vehicle. Sections 141 and 142 deal with particular claims on the basis of no fault liability and Section 143 re-emphasizes what is emphasized by Section 167 of the Act that the provisions of Chapter X of the Motor Vehicles Act, 1988, would apply even if the claim is made under the Workmen's Compensation Act. Section 144 of the Act gives the provisions of Chapter X of the Motor Vehicles Act 1988 overriding effect.

17. The Apex Court has held that in respect of a claim when remedies are provided under two distinct enactments, then the claimants are entitled to elect under either of the enactments and seek compensation and when once, the claimants opt to seek compensation under a particular enactment, they would be barred from seeking compensation under the other enactment. The Apex Court has pressed into service the doctrine of election in the scheme of claiming compensation.

18. Therefore, what has to be considered in the instant case is as to whether the respondents/claimants have exercised their option to seek compensation under the provisions of the WC Act and therefore, they were disentitled once again to

file a claim petition under the provisions of the MV Act. In this context, the order dated 29.04.2004, which is produced at Ex.P-8, is significant. The said order is passed by the Workmen's Compensation Commissioner, Goa and it reads as follows:-

This order is in respect of the application dated 27.02.2004 in Form "G" filed by Smt.Dyamavva Yalgurdappa resident of Headland Sada claiming compensation under Workmen's Compensation Act, 1923 contending that she is the dependent of late.Yalagurdappa B.Goudar, who died in the course of and arising out of employment while working with Opp. Party due to accident.

The Opp.Party Mormugao Port Trust vide their letter dated 04.11.2003 had informed that Shri Gowder Yellagurdappa, ex-Pump Operator who was posted at the Old Power House while working on the second shift on 19.04.2003 met with an accident with a tipper truck and succumbed to the injuries sustained. The management further mentioned the date of birth of the deceased employee was 01.04.1956 and his monthly salary was Rs. 9,276/- at the time of his death and in terms of Workmen's Compensation Act, 1923, they deposited an amount of Rs. 3,26,140/- in this office towards compensation to be paid to the dependents of the deceased employee.

Notice was served on the parties and the hearing was fixed on 20.04.2004. During the course of hearing on 20.04.2004 the applicant stated that she is the wife of late Yellagurdappa Goudar. Her husband was working for Mormugao Port Trust in Mechanical Engineering Department as a Pump Operator. On 19.04.2003 her husband met with an accident. He was hit by a truck and succumbed to the injuries. He died on the spot. Besides her, she has got two sons viz., Shri.Balappa Y.Goudar and Shri.Basavraj Y.Goudar aged 21 years and 19 years respectively and one daughter Miss.Yallava Y.Goudar, daughter aged 20 years who were dependents on the earning of her husband. She further stated that she is aware that the Opp.Party has deposited an amount of Rs. 3,26,140/- with this Authority which according to her the amount has been properly worked out as per Workmen's Compensation Act, She prayed that the said amount may be awarded to her and children as per the Workmen's Compensation Act.

The representative of the Opp.Party Mr.S.V.Verekar, Labour Officer, who was present during the course of hearing on 20.04.2004 did not desire to cross the Applicant.

After having verified the records produced in the course of hearing and the fact that the Opp. Party deposited the amount accepting the liability to pay the compensation, I hereby order to pay the compensation to the dependents of late Yellagurdappa Goudar in the following manner:

I. An amount of Rs. 76.140/- to be paid to Smt. Dyamavva Yalagurdappa, wife of late Yalagurdappa B.Goudar, by depositing in her saving Account No. 6272, in the Bank of India, Vasco.

II. An amount of Rs. 2.00 lakhs to be paid to Smt. Dyamavva Yalagurdappa, wife of late Yalagurdappa B.Goudar by way of Fixed Deposit Account for a period of five years in the Bank of India, Vasco.

III. An amount of Rs. 50,000/- to be paid to Miss.Yalawa Y.Goudar, daughter of late Yalagurdappa B.Goudar, by way of Fixed Deposit Account for a period of five years in the Bank of India, Vasco.

19. Under the provisions of the WC Act, the statutory liability of the employer is stated in Section 3 of the WC Act. Section 4 pertains to the determination of compensation; Section 5 deals with the method of calculation of the wages; Section 8 pertains to distribution of compensation. While Section 10 deals with the claim to be made for compensation. For the purpose of this case, the relevant provisions to be considered are Sections 8 and 10. They read as follows:-

8. DISTRIBUTION OF COMPENSATION. - (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation of an amount equal to three months' wages of such workman and so much of such amount as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1), as compensation in respect of a deceased workman the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation.

If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid.

The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the

Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the workman.

(8) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(9) Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

10. NOTICE AND CLAIM. - (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death:

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement

caused by the disease:

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected.

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim - (a) if the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or (b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of

the person on whom it is to be served, or. where a notice-book is maintained, by entry in the notice book

20. A comparative reading of the said Sections would make it apparent that while Section 8 gives jurisdiction to the Commissioner to disburse the compensation which has been deposited with the Commissioner by the employer, after holding an enquiry with regard to the dependency and other such matters, Section 10 empowers the claimant to seek compensation on account of the death or injury.

21. Having regard to the statutory liability cast on the employers, it is incumbent upon them to deposit the compensation amount in terms of the mandate of the WC Act. It is only when such deposit is not made by the employer, that the claimants would be entitled to seek compensation by filing a claim petition u/s 10 of the WC Act. However, in the case of injury resulting in death, the payment of compensation can be made when the same is deposited by the employer with the Commissioner. In fact, the Sub-section (1) of Section 8 states that there can be no payment which can be made directly by the employer to the legal representatives of a deceased. Therefore, the Section mandates that in the case of death, the employer can on his own volition deposit the compensation with the Workmen's Compensation Commissioner, who then has to issue notice to the dependents and call upon them to appear before him for the purpose of holding an enquiry with regard to their dependency and then disburse the compensation. It is in that context that the Workmen's Compensation Commissioner in the instant case, has issued notice to the respondents/claimants and on holding an enquiry, has passed the order dated 29.04.2004, which is at Ex.P-8, a copy of which is made available during the course of hearing by the counsel for the respondents/claimants. Therefore, the disbursement of compensation in the instant case is in terms of Section 8 of the WC Act and not under the provisions of Section 10 of the WC Act. In fact, no claim petition had been filed by the respondents/claimants before the Workmen's Compensation Commissioner seeking compensation on account of the death of the bread earner of the family. That being the factual position, it cannot be held that the respondents/claimants had exercised option to seek compensation u/s 10 of the WC Act. When no option had been exercised by the respondents/claimants under the provisions of the WC Act, there was no bar for them to file a claim petition u/s 166 of the MV Act. The said claim petition has been considered on merits and the Tribunal, having regard to the facts that the award of compensation by the Tribunal was higher in quantum than what was deposited before the Workmen's Compensation Commissioner, has deducted the compensation amount disbursed by the Workmen's Compensation Commissioner and has restricted the compensation to the balance amount determined by it. Since, in the instant case, the respondents/claimants had not filed any claim petition u/s 10 of the WC Act and they had not elected to seek compensation under the said enactment, it cannot be held that they had exercised their option under the provisions of the WC Act and therefore, they were disentitled to file the claim petition under the provisions of the MV Act. The receipt of compensation u/s 8 of the WC Act would

not disentitle the claimants to file a claim petition under the provisions of the MV Act. In the instant case, since no claim petition was filed u/s 10 of the WC Act, it cannot be held that the respondents/claimants were not entitled to file the claim petition under the provisions of the MV Act. In the instant case, the receipt of compensation u/s 8 of the WC Act was not a bar within the meaning of Section 167 of the MV Act. Accordingly, Point No. 1 is answered against the appellants.

22. As far as the second point is concerned, the contention of the insurance company is that the driver was under the influence of alcohol and intoxicated at the time of accident and therefore, the insurance company was not liable to satisfy the award. Placing reliance on the decision of the Apex Court in the case of National Insurance Co. Ltd. Vs. Parvathneni and Another, it is contended that the insurance company has no liability in the instant case. It is contended that the insurance company can pay the compensation and recover it from the owner of the vehicle.

23. As far as this aspect is concerned, the Tribunal has noted the written statement filed by the insurance company and has taken into consideration the fact that in the written statement, there was no defence taken that the driver of the vehicle was driving under the influence of intoxicants. There being no such defence in the written statement, no evidence in that regard could have been let-in by the insurance company.

24. Reliance was also placed on Ex.P-2, which is the copy of the complaint, wherein it had been stated that on medical examination, it was found that the driver had consumed alcohol. The said document has not been tested by the author of the said document being examined in the instant case.

25. RW-1, no doubt, has let-in evidence placing on record the insurance policy of the vehicle. However, in the absence of there being any evidence to corroborate the statement made in Ex.P-2 by the concerned doctor who had issued the medical certificate that the driver had consumed intoxicants, the Tribunal was justified in holding that the driver of tipper which caused the accident drove the vehicle under the influence of alcohol.

26. The Tribunal however has taken into consideration the fact that the owner of the vehicle had not appeared in the matter and that there was no contra evidence that the driver of the vehicle was not under the influence of the intoxicants and under the circumstances, held that the insurance company shall pay the compensation amount, to the respondents/claimants and recover the same from the owner of the vehicle by filing an execution petition on the judgment and award passed by it. In the instant case, it is noticed that Ex.R-2 stipulates at Clause C of Section 1(3) that the insurance company was not liable to make any payment in respect of any accidental loss or damages suffered while the insured or any person driving with the knowledge and consent of the owner, is under the influence of alcohol or any drugs. No evidence has been let-in by the insurance company to prove that the driver was under influence of the alcohol

with the knowledge and consent of the insured. Under the circumstances, placing reliance on Ex.P-2, the Tribunal has, in fact, granted relief to the insurance company to pay the compensation and recover the same from the insured, whereas in the absence of proof of knowledge and consent of the insured vis-à-vis the driver being under the influence of alcohol or intoxicating drugs, the insurance company would have been liable to pay the compensation in entirety. Under the circumstances, there is no substance in the contention of the learned counsel appearing for the insurance company that the Tribunal could not have ordered the insurance company to pay the compensation and then to recover the same from the insured. Therefore, that portion of the judgment and award would also not call for any interference in this appeal. Accordingly, Point Nos. 2 and 3 are answered.

In the result, the appeal is dismissed. The amount in deposit shall be transmitted to the Tribunal.