

(1974) 03 MAD CK 0005

In the Madras High Court

Case No : Civ. Rev. Petition No's. 326, 328 and 362 of 1973

Union of India (UOI)

APPELLANT

Vs

P. Kailsam and Others

RESPONDENT

Date of Decision : 15-03-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 80
Motor Vehicles Act, 1988 — Section 110, 110A, 110B

Citation : (1974) ACJ 488

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : P.S. Srisailam, for the Appellant; K. Raman, K.C. Srinivasan, K. Kumaraswami Pillai and G.L. Vijayaraghavan, for the Respondent

Final Decision : Dismissed

Judgement

Kailasam, J.—The Union of India (UOI) represented by the General Manager, Southern Railway, Madras is the Petitioner in the above civil

revision petitions. The claimants in O.P. Nos. 14, 16 and 18 of 1971 under the Motor Accidents Claims Tribunal are the Respondents herein.

They filed the claim against the owner of the bus and the Insurance company for an accident which took place on 10th November 1969 at a level

crossing near Karur. The Insurance company was made the 4th, 5th and 4th Respondent in the respective applications. The Respondent-insurance

company, in their counter to the claim petitions, contended that they were not liable but it is only the Indian Railways that was negligent inasmuch as

the gateman employed at the level crossing was responsible for the accident as he had kept the railway gate wide open for the highway traffic to

pass, without any signal of the passing train. After this defence, the claimants filed interlocutory application Nos. 559, 501, and 649 of 1971

respectively, praying that the railways may be made a party to the applications. The railways contested the applications and submitted that they

were neither necessary nor proper party and that they should not be added. They also contended that the Motor Accident Claims Tribunal had no

authority to hold the railways liable for payment of damages to the Petitioners. The lower court rejected the plea and directed that the railway be

made a party. It is against the decision in the above said three interlocutory applications that the present revision petitions have been filed.

2. u/s 110 of the Motor Vehicles Act, the State Government is empowered to constitute one or more Motor Accidents Claims Tribunal for the

purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to persons arising out of the

use of motor vehicles, or damages to any property of a third party so arising or both. The proviso to the section states that for claims for

compensation in respect of damage to property exceeding Rs. 2000/-, the claimant may at his option, refer the claim to a civil court for

adjudication, and where a reference is so made, the Claims Tribunal will have no jurisdiction to entertain any question relating to such claim.

Section 110-B provides for the award by the Claims Tribunal.

It states as follows:

On receipt of an application for compensation made u/s 110-A , 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 compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid

by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them as the case may be.

Thus, the proceedings by the Claims Tribunal provides only for the determination of compensation payable by the insurer. or the owner or the

driver of the vehicle involved in the accident or by all or any of them. It is clear that the Act is applicable to the claims arising out of the use of

motor vehicles by their owners and against the insurer and the driver of motor vehicles alone. It is not contended that the Motor Vehicles Claims

Tribunal is empowered to adjudicate on the liability of the Railways even if it is

held to be negligent for that is outside the scope and jurisdiction of the Claims Tribunal.

3. On this basis, it is not disputed, and as submitted by the learned Counsel for the railways, that the railway is not a necessary party as the

claimants are not entitled to any relief as against the railways. On the basis that the railways are not liable for any damages, the Claims Tribunal

cannot award any damages against the railways and the railways may not be a necessary party. The questions whether the CPC particularly, Order

1 Rule 10, is applicable before the Tribunal or not, need not be gone into for it is settled law that any Tribunal can exercise its functions and in

discharging its duties, take such steps as are essential to enable it to function effectively. There could, therefore, be no doubt that, whether the CPC

applies or not, the Tribunal will have powers to implead necessary and proper parties. Taking the CPC as a guidance, under Order 1 Rule 10(i),

the court may order any person to be substituted or order as Plaintiff if it is necessary for the determination of the real matter in dispute so to do.

Under Order 1 Rule 10(ii), the court may at any stage of the proceedings order that the name of any person who ought to have been joined

whether as Plaintiff or Defendant or whose presence before court may be necessary in order to enable the court to effectually and completely

adjudicate upon and settle all the questions in the suit be added. It may be that the railway is not a necessary party in the sense that no relief can be

asked for against it. But one of the vital questions that arise for consideration before the Claims Tribunal is as to who was negligent. The Petitioner

has claimed against the owner of the bus and the insurance company. In order to sustain the claim, the Petitioner will have to establish that the

negligence was on the part of the driver of the bus. The plea taken by the insurance company is that the driver of the bus was not negligent but it

was only the conduct of the railway employee at the gate. It, therefore, becomes necessary for the Tribunal to adjudicate as to whether the driver

of the motor vehicle or the railway servant was negligent and in order to enable the Tribunal to effectually and completely adjudicate and settle this

question, the railway is clearly a proper party. Several decisions were cited. But it is unnecessary to refer to them. The principle is that, generally,

when the Plaintiff is not keen on getting a party added as Defendant, the Plaintiff

being dominus litis, third party should not be added. But, if the Plaintiff requires a person to be added for effectually and completely adjudicating upon the matter in dispute, third party will be a proper party. As already pointed out, the question of negligence of the railways is a vital question and it may, if it, ultimately, turns out that the Tribunal finds the railways to be negligent, the railways would have a genuine grievance as that finding would be without giving an opportunity to them to repudiate the suggestion of negligence on their part. Considering all these circumstances, I am satisfied that the lower court was right in directing the railways to be made as party to the proceedings.

4. As the Defendant-railway will be entitled to raise all objections that are known to law, the learned Counsel submitted that the railways could not be impleaded unless the provisions of Section 80, CPC were followed. He also contended that the suit against the railways is barred by limitation and in these circumstances, the suit against them is not maintainable. All the questions that are to be raised by the railways will be decided by the Claims Tribunal according to law. These revision petition are dismissed. The Respondent-claimants in civil revision petitions Nos. 326 and 328 of 1973 will have their costs in these revisions from the Petitioners. No costs in civil revision petition No. 362 of 1973.