

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/10/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice K. GNANAPRAKASAM

Civil Misc.Appeal No. 1603 of 2001

and

C.M.P.No. 21316 of 2001

The Oriental Insurance Company Ltd.,

139, Eswaran Koil Street, Pondy. .. Appellant/2nd Respondent.

-Vs-

1. Kaliya Pillai,

2. Thangam ..Respondent 1 and 2/Petitioner 1 and 2.

3. N. Velu.

..Respondent 3/1st respondent.

Appeal against fair and decretal order dated 12-12-2000 made in O.P.No. 171 of 1998 on the file of the Motor Accident Claims Tribunal (Sub Court) Kallakurichi, as sated therein.

!For appellant : Mr. M.S. Krishnan

^For Respondents 1 and 2 : Mr. R. Muralidharan

:JUDGMENT

(Judgment of the Court was made by P. SATHASIVAM, J)

Aggrieved by the award of the Motor Accidents Claims Tribunal, Kallakurichi dated 12-12-2000 made in O.P.No. 171 of 1998, the Oriental Insurance Company, Pondicherry has filed the above appeal.

2. Respondents 1 and 2 herein/claimants therein have filed the said claim petition claiming a compensation of Rs.4 lakhs for the death of their son Pavulkumar alias Kumar in a motor vehicle accident that took place on 25-2-98. According to them, on 25-2-98 at about 14.00 Hours when the deceased Pavulkumar alias Kumar was driving a Tractor and Trailer bearing registration No. TAY 6838 and TCF 36 83 from Sankarapuram to Moongilthuraipattu, near Ilayankanni, he fell down from the tractor and died. The claimants were fully

depending upon the income of the deceased and they claimed compensation to the tune of Rs.4 lakhs. Before the Tribunal, the first claimant, father of the deceased was examined as P.W.1 and one Kalaichelvan as P.W.2, and Exs. P-1 to P-6 were marked in support of their claim. On the side of the owner and insurance company, no one was examined and no document was marked. The Tribunal on appreciation of oral and documentary evidence and after holding that the accident was caused due to rash and negligent act of the driver of the tractor namely Pavulkumar and that the tractor being insured with the Oriental Insurance Company, second respondent therein/appellant herein, passed an award for Rs.3 lakhs with interest at 12 per cent from the date of petition. Against the said award, the Insurance company alone has preferred the above appeal questioning its liability.

3. Heard the learned counsel for the appellant as well as respondents 1 and 2.

4. Mr. M.S. Krishnan, learned counsel appearing for the appellant, by drawing our attention to the specific finding of the Tribunal that the accident was caused due to rash and negligent driving of the driver of the tractor and trailer, and that he alone was responsible for the accident, contended that the Tribunal has committed an error in passing the award in favour of the claimants. In other words, according to him, the deceased being a tort-feasor, his legal heirs are not entitled to compensation. In any event, according to him, since the driver of the tractor died in the course of his employment, the proper remedy for the claimants is to approach the Commissioner for Workmen Compensation and the claim petition filed under Section 166 (1) of the Motor Vehicles Act before the Motor Accidents Claims Tribunal at Kallakurichi is not maintainable. It is his further contention that if this Court is inclined to pass an award under Workmen's Compensation Act, interest need not be awarded. On the other hand, Mr. R. Muralidharan, learned counsel for respondents 1 and 2/ claimants, would contend that in view of Section 167 of the Motor Vehicles Act, inasmuch as the death occurred by using the motor vehicle, notwithstanding anything contained in the Workmen's Compensation Act, the claimants are entitled to compensation under the provisions of the Motor Vehicles Act. He also contended that even if it is accepted that the proper course is to file a claim under the Workmen Compensation Act, this Court has ample jurisdiction to pass appropriate orders even under the provisions of the Workmen's Compensation Act, and in that event, award may be passed with interest from the date of the accident.

5. We have carefully considered the rival submissions.

6. It is seen from the materials that in respect of death of Pavulkumar alias Kumar, his parents have prayed for a compensation of Rs.4 lakhs under Section 166 (1) of the Motor Vehicles Act, 1988. By pointing out para 23 of the claim petition, learned counsel for the appellant Insurance company raised his contention that since the deceased fell down from the moving tractor and died, while he was driving the same from Sankarapuram to Moongilthuraipattu, neither himself nor any one could claim compensation for his own wrong. In other words, it is his main contention that the deceased being a tort-feasor, the claimants namely his parents are not entitled to claim compensation under the

Motor Vehicles Act. Learned counsel appearing for the respondents drew our attention to Section 167 of the Motor Vehicles Act, 1988, and contended that irrespective of the provisions in the Workmen's Compensation Act, 1923, they can very well maintain the claim petition under the Motor vehicles Act. It is relevant to refer Section 167 of the Motor Vehicles Act, 1988.

"Section 167. Option regarding claims for compensation in certain cases.- Notwithstanding anything contained in the Workmen's Compensation Act, 1928 (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."

It is true that due to death or bodily injury, the aggrieved or interested person can make a claim for compensation under both of the Workmen's Compensation Act and the Motor Vehicles Act, and that without prejudice to the provisions of Chapter X, he can claim such compensation under either of these Acts but not under both. The only bar is that the aggrieved person/persons cannot claim compensation under both the Acts. However, it is not disputed that in this case the death occurred due to falling down from a moving tractor. The deceased was none else than the driver of the tractor and the trailer. In such a circumstance, he being a tort-feasor and responsible for the accident, he cannot claim compensation for the injuries, likewise his legal heirs also are not entitled for compensation from the Insurance company by invoking the provisions of the Motor vehicles Act. In this regard, it is relevant to refer a Division Bench decision of this Court in New India Assurance Company Ltd., v. Meenal, reported in 1993 A.C.J. 522. After referring to the earlier decisions of this Court and the other High Courts as well as the Supreme Court, the Division Bench (K. Venkataswamy and A. Abdul Hadi, JJ) has held that inasmuch as the deceased was himself a tort-feasor, hence the claimants cannot maintain the claim petition for any compensation from the owner of the vehicle; consequently then cannot have any claim against the insurance company. Similar view has been reiterated by the subsequent Division Bench of this Court (consisting of A. Abdul Hadi, J. and myself (P. Sathasivam, J.) in the case of The Oriental Insurance Company Ltd., v. Pandurangam and others, reported in 1997-1-L.W.59. In the case on hand, on the basis of the materials placed, the Tribunal in para 5 has arrived at a specific finding that the accident was caused due to rashness and negligence on the part of the driver of the tractor and trailer, namely, Pavulkumar. In the light of the said factual conclusion and of the fact that the accident was caused only due to the negligence of the driver of the ill-fated tractor, the claimants are not entitled to claim any compensation under the Law of Torts. It is well settled law that when the owner is not liable, the insurer cannot be held liable. Since the accident was caused only due to the rash and negligent act of the driver of the tractor, we hold that the question of vicarious liability will not arise when the claim is made by the tort-feasor himself or any other person claiming under the tortfeasor; accordingly the claim by the claimants is absolutely misconceived and they cannot claim any compensation from the owner of the vehicle; consequently they also cannot make any claim against the appellant-Insurance company. However, the insurer's

liability is to be determined not only with reference to the provisions under the Motor Vehicles Act, but also with reference to the contract of insurance which would extend to the liability of the insured under the Workmen's Compensation Act. There is a specific finding by the Tribunal that the deceased tractor driver died in the course of his employment. Further, it is not disputed that there was a valid insurance on the date of the accident, and accordingly the insurer was liable to the extent of liability under the Workmen's Compensation Act. In other words, we hold that even though the insurance company was not liable under the provisions of the Motor Vehicles Act, it would be proper to assess the compensation under the Workmen's Compensation Act and award the same in favour of the claimants. On this ground, instead of directing the respondents/claimants to go before the Commissioner for Workmen's Compensation Act, in order to shorten the litigation and also in the interest of justice, we decided to dispose of the appeal by determining the appropriate compensation in favour of the claimants.

7. As per Section 3 of the Workmen's Compensation Act, undoubtedly the employer is liable to pay compensation in respect of personal injury or death caused to a workman by accident arising out of and in the course of his employment in accordance with the provisions of Chapter II. Section 4 provides how the amount of compensation is to be determined. As per sub-section (1) of Section 4A, compensation under section 4 shall be paid as soon as it falls due. It is not disputed that for arriving at a just compensation in case of permanent disablement and death the factors that are provided under Schedule IV of the Workmen's Compensation Act have to be taken note of. Though the claimants have produced salary certificate-Ex.P-4, the owner of the tractor who issued the said certificate though he is a party (first respondent in O.P.No.171/98) has not chosen to examine himself to substantiate the contents of Ex.P-4. However, in the light of Ex.P-6 Driving licence to drive tractor and trailer and considering the fact that the deceased died while driving the tractor, it would be proper to hold that he would have earned Rs.2000/- per month as a driver of a tractor. By applying the formula prescribed under Schedule IV, we fix the compensation of Rs.2,16,000/-. The procedure and method adopted above has not been disputed.

8. Another question to be considered is whether the claimants are entitled to interest for the said compensation and if so, from what date? Learned counsel appearing for the appellant by drawing our attention to a decision of the Apex Court in Ved Prakash Garg v. Premi Devi reported in AIR 1997 Supreme Court 3854, would contend that the payment of interest would arise only on determination of compensation under the provisions of Workmen's Compensation Act and not either from the date of petition or from the date of accident. Similar question was considered by the Supreme Court in this decision. After referring to the relevant provisions with regard to "interest" and "default" under the Workmen's Compensation Act, the Supreme Court has observed that, (para 14)

"14. On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest therein, if

ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Workmen's Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions under the very contracts of insurance reflected by the Policy which would make the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer under Section 3 read with Section 4A of the Compensation Act. All these provisions represent a wellknit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the scheme of Section 4A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per Section 4A(3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose bread-winner might have either been seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein..."

By heavily relying on the above passage and Section 4A(3), learned counsel for the insurance company would contend that there cannot be any direction for payment of interest without determining the amount of compensation and giving a month's time. According to him, only in the case of default and non-payment of amount within the prescribed time, the claimants are entitled interest. After considering the object and scheme of the Act and sections 3, 4, 4A of the Workmen's Compensation Act, we are unable to accept the said contention for the following reasons. In the very same decision, namely, AIR 1997 Supreme Court 3854 (cited supra), after holding so, in the penultimate paragraph, Their Lordships have held, (para 19)

"19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4A sub-section (3)(a) of the Companies Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4A (3) (b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone."

It is further seen from the last paragraph that after setting aside the liability to pay the penalty imposed on the insured, they directed the

insurance company to pay compensation as fixed by the workmen commissioner with interest at 6 per cent per annum thereon from the date of the accident till the date of payment to the claimants (vide para 20).

9. It is also relevant to refer a 4 Judge Bench decision of the Hon'ble Supreme Court in Pratab Narain Singh Deo v. Shrinivas Sabata, reported in 1976 A.C.J. 141 wherein Their Lordships have considered the very same question namely payment of "interest" and "penalty" under the Workmen's Compensation Act. In para 7, Their Lordships have held thus:

"7....The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19.....The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary. "

The above conclusion of Their Lordships makes it clear that the employer or person liable to pay compensation need not wait till formal determination by the Commissioner under the Workmen's Compensation Act. On the other hand, we hold that the employer or any other person is liable to pay compensation as soon as personal injury was caused or death occasioned in the course of employment. The provisions in the Workmen's Compensation Act referred to above would clearly show that the interest shall be paid to the worker or his dependent as the case may be and the penalty shall be credited to the State Government. In other words, on the delaying of payment of compensation on unjustifiable ground, the employer does not earn any penalty, if the claimant is being compensated with higher rate of interest. The term "fell due" in sub-section (1) of Section 4A is to mean the time when the right to claim compensation accrued due. The employee or his dependents would be gained by means of interest for the amount due as well as the penalty for the delay. As stated earlier, the interest has to be paid to the employee or to his dependent from one month after the date on which it was actually fell due and the penalty amount has to be credited to the account of the State Government. We hold that the interest would accrue 30 days after the date of accident and not from the date of quantification as argued by the learned counsel for the insurance company. In this regard, it is relevant to refer a Division Bench decision of the Kerala High Court in Oriental Insurance Company Limited v. Abdul Nazar, reported in 1997 Lab.I.C. 891. The conclusion arrived at therein is as follows: (para 10)

"10. Once it is found that the amount of compensation falls due on the date of the accident, it has necessarily to be held that the defaulting employer shall pay interest on the compensation from the date of the accident. The wording of the Section is very clear that mere failure to pay compensation would saddle the employer with the liability to pay interest unlike in the case of penalty. Employer will be liable to pay penalty only in cases where the Commissioner is satisfied that there was no justification for the delay. The contumacious conduct on the part of the employer is not making the payment

has relevance only in the case of his liability to pay penalty. As far as interest is concerned, there is no requirement to prove that the employer was not honestly contesting his liability. Ultimately, when it is found that he has liability to pay compensation by the Commissioner for Workmen's Compensation, the workman has to be compensated for not having the advantage of receipt of the amount of compensation on the date on which the accident happened. On the other hand, it has to be noted that the employer was retaining the amount with him all the time when the proceedings were going on. The fact that he has been granted one month's time from the date on which compensation fell due to make the payment would not in any way postpone the date from which interest would start running. Therefore, we are of the view that the liability to pay interest would run from the date on which the right to receive compensation accrues in favour of the workman, namely, the date of the accident and not when orders are issued by the Commissioner for Workmen's Compensation. The above view of ours is fortified by decisions of several other High Courts, vide THE MUNICIPAL COMMISSIONER, BARODA v. PATEL ENGINEERING CO. LTD., 1976 Acc CJ 104, JAYAMMA v. EXECUTIVE ENGINEER, P.W.D. MADHUGIRI, 1982 Acc CJ 361: (1982 Lab IC Noc 61) (Kant), MADAN MOHAN VERMA v. MOHAN LAL, 1983 Acc CJ 231. Even though the specific question as such was not raised in 1984 Acc CJ 630 supra, Bench of this Court had also held that interest at 6% p.a. shall be paid from the date of the accident till the date of payment."

As stated earlier, the Workmen's Compensation Act, being a beneficial legislation, considering the object and scheme of the Act, particularly after insertion of section 4A, we hold that interest for the compensation amount would accrue 30 days after the date of accident and not from the date of quantification. To make it clear that we are of the view that the liability to pay interest would run from the date on which the right to receive compensation accrues in favour of the workman namely the date of the accident and not on the date of issuance of orders by the Commissioner for Workmen's compensation.

10. In the light of what is stated above, we modify the order of the Tribunal and pass an award for Rs.2,16,000/- in favour of the claimants-respondents herein with interest at 12 per cent. Out of this amount, the first respondent herein (Kalia Pillai), father of the deceased is entitled to Rs.1,00,000/-, while the second respondent herein (Thangam) mother of the deceased is entitled to Rs.1,16,000/-. The interest as mentioned above shall be paid after the expiry of 30 days from the date of accident till the date of payment. Civil Miscellaneous Appeal is disposed of on the above terms. No costs. C.M.P.No.21316/2001 is closed.

Index:- Yes

Internet:-Yes

R.B.

To:

The Motor Accidents Claims Tribunal (Sub Court),
Kallakurichi with records.

