M. Ahammedkutty Haji Vs Amina

Court: High Court Of Kerala

Date of Decision: Aug. 12, 2016

Acts Referred: Motor Vehicles Act, 1988 - Section 166, Section 173, Section 5

Citation: (2017) 2 KerLJ 368 : (2017) 2 KLT 600

Hon'ble Judges: Mr. C.T. Ravikumar and Mr. K.P. Jyothindranath, JJ.

Bench: Division Bench

Advocate: Sri. K. Ramachandran and Smt. S. Jayasree, Advocates, for the Petitioner; Sri. A.A. Ziyad Rahman, Sri. M. Rajagopalan and Sri. Rajit, Advocates, for the Respondent No. 8

Final Decision: Dismissed

Judgement

Ravikumar, J.â€"The second respondent in O.P.(MV).No.571 of 1997 on the files of the Motor Accidents Claims Tribunal, Tirur is the appellant

herein. This is his second round of litigation. The said claim petition filed under section 166 of the Motor Vehicles Act was originally disposed of by

the Tribunal as per judgment and award dated 30.6.2003 granting a compensation of Rs.3,02,500/- with interest @ 9% per annum from the date

of the petition till realisation along with a cost of Rs.1,500/-. The 8th respondent-insurance company was directed to pay the amount awarded to

the petitioners therein viz., respondents 1 to 6 herein and the insurance company was permitted to recover the amount so paid, from respondent

No.7 and the appellant herein, who was the owner of the offending vehicle which is a lorry bearing Reg.No.KL 10-E-4831. Thereupon, the 8th

respondent, insurance company, satisfied the award and then, filed E.P.53 of 2004 for recovering the amount paid from the appellant herein. It

was in the circumstances that the appellant herein filed M.A.C.A. No.235 of 2004 before this Court on the earlier occasion. This Court disposed

of the said appeal as per judgment dated 6.4.2011. Evidently, as per the said judgment, this Court remanded the matter solely for reconsideration

on the question regarding "who is liable to pay the compensation". The said question was to be decided after affording opportunities to the

appellant herein, the driver of the offending vehicle and the insurance company, going by the said judgment. At the same time, it was further

observed in the judgment thus :-

.....it is made clear that the quantum fixed by the Tribunal shall not be re-opened or reconsidered.

(emphasis added)

2. Thus, it is evident that it was a closed remand confining the scope of consideration on remand as to who among the respondents before the

Tribunal is liable to pay compensation. Pursuant to the remand, the Tribunal considered the aforesaid question in terms of the judgment of this

Court in M.A.C.A. No.235 of 2004. Evidently, notice was also issued to the first respondent therein who was the driver of the vehicle involved in

the accident. Like in the original proceedings, the first respondent therein remained ex parte and did not avail the opportunity granted by this Court

to contest the matter on the aforesaid question despite the service of notice on him. Obviously, availing the opportunity granted by this Court, the

appellant herein/the 3rd respondent therein, adduced evidence by getting himself examined as RW1. After considering the additional evidence and

also the arguments advanced by both the owner of the vehicle (the appellant herein) and the insurer of the vehicle (8th respondent herein), the

Tribunal passed the revised award impugned in this appeal. As per the same, the Tribunal held that the insurance company is entitled to recover the

award amount, from respondents 1 and 2 after satisfying the award. It is feeling aggrieved by the said finding and the consequently granted right to

recover the award amount that this appeal has been preferred by the insured-owner of the offending vehicle.

3. We have heard the learned counsel for the appellant and the learned counsel for the 8th respondent. As early as on 12.12.2001, taking note of

the nature of the dispute and the existence of a valid insurance policy in respect of the offending vehicle, issuance of notice to the respondents

except to the 8th respondent, was dispensed with. Essentially, the challenge in this appeal is against the liberty granted to the insurance company to

recover the amount awarded, from the appellant who is the insured-owner of the offending vehicle after satisfying the award. Evidently, the 8th

respondent effected payment of compensation to the claimants, in terms of the directions in the impugned judgment. The learned counsel for the

appellant contended that since the vehicle in question was having a valid insurance policy at the time of the accident, the insurance company could

not wriggle out of the statutory liability contending that the driver of the vehicle was not having a valid driving license at the time of the accident. To

buttress the said contention the learned counsel relied on the decision of the Hon''ble Apex Court in National Insurance Co. Ltd. v. Swaran

Singh [2004 (1) KLT 781]. Placing reliance on the said decision, it is submitted by the learned counsel for the appellant that breach of conditions

of a policy is a matter to be established by the insurance company and therefore, in this case, since the insurance company took up the contention

that the appellant had violated the policy conditions by entrusting the vehicle to a person who was not having valid driving license, the liability is on

the insurance company to establish the same. On the said foundation it is further contended by the appellant that having failed to establish the

breach on his part, the insurance company could not avoid the statutory liability. Ergo, it is contended that the Tribunal erred in law in granting

liberty to the insurance company to recover the amount awarded and that the Tribunal ought to have found that the insurance company is having

statutory liability to indemnify the insured-owner/appellant. In other words, according to the appellant, the entire liability to pay compensation ought

to have been fastened, ultimately, on the insurance company.

4. Per contra, the learned counsel for the 8th respondent-insurance company resisted the aforesaid contentions in the light of the very decision in

Swaran Singh''s case. It is contended that the Hon''ble Apex Court in the very same decision, in unambiguous terms, held that the owner of a

motor vehicle has got a statutory liability and responsibility, in terms of S.5 of the M.V. Act, to see that no vehicle owned by him is driven by a

person who does not satisfy the provisions of Sections 3 or 4 of the Act. In that regard, the learned counsel brought to our attention paragraphs 77

and 102 (vii) of the said decision. In short, it is contended by the learned counsel that no appellate interference is called for, in this case.

5. In the light of the rival contentions and the factual matrix obtained in this appeal, the question to be considered is whether the insured-owner of a

vehicle got any statutory liability to verify as to whether the driver of the vehicle possessed a valid licence or not under section 5 of the M.V. Act.

Further, if the owner of a motor vehicle or a person in charge of a motor vehicle is under such a statutory responsibility, whether he can be said to

have successfully discharged it by merely getting himself examined in a proceeding before the Tribunal. Contextually, it is relevant to refer to section

5 of the M.V. Act which reads thus :-

5. Responsibility of owners of motor vehicles for contravention of sections 3 and 4-No owner or person in charge of a motor vehicle shall cause or

permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

6. A perusal of the M.V. Act undoubtedly reveals that the owner or person in charge of a vehicle is having such a statutory liability and a duty to

see that the vehicle owned by him or under his charge and control is not driven by a person who does not satisfy the provisions of sections 3 or 4

of the M.V. Act. Going by section 3, no person shall drive a motor vehicle in a public place unless he holds an effective driving licence authorising

him to drive a vehicle viz., that class of vehicle. Section 4 of the M.V. Act puts age barrier in connection with the driving of motor vehicles. In that

contextual situation, it is relevant to refer to paragraph 102(vii) of the Swaran Singh''s case (supra) which reads thus :-

The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one

or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(emphasis added)

7. Thus, it is obvious that going by Swaran Singh''s case (supra) and the very provisions under section 5 of the M.V. Act, the owner or person in

charge of a vehicle is having a statutory liability to see that no person who does not satisfy the provisions of section 3 or section 4 is caused or

permitted to drive the vehicle. Three decisions of the Apex Court rendered subsequent to Swaran Singh''s case viz., [National Insurance Co.

Ltd. v. Kusum Rai] 2006 (2) KLT 300, Ishwar Chandra and Ors. v. The Oriental Insurance Co. Ltd. and Ors. [AIR 2007 SC 1445]

and Ram Babu Tiwari v. United India Insurance Co. Ltd. and others [2008 (8) SCC 165] also assume relevance in the context of the issues

involved and the arguments advanced. In Kusum Rai''s case, the vehicle in question was being used as a Taxi and therefore, as a commercial

vehicle. Though the driver of the said vehicle was required to hold an appropriate licence therefor, he was holding only a licence to drive a light

motor vehicle. In other words, he did not possess any licence to drive a commercial vehicle. The question was whether the insurer could raise

breach of condition of contractual insurance on the ground that the driver was not having a valid, appropriate driving licence to drive that class of

vehicle involved in the accident. In paragraph 13 of Kusum Rai''s case, the Apex Court held thus :-

In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the

vehicle possessed a valid licence or not.

Further, in paragraph 11 in Kusum Rai''s case, it was held :-

This Court in Swaran Singh (supra) clearly laid down that the liability of the insurance company vis-a-vis the owner would depend upon several

factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on

the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle.

(emphasis added)

8. In the light of these decisions and provisions under section 5 of the M.V. Act, there can be no doubt at all with respect to the position that the

owner or a person in charge of a motor vehicle is under a statutory responsibility, which is their statutory liability, to take adequate care to see

whether the driver got an appropriate licence to drive the class of vehicle to which his vehicle belongs. It is to be noted that the decisions in Kusum

Rai''s case, Ishwar Chandra''s case and Ram Babu Tiwari''s case were rendered by the Hon''ble Apex Court virtually relying on its earlier decision

in Swaran Singh''s case. A careful scanning of the said decision would reveal that virtually it was held therein that absence of a valid licence to drive

a particular class of vehicle to which the vehicle in question belongs, would entitle the insurer to succeed in his defence and to avoid liability on the

ground that the driver was not having a valid driving license. In this context, it is also relevant to note that S.B. Sinha (J) who authored the three

decisions viz., Kusum Rai''s case, Ishwar Chandra''s case and Ram Babu Tiwari''s case was also a party in Swaran Singh''s case. In paragraph 11

of Kusum Rai''s case, the relevant portion from Swaran Singh''s case was extracted. The question regarding the liability of the owner vis-a-vis the

driver being not in possession of a valid licence was considered in Swaran Singh''s case. It reads thus :-

82. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. S. 10

of the Act enables Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the

said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without

gear; (b) motorcycle with gear; (c) invalid carriage; (d) light motor vehicle; (e) transport vehicle; (f) road-roller; and (g) motor vehicle of other

specified description. The definition clause in S. 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in

sub-section (2) of S.10. They are ''goods carriage'', ''heavy goods vehicle'', ''heavy passenger motor vehicle'', ''invalid carriage'', ''light motor

vehicle'', ''maxicab'', ''medium goods vehicle'', ''medium passenger motor vehicle'', ''motorcab'', ''motorcycle'', ''omnibus'', ''private service vehicle'',

''semi-trailer'', ''tourist vehicle'', ''tractor'', ''trailer'' and ''transport vehicle''. In claims for compensation for accidents, various kinds of breaches with

regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for motorcycle

without gear, for which he has no licence. Cases may also arise where a holder of driving licence for ''light motor vehicle'' is found to be driving a

''maxicab'', ''motorcab'' or ''omnibus'' for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken

whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory

cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like

mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed

to avoid its liability merely for technical breach of conditions concerning driving licence."".

9. The said paragraph was extracted in Ishwar Chandra''s case as well. In Ram Babu Tiwari''s case, the question whether the insurer could seek

exclusion of liability on the ground that on the day of the accident the driver was not having a valid licence was also considered. Kusum Rai''s case,

Ishwar Chandra''s case and Swaran Singh''s case were also referred to therein. In that case, the driver was having a driving licence from

11.2.1990 to 10.2.1993 and again from 7.2.1996 to 7.2.1999. But he was not having a valid driving licence on the date of the accident i.e., on

27.1.1996. He got it renewed by filing an application after the expiry of thirty days from the date of expiry. In view of the first proviso to section

15(1) which provides that when an application for renewal of licence is made from thirty days after the date of its expiry the driving licence shall be

renewed with effect from the date of its renewal, it was held that the insurer was right in its stand that the driver was not duly licenced on the date

of the accident and therefore their liability was excluded. In all the three decisions viz., Kusum Rai''s case, Ishwar Chandra''s case and Ram Babu

Tiwari''s case, in such circumstances, the insurer was directed to make payment at first instance and then to recover the amount from the driver and

the owner. In the light of the decisions of the Apex Court in Kusum Rai''s case, Ishwar Chandra''s case and Ram Babu Tiwari''s case, it is evident

that even in a case where the driver possesses a driving licence but not an effective driving licence as relates the class of vehicle involved in the

accident will be a good ground of defence for the insurer to avoid the statutory liability as against the insured-owner though it will have to satisfy the

award and pay the awarded amount in terms of the award to the claimant initially and then recover the amount paid from the insured-owner. Thus,

in view of the decisions in Kusum Rai''s case, Ishwar Chandra''s case and Ram Babu Tiwari''s case, it is evident that the mere possession of a valid

driving licence would not save the situation of liability to pay the compensation awarded to the claimant as far as the insured-owner is concerned

unless he succeeds in establishing that he had taken due care to see that the driver had an appropriate licence to drive the vehicle. It would also

reveal that even in a case where the driver was having a licence but no licence to drive the class of vehicle to which the vehicle in question belongs

to, the owner of the vehicle or the person in charge of the vehicle could not evade the said liability. As held by the Apex Court in the aforesaid

cases, section 3 of the M.V.Act casts an obligation on a driver to hold an effective driving licence for the type of the vehicle which he intends to

drive. A perusal of section 10 of the M.V. Act enables the Central Government to prescribe forms of driving licence for various categories of

vehicles mentioned in sub-section 2 thereof. They are :-

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) road-roller;

(j) motor vehicle of a specified description.

The driver may obtain a licence for one or more of them and needless to say that on obtaining licence to drive a particular type of vehicle

mentioned in (a) to (j) after initially obtaining one or more among them the factum of his obtaining any other licence to drive any other type of

vehicle would be added to his originally issued driving licence in terms of section 11 of the M.V. Act. Section 2 of the Act among various

definitions carry definitions of various categories of vehicles such as goods carriage, heavy goods vehicle, heavy passenger motor vehicle, invalid

carriage, light motor vehicle, maxi-cab, medium goods vehicle, medium passenger motor vehicle, motor-cab, motorcycle, omnibus, private service

vehicle, semi-trailer, tourist vehicle, tractor, trailer and transport vehicle. The latter limb of section 3 of the M.V. Act makes it clear that unless a

person holds an effective driving licence specifically authorising him to drive a transport he shall drive a transport vehicle. In other words, if he was

actually possessing a licence to drive a transport vehicle, on obtaining such authorisation, he will have to get it added in accordance with law in his

driving licence in terms of section 11 of the M.V. Act. In that context, section 4 also assumes relevance. It would reveal that as regards the age

barrier for driving a motor vehicle in any public place, it provides that no person under the age of eighteen years shall drive a motor vehicle in any

public place. True that its proviso carries an exemption in case a motor cycle with engine capacity not exceeding 50 cc may be driven in a public

place by a person after attaining the age of sixteen years. But at the same time, the age barrier for the purpose of driving a transport vehicle in

public place going by section 4(2) of the M.V. Act is twenty years and going by the same, no person under the age of twenty years shall drive a

transport vehicle in any public place. In the case on hand, the offending vehicle was a tanker lorry bearing Reg.No.KL 10-E-4831. The term

transport vehicle is defined under section 2(47) and it reads thus :-

transport vehicle"" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

10. In this case, there is nothing on record to show that the first respondent before the Tribunal, the lorry driver, was having a licence to drive such

a transport vehicle. In that context, it is also relevant to refer to paragraphs 95 to 98 of Swaran Singh''s case. Evidently in paragraph 95, an

unreported decision Civil Appeal No.163 of 1996 decided on 6.8.2002 was referred to. In that case, owing to the absence of valid driving licence

''pay and recovery'' was ordered. After referring to the said decision, in paragraph 96 in Swaran Singh''s case, the Apex Court held thus :-

96. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first

instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

(emphasis added)

Paragraphs 97 and 98 in Swaran Singh''s case also assumes relevance and they read thus :-

97. Apart from the reasons stated hereinbefore the doctrine of stare decisis persuades us not to deviate from the said principle.

98. It is well settled rule of law and should not ordinarily be deviated from. (See Bengal Immunity Co. Ltd. v. State of Bihar ((1955) 2 SCR

603 at 630-632), Keshav Mills Co. Ltd. v. Commissioner of Income Tax, Bombay North ((1965) 2 SCR 908 at 921-922), Union of

India v. Raghubir Singh ((1989) 3 SCR 316 at 323, 327, 334), Gannon Dunkerley and Co. v. State of Rajasthan ((1993) 1 SCC 364),

Belgaum Gardeners Co-op. Production Supply and Sale Society Ltd. v. State of Karnataka (1993 Supp. (1) SCC 96) and

Hanumantappa Krishnappa Mantur v. State of Karnataka (1992 Supp. (2) SCC 213)).

11. It is to be noted that it is after such conclusion as extracted above, that in paragraph 102(vii), the Hon''ble Apex Court found that the question

whether the owner had taken reasonable care to find out as to whether the driving licence produced by the driver does not fulfil the requirements of

law or would not have to be determined in each case. In the light of the aforesaid discussions, it is evident that in a case where there was no driving

licence or in a case where the driver possesses a driving licence but not the licence authorising him to drive the particular class of vehicle involved in

the accident or if there is no valid driving licence, the insurance company is liable only to satisfy the decree as against the third party at the first

instance and at the same time, it will be having the right to recover the amount awarded and paid in terms of the award in question to the claimant,

from the owner of the vehicle. To escape from the said statutory liability under section 5 of the M.V.Act, necessarily, the insured-owner has to

establish that he had taken adequate care to ensure that the driver was having a valid driving licence.

12. Now, we will consider whether the insured-owner can be said to have discharged the statutory liability under section 5 of the M.V. Act, in the

case on hand. Obviously, in this case, apart from making a bald statement to the effect that according to his knowledge, the first respondent

obtained licence from Maharashtra and further stating that the first respondent is a native of Vengara, which is a place in Malappuram District of

Kerala State, the appellant had not stated any thing regarding the question whether the driver was having a valid driving licence to drive the class of

vehicle to which a tanker lorry belongs, at the time of the accident. There can be no doubt with respect to the fact that it is a "heavy goods vehicle"

belonging to the category of transport vehicle. In the original proceedings as also in the proceedings pursuant to the remand that culminated in the

revised award despite issuing notice, the driver of the vehicle in question had not entered appearance and resisted the case. In fact, he had not

challenged the judgment and award in OP(MV).571/1997 passed on 30.6.2003 at the first instance as also the presently impugned judgment.

When the vehicle involved is a tanker lorry, the insured-owner cannot be permitted to take things so lightly and then escape the liability by evasive

answers as mentioned above that too, by simply saying that according to his knowledge the driver was having a licence obtained from Maharashtra

especially when it is admitted that the driver is a Keralite residing at Vengara in Malappuram District. The manner in which he deposed during his

examination as aforesaid would reveal that he had not taken adequate care to see that the driver was possessing an appropriate licence to drive his

vehicle which is a tanker lorry. In such circumstances, it can only be said that the appellant had not discharged his statutory liability to see that the

driver of the vehicle was having appropriate licence to drive the vehicle. In such circumstances, it can only be inferred that the first respondent was

not having a licence to drive the tanker lorry at the relevant point of time. At any rate, the evidence on record would undoubtedly suggest that the

appellant had failed to discharge his statutory liability under section 5 of the M.V.Act to verify whether the first respondent was having a valid

driving licence to drive a tanker lorry at the relevant point of time, even at any point of time. The Tribunal had already found that the accident in

question was caused due to the negligence of the driver of the tanker lorry, the first respondent and it is not at all disputed before us. That finding is

not at all disputed by the first respondent and he remained ex parte in all related proceedings. The second respondent, the appellant could not

establish the contra position. It is to be noted that on the earlier occasion, before this Court the appellant herein submitted (as noted by the Tribunal

in paragraph 12 of the impugned judgment) that he might be able to trace out the driver and get the licence produced through him before the

Tribunal, in case of grant of further opportunity. Therefore, the appellant was having the burden, at least, to establish that he had satisfactorily

discharged the statutory liability under section 5 of the M.V. Act. In the contextual situation, the following recital in paragraph 12 of the impugned

judgment assumes relevance. It reads thus :-

As per the order in I.A.No.1031/98 dated 14.07.1998 the first respondent was directed to produce his driving licence before this court. The first

respondent did not claim that notice. Therefore that application was closed drawing adverse inference. Even though the second respondent has

stated that the first respondent was having valid and effective driving licence, he has not produced the same. Answers given by RW1 during cross

examination reveal that he has not made any effective enquiry to ascertain the whereabouts the first respondent. The evasive answers given by

RW1 during cross examination probabilise that at the time of the incident the first respondent was not having valid and effective driving licence to

drive the vehicle involved in the incident.

13. When a person engages another to drive a vehicle like a tanker lorry he cannot simply be heard to say that to his knowledge that such person

obtained licence from another State. It is nothing but an evasive answer capable to drawing the conclusion that the appellant had not taken

adequate care to see that the driver had an appropriate licence to drive the vehicle which is a tanker lorry. In such circumstances, we have no

hesitation to hold that the mere fact that he got himself examined before the Tribunal and deposed as above, is not a reason to hold that he had

discharged the liability under section 5 of the M.V. Act successfully. As noted hereinbefore, in Swaran Singh''s case, the Hon''ble Apex Court held

that the question whether the insured-owner had taken adequate care in that regard could be determined in each case. If such an endeavour is not

having any impact, no doubt, the Hon''ble Apex Court would not have made such a finding.

14. In the contextual situation, it is also relevant to refer to a decision of the Hon''ble Apex Court in Oriental Insurance Company v.

Zaharulnisha and Ors. [AIR 2008 SC 2218]. In that case, one person met with an accident with two wheeler scooter and died. Claim petition

was filed before the Tribunal and compensation was granted thereunder. The driver was holding licence for driving heavy motor cycle. But no

licence to drive the vehicle concerned which involved in the accident. Violation of section 10(2) of the M.V Act was raised as a defence to avoid

liability. It was held by the Apex Court that insurance company could not be held liable to pay the amount of compensation to the claimants for the

cause of death which had occurred due to rash and negligent driving and further held that the appellant, insurance company though not liable to pay

the amount of compensation shall satisfy the award first and thereafter, they could recover the same with interest from the owner of the vehicle. In

this case also evidently, the fact that the accident occurred solely due to the negligence of the driver was upheld at the first instance itself when

appeal was preferred against the judgment and award dated 30.6.2003 as per judgment in MACA No.235 of 2004. In such circumstances, the

fact that the accident occurred solely due to the negligence of the driver cannot be disputed and as stated earlier, the remand was only a closed

remand whereby the question of liability alone was directed to be considered afresh. For the foregoing reasons, the insurer is liable to succeed in

his contention.

In the light of the decisions referred (supra) and the factual matrix obtained in the case, the appellant cannot be heard to say that the liability to

indemnify him should be fastened on the insurer. As noticed hereinbefore, earlier, the appellant himself approached this Court by filing M.A.C.A.

No. 235/2004 and that was disposed of as per judgment dated 6.4.2011. While making it clear that the quantum of the award passed by the

Tribunal should not be re-opened or reconsidered, this Court clearly laid down the scope of consideration of the matter on remand and remanded

the matter solely for the purpose of reconsideration regarding the liability to pay the compensation. In the light of the evidence on record and the

position of law referred hereinbefore, we do not find any reason to hold that the Tribunal had arrived at a finding which is against the weight of

evidence to make it perverse or palpably erroneous warranting appellate interference. In short, according to us, ''pay and recovery'' ordered also

invites no interference. The upshot of the discussions is that this appeal is liable to fail and accordingly, it is dismissed. The parties shall bear their

respective costs.