

(2018) 01 KAR CK 0153
In the Karnataka High Court
Case No : 47962 of 2014 (GM-KEB)

ANNAPURNA

APPELLANT

Vs

MANAGING DIRECTOR

RESPONDENT

Date of Decision : 08-01-2018

Acts Referred:

Constitution of India, Article 226, Article 142 - Power of High Courts to Issue certain writs - Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc <a href=

Citation : (2018) 01 KAR CK 0153

Hon'ble Judges : Vineet Kothari

Bench : Single Bench

Advocate : RAMESH K.R., G.C. SHANMUKHA

Final Decision : Disposed off

Judgement

1. The present writ petition is filed by the petitioners with the following prayers:

(a) Issue a writ of certiorari or any other appropriate writ or order or direction, quashing the impugned Official Memorandum dated

31.07.2009 bearing No. ""VERNACULAR MATTER OMITTED"" 2108 11 at Annexure-D, issued by the 2nd - Respondent, in so

far as it relates to quantum of compensation granted to the petitioners.

(b) Issue a writ of mandamus or any other appropriate writ or order or direction directing the respondent authorities to pay a sum of

Rs.10,00,000/- as compensation to the petitioners on account of the death of late K.S.Maheshwarappa in an electrocution accident;

and

(c) Grant such other relief or reliefs as this Hon"ble Court deems fit in the facts

and circumstance of this case.

2. The controversy involved in the present case is squarely covered by a decision rendered by this Court in the case of Smt.Lakshmiddevamma vs.

Managing Director, BESCOM decided on 11.12.2017 in W.P.No.52510/2014 in which this Court has held as follows:

1. The learned counsel for the Respondent- BESCOM Mr.H.V.Devaraju submitted that the Respondent-Authorities have

considered the case of the petitioner in terms of the interim order passed by this Court on 08.11.2017 and in terms of Circular dated

09.05.2013, the competent Authority has passed the additional order to award additional compensation of Rs.One lakh in favour of

the petitioner Smt.Lakshmiddevamma, whose husband has unfortunately died on account of fatal accident due to electrocution on

03.11.2008 .

2. The Cheque No.255160 dated 08.12.2017 for a sum of Rs.One lakh has been handed over to the petitioner in the presence of

the respective counsels in the Court today and the petitioner herself has also signed the order sheet in receipt thereof.

3. In view of this, the present writ petition is disposed of as infructuous. If the petitioner still wants more compensation even despite

this additional compensation given, she is at liberty to approach the Civil Court by way of civil suit as already permitted in such other

case in W.P.No.54502-506/2015 & connected matters decided on 16.10.2017 (Sri.P.Malappa & Others vs. BESCOM &

Others), in which this Court held as under:-

11. In the circumstances narrated above, this Court is of the considered opinion that it is not appropriate for this Court to exercise

writ jurisdiction under Article 226 of the Constitution of India, for not only determining the question of facts like the cause of accident,

negligence of Electricity Distribution Companies or not, but on the other hand also, which criteria is to be adopted for determining the

amount of compensation is also a material question.

12. The decisions cited at the bar do not appear to have referred to the provisions of the Fatal Accidents Act, 1855, which actually

covers the field of such cases of accidents and cause of death, where on the

basis of tortious liability can be fixed on the

Respondents-Electricity Distribution Companies.

13. The preamble of the said Act is that, it is an Act to provide compensation to families for loss occasioned by the death of a person

caused by actionable wrong. It is a 4 Sections Act and including its preamble provides for the compensation where no action or suit

is maintainable in any Court against a person who by his wrongful act, neglect or default, may have caused the death of another

person. The relevant provisions of the said Act with its preamble are quoted below for ready reference:-

THE FATAL ACCIDENTS ACT, 1855

An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.

Preamble .- WHEREAS no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or

default, may have caused the death of another person, and it is often- times right and expedient that the wrong- doer in such case

should be answerable in damages for the injury so caused by him. It is enacted as follows:-

1. Short title and extent.- (1) This Act may be called the Fatal Accidents Act, 1855 .

(2) It extends to the whole of India except the State of Jammu and Kashmir].

[1A.] Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.-Whenever the death

of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not

ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been

liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured and

although the death shall have been caused under such circumstances as amount in law to felony or other crime.

[***] Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person and shall be

brought by and in the name of the executor, administrator or representative of

the person deceased;

and in every such action, the court may give such damages as it may think proportioned to the loss resulting from such death to the

parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all

costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties, or

any of them, in such shares as the court by its judgment or decree shall direct.

COMMENTS

(i) Under section 1A of the Fatal Accidents Act, 1855, compensation awarded for loss of dependency, worked out by applying the

principle of multiplier is a part of damages ""proportioned to the loss resulting from the death""; Fizabai v. Nemi Chand, AIR 1993 MP

79.

(ii) Section 1A of the Fatal Accidents Act, 1855 read with section 110B of the Motor Vehicles Act, 1939 (Now see Motor Vehicles

Act, 1998), makes it obligatory on the tribunal to award ""just compensation"" which differs from case to case; Sardar Ishwar Singh v.

Himachal Puri, AIR 1990 MP 282.

(iii) The maintainability of the claim for damages on account of the agony suffered by wife cannot be claimed by the plaintiff in a

representative capacity. As husband he can claim damages either under the Fatal Accidents Act or under, the Motor Vehicles Act;

M.L. Singhal v. Dr. Pradeep Mathur, AIR 1996 Del. 261.

2. Not more than one suit to be brought. - Provided always that not more than one action or suit shall be brought for, and in respect

of the same subject-matter of complaint 1 [***]:

Claim for loss to estate may be added: -

Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and

recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when

recovered, shall be deemed part of the assets of the estate of the deceased.

3. Plaintiff shall deliver particulars, etc.- The plaint in any such action or suit shall

give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

4. Interpretation- clause.- The following words and expressions are intended to have the meanings hereby assigned to them

respectively, so far as such meanings are not excluded by the context or by the nature of the subject- matter; that is to say [****] the

word"" person"" shall apply to bodies politic and corporate; and the word ""parent"" shall include father and mother and grand- father

and grand- mother; and the word ""child"" shall include son and daughter and grand- son and grand- daughter and step- son and step- daughter"".

14. In view of this, this Court is of the considered opinion that it would be not appropriate to invoke the writ jurisdiction in such cases

and arbitrarily determine the compensation without any yardsticks or parameters.

15. The judgment of the Hon"ble Supreme Court upholding the Division Bench judgment of this Court in the case of Raman vs. Uttar

Haryana Bijli Vitran Nigam Ltd., & Others was rendered in exercise of Article 142 of the Constitution of India, which power this

Court does not have and therefore, the said decision does not decide the question, whether the writ petition in such case is

maintainable or not.

16. In the circumstances narrated above, this Court holds that these writ petitions are not maintainable under Article 226 of the

Constitution of India and the claimants/petitioners should approach the Civil Courts by way of civil suits, where all these question of

facts can be established with relevant evidence proved in accordance with law. The delay in filing such suits, even now, however

deserves to be condoned, since the petitioners availed a remedy which this Court at this stage is holding to be misconceived and not

maintainable.

17. Therefore, the petitions are disposed of with a liberty and direction to the petitioners to file appropriate civil suits in competent

civil courts and if such civil suits are filed within a period of 60 days from today, the Courts below, where such suits are filed are

directed not to raise an objection of limitation in such cases but proceed to decide the suits on merits in accordance with law. No

costs.

The writ petition is accordingly disposed of. No order as to costs"".

Accordingly, the present writ petition is disposed of in the same terms. No costs.