
(1995) 05 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 5309 of 1990

B. Rajalakshmy

APPELLANT

Vs

K. Arumughom and Others

RESPONDENT

Date of Decision : 30-05-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (1996) 1 ACC 510 : (1995) ACJ 903

Hon'ble Judges : V.V. Kamat, J

Bench : Single Bench

Advocate : K.K. Mohammed Ravuf, for the Appellant; D. Anil Kumar and P.N.K. Achan (Sr. Advocate), for the Respondent

Final Decision : Allowed

Judgement

V.V. Kamat, J.—In regard to a collision of Jayanti Janata Express and a motor bus on 9.5.1979 a petition for compensation (O.P. (MV) No. 1332 of 1980) was filed by the present petitioners husband before the Motor Accidents Claims Tribunal, Boat jetty, Ernakulam (respondent No. 5). The Motor Accidents Claims Tribunal passed an award on 28.2.1986. While examining the case with regard to the liability of compensation the tribunal has made the following observations: The Petitioner and his wife are the legal heirs of the deceased boy. But the petition is filed only by the father. The wife of the petitioner who was examined as P.W. 2 is also entitled to half of the amount. There is no averment in the petition that the petition is filed for and on behalf of the wife also. The petitioner is therefore entitled only to half of the amount awarded viz. Rs. 17,500/-.

Therefore the tribunal finding that there is no averment in the petition that the petition is filed for and on behalf, of the wife also awarded only half of the amount of Rs. 17,500/- to the petitioner's husband. The tribunal held that an amount of Rs 35,000/- would be adequate compensation for death of the child. The victim was the son of the present petitioner and her husband and the husband had approached the tribunal. The tribunal made the above observations

in this context clearly holding that both the husband and wife are the legal heirs and are entitled to compensation. The present petitioner preferred an application (I.A. No. 1958/89) praying for payment of compensation of Rs. 17,500/- with interest and cost praying alternatively to implead her in the Original Petition.

2. By the impugned order dated 28.1.1990 the petitioner's application was rejected. While rejecting the application the tribunal observed that the father of the deceased alone moved application and that was the reason why the applicant was not awarded the amount determined because there is no such award of payment although there are observations.

3. The tribunal has also made a reference to the appeal (M.F.A. 705/85) preferred by the Insurance Company, the present respondent No. 2. The decision of this Court is reported in *United India Insurance Co. Ltd. v. Premakumaran & others* (1987 (2) KLT 817). It is held that as far as the Insurance Company is concerned the liability of the said insurance company would be limited to Rs. 5,000/- for each claimant by virtue of the policy issued by them. It is also further ordered that to that extent the claimants would be entitled to withdraw the amount deposited in the tribunal. It is needless to state and clarify that this decision, as regards the liability of the respondent No. 2 in this petition the Insurance Company would govern the situation and to that extent in any event the insurance company would be governed by the said decision as regards the liability to the extent of Rs. 5,000/- only.

4. It was strenuously urged by the learned counsel for the respondent No. 1 as well as for respondent No. 3 that the present petitioner approached the tribunal well nigh after a period of three years although the present petitioner was examined as a witness in the award proceedings. Pointing out this aspect learned counsel not only supported the impugned order of the tribunal by this independent and separate reason but also contended that this Court should be slow to consider the question of exercise of extra ordinary jurisdiction. Learned counsel contended that the fact that the petitioner was a witness in the award proceedings would have to be meaningfully appreciated. It is contended that she could have taken steps to be added as a party to the award proceedings if not on her own, atleast through her husband. That was not done and added to it she approached the tribunal also in a belated manner. Learned counsel also urged that the Court should be slow in exercise of this supervisory jurisdiction not only on the ground of delay but also with regard to the facets of conduct displayed on record. Learned counsel placed reliance on the decision in support of this propositions. However, in view of the clear cut position there cannot be dispute with regard to the submission that this Court had to be more than slow in interference, the authorities cited require no reference in this judgment.

5. The proceedings before the accident tribunal have to be appreciated not with an approach of the law of limitation. The constitution and establishment of the accident claims tribunal is essentially for quicker and meaningful administration of justice and it is for this reason that the tribunal approaches the question from

the point of view of justice.

6. To consider the factual matrix before me it would be necessary to appreciate as to what is required to be decided in this matter. The facts and the findings in regard there to are beyond the pale of dispute between the parties. A young S.S.C student was killed, in a collision leaving behind him his aged parents. The father approaches the tribunal. The tribunal has found that the adequate compensation would be Rs. 35,000/-. There is no dispute about this finding in the present petition. The tribunal has also recorded, although not specifically necessary, that the parents of the victim are the legal heirs. It is only because the petition for compensation was filed by the father and there being no averment in the petition that the petition filed for and on behalf of the wife also the consequential and inevitable award is not passed in favour of the present petitioner. It stares in the face of the proceedings that the tribunal is also more than careful in recording a finding that the wife of a petitioner who was examined as P.W.2 is also entitled to half of this amount. There is also no dispute that half of this amount would be a liquidated amount of Rs. 17,500/-. There are nothing to decide and the petitioner was unceremoniously thrown out of the Court on technical grounds and the said order is being supported again on technical grounds of delay in a situation where the entire remedy is for speedy and effective justice.

7. It will have to be observed that the tribunal has unceremoniously rejected the application when the application contained an alternative prayer of permitting the present petitioner to be impleaded in the main petition. Be that as it may. What has been stated hereinbefore would show that in fact there is nothing to decide but what is required to be done is to execute what has already been decided in favour of the present petitioner. The steps that are taken by the parties in the proceedings before the tribunal would require to be considered as steps in the ultimate process of justice and the record stares in the face that justice is already recorded in favour of the present petitioner. Even the provisions of Section 166 of the Motor Vehicles Act which provides for application for compensation, if considered in the proper spirit it would be seen that such application can be made not necessarily by all the legal representatives but by any of the representatives. In my judgment on the present facts that are crystal clear on record even the application (I.A. 1958/89) could have been considered as an application for the purpose. Such situation are implicit in a deeming way in the proceedings that are really provided for speedy and prompt justice. Even from the award when the facts are clear that the present petitioner and her husband are the two heirs entitled to compensation on equal footing, the tribunal would not have been blameworthy if it had awarded compensation proceeding to act in a deeming way when the facts are on record in a clear situation, proceeding to act that as the mother was also the legal heir and she having been examined as a witness could be considered to be entitled to compensation in an application to which she was not a party. This was especially when she was examined as a witness. It would be necessary to project ultimately to meet the

situation when certain factual aspects are more than clear. In this matter on the basis of the findings which are not under challenge in any way in this petition a justifiable satisfaction could have been spelt to had the tribunal participated a little to help the parties in the interest of patent justice in favour and it is necessary that proper situations are required to be dealt with under the demanding circumstances. Atleast when the present petitioner approached the tribunal by a separate application the tribunal could have got over the traditional approach that the husband did not take steps or the present petitioner did not step in on her own. This becomes really necessary and demanding when the situation is ordinarily more than clear.

8. The submissions as regards delay fell into insignificance in their application because in fact there is nothing to be decided and what is already decided is only required to be implemented or executed under the circumstances. In my judgment such a situation will not be covered by the notions of the fetters of the limitation. If any situation requires interference and a probe by this court, though little belatedly there cannot be any better factual matrix calling for such interference and administration of consequential justice. Thus the petition succeeds. The petitioner is entitled to recover to an amount of Rs. 17,500/- with appropriate interest. It is made clear that the liability of the Insurance Company (respondent No. 2) would be as finalised by the decision cited above (United India Insurance Co, Ltd. v. Premakumaran and other - 1987 (2) KLT 817). The liability of this amount of Rs. 17,500/- would be on respondent Nos. 1 to 3 as stated above. As regard the question of interest learned counsel for the respondent No. 1 and the Insurance Company also submitted that the interest should not be awarded in view of the fact as seen from above that the petitioner will have to be blamed and dealt with accordingly. It is true that the petitioner has not approached but as observed above her rights are finally crystallised in the award itself. Although it is true that the petitioner could have been better appreciated had she taken steps but at the same time, for the reasons recorded above nothing was to be decided in the matter. Her rights are crystallised and her demands are also finalised. The situation of the petitioner's husband cannot be considered to be in any way different with regard to the entitlement of interest on the factual matrix. Learned counsel finally submitted for the concerned respondents that the application was made in the year 1989 and therefore the award of interest could be considered at the most from that date. It is not possible to accept this submission. I have observed above that the tribunal in the award itself could have considered the question. Taking into consideration all these aspects I order that the petitioner would be entitled to the interest at the rate of 6% per annum from 28.8.1980 as ordered in favour of her husband in the award. Accordingly the petition succeeds as above. In the circumstances there shall be no order as to costs.