
(2001) 09 KAR CK 0004
In the Karnataka High Court

Baburao Sataba Manabutakar, Deceased by his L.Rs.	APPELLANT
Vs	
Doreswamy and Others	RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 166

Citation : (2002) 3 ACC 83 : (2002) 4 KCCR 290 SN

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Judgement

Kumar Rajaratnam, J.—The legal representatives of the deceased Baburao have preferred this appeal against the order of the Tribunal in negating their claim for compensation.

2. The deceased Baburao met with an accident due to the rash and negligent driving of a tanker bearing No. HYW 1333 and sustained certain injuries on 7.2.1991.

3. The said deceased Baburao filed an application u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) before the Additional M.A.C.T. at Hubli in M.V.C. No. 497/1995. Unfortunately he died on 7.7.1991 five months after the accident during the pendency of the claim petition.

4. The present appellants, who are the legal heirs of the deceased Baburao filed I.A. II before the Tribunal to bring them on record. The Tribunal permitted them to come on record to prosecute the claim petition filed by the deceased Baburao to the extent that it related to the loss to the estate of the deceased.

5. The claim petition was resisted on the ground that the death of the deceased on 7.7.1991 was not due to the injuries sustained in the accident on 7.2.1991 and accordingly sought for dismissal of the claim petition.

6. The Tribunal after considering the evidence came to the conclusion as follows:

13. In my opinion the legal heirs of the deceased have miserably failed to prove

that prop (sic) of their family who had sustained injuries in the accident had later on died only on account of the injuries sustained in the accident. There is some positive evidence to believe that he had died on account of the reasons other than the injuries sustained in the accident. Hence, their claim is not maintainable even to the extent of loss to the estate in view of the ruling cited above. As such the entire claim has to be failed.

7. The Tribunal relied on the law laid down by the Full Bench of this Court in Kannamma Vs. Deputy General Manager, . While dismissing the claim petition the Tribunal held that the death of the deceased did not occur as a result of the bodily injury sustained in the accident.

8. The Full Bench of this Court in Kannamma's case held as follows:

12. In the result, the Full Bench answers the question referred for its decision by the Division Bench, thus:

(i) A claim petition presented u/s 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc. (loss to estate) cannot, on such person's death occurring not as a result or consequence of bodily injuries sustained from a motor accident, be prosecuted by his/her legal representatives; but

(")...

9. The Division Bench of this Court in S. Muniyappa Vs. H.L. Narasimhaiah and Others, , also had occasion to examine this aspect of law and held that a suit for damages for personal injury does not survive the death of the injured if the deceased dies on account of reasons other than the injuries sustained in the accident.

10. The law laid down by the Division Bench judgment in Muniyappa's case was approved by the Full Bench judgment of this Court in Kannamma's case. The Full Bench of this Court in Kannamma's case dealt with Section 306 of the Indian Succession Act and Section 110 of the Motor Vehicles Act, 1939. It would be appropriate at this stage to make a reference to Section 306 of the Indian Succession Act insofar as it relates to an action by the legal representatives of the deceased where death was not as a result of the accident. The relevant portion of Section 306 of the Indian Succession Act reads as follows:

306. All demands whatsoever and all rights to prosecute any action or special proceeding existing in favour of.... a person at the time of his decease, survive to his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party....

Illustrations:

(i) A collision takes place on a railway in consequence of some neglect or default

of an official, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(ii) ...

(Emphasis supplied)

11. The relevant portion of Section 110 of the Motor Vehicles Act reads as follows:

110-A (I)(a). by a person who has sustained the injury; or

(aa) by the owner of the property; or

(b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

(Emphasis supplied)

12. Interpreting Section 306 of the Indian Succession Act and Sections 110 and 110A of the Motor Vehicles Act the Full Bench in Kannamma's case held that a right to prosecute an action for personal injuries not causing the death of the party does not survive to his legal heirs.

13. What is not to be forgotten was that the Division Bench in Muniyappa's case made certain recommendations for the amendment of Section 306 of the Indian Succession Act.

14. It is a matter of great concern to this Court that inspire of the matter being brought to the notice of the State Government and to the Union of India there has been no effort made by bringing in necessary legislation to redress the grievances of the legal heirs of a person who suffered grievous injuries and died subsequently without there being any direct nexus between the injury and the death of the deceased.. The Division Bench of this Court in Muniyappa's case held as follows:

23. It is no doubt true that the mischief is partially annulled by Section 120 of the Motor Vehicles Act. The Legislature has to still further amend the law by specifically amending Section 306 of the Indian Succession Act enabling the cause of action in the case of personal injuries to survive by dropping in the section the exception with regard to action for damages for personal injuries. That is the desideratum of the day in view of the fact that thousands of persons are killed and lakhs of them are maimed in motor accidents every year in the country.

24. The appeal, for the foregoing reasons, stands dismissed as the cause of action does not survive the death of the injured claimant.

25. Forward a copy of this judgment to the Chairman, Indian Law Commission, the Secretary for Law & Parliamentary Affairs, Government of Karnataka, and the Secretary for Law and Parliamentary Affairs, Government of India, New Delhi, for kind perusal and for suggesting the necessary amendment in law.

(Emphasis supplied).

15. A reference has also been made before me to Section 166 of the Motor Vehicles Act, 1988 by the learned Counsel for the Insurance Company (Act No. 59 of 1988). Act No. 59/1988 was introduced on 14th of October, 1988 to consolidate and amend the law relating to motor vehicles. Even in the present Motor Vehicles Act, 1988 it appears that there is a bar u/s 166 for the legal heirs to claim damages for compensation on account of the injury sustained by the deceased where death has not resulted from the accident. It may be necessary to quote only the relevant portion of Section 166 insofar as it relates to compensation by the legal heirs, which reads as follows:

166. Application for compensation.--(1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(Emphasis supplied)

16. Thus it is clear that a claim petition presented u/s 166 of the Motor Vehicles Act, 1988 by the person sustaining bodily injuries in a motor accident claiming for compensation cannot on such person's death occurring not as a result of the bodily injury sustained from the motor accident be prosecuted by the legal heirs.

17. It has to be noted with anguish that if a person suffers grievous injury and does not die as a result of the injuries but dies out of natural causes such as a heart attack or a stroke, the legal heirs would not be entitled to claim for damages under the provisions of the Motor Vehicles Act, 1988 because of the bar u/s 306 of the Indian Succession Act.

18. Realising this lacuna which affects many legal heirs from getting justice the

State of Kerala has found it expedient to introduce legislation to unify and amend laws relating to survival of cause of action in respect of torts by amending Section 306 of the Indian Succession Act, 1925 (Central Act 39/1925) in so far it relates to right of action in torts.

19. The Kerala Torts (Miscellaneous Provisions) Act, 1977 (Act No. 8 of 1977) repeals Section 306 of the Indian Succession Act insofar as it relates to right of action in torts. Section 9(3) reads as follows:

3. Section 306 of the Indian Succession Act, 1925 (Central Act 39 of 1925) so far as it relates to right of action in torts, shall cease to apply to the State of Kerala. (Emphasis supplied)

The amendment to Section 306 of the Indian Succession Act received Presidential assent as far back on 17th February, 1977. In the Kerala Statute (Act No. 8/1977) the damages claimed for the benefit of the estate by the legal heirs, however, shall not include exemplary damages and in the case of breach of promise of marriage it shall be limited to such damage to the estate of that person as flows from the breach of promise to marry and where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death except a sum in respect of funeral expenses may be included.

20. From this it appears to me that the Kerala Legislation has cured this grave injustice that was being caused by the inability of the legal heirs to claim damages with respect to the injuries sustained by the deceased.

21. The Full Bench of this Court in Kannamma's case goes to the extreme by stating that no claim for damages can be made at all by the legal heirs with respect to the injuries sustained by the deceased. In other words, the Full Bench has concluded that unless there is a nexus between the injury and the cause of death the claim petition is liable to be dismissed in limine.

22. It would be worth reiterating what the Full Bench said on this question. The Full Bench pronounced at paragraph 12 as follows:

12. In the result, the Full Bench answers the question referred for its decision by the Division Bench, thus:

(i) A claim petition presented u/s 110A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc. (loss to estate) cannot, on such person's death occurring not as a result or consequence of bodily injuries sustained from a motor accident, be prosecuted by his/her legal representatives; but

(ii) A claim petition presented u/s 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for

personal injuries as also for compensation towards expenses, loss of income, etc., (loss of estate) can, on such person's death occurring as a result or consequence of bodily injuries sustained in the motor accident, be prosecuted by his/her legal representatives only insofar as the claim for compensation in that claim petition relates to loss to estate of the deceased person due to bodily injuries sustained in the motor accident.

(Emphasis supplied)

23. By this it is to be understood that if the death does not occur as a result of consequence of bodily injuries sustained in the motor accident the legal heirs cannot claim compensation. However, the legal heirs can claim compensation u/s 119 of the Motor Vehicles Act for the death of the deceased, if the death occurs as a result or consequence of the bodily injuries sustained in the motor accident.

24. The Supreme Court has interpreted the provisions of the Motor Vehicles Act as a benevolent legislation and has held that compensation can be on the basis of general principles of common law of loss and gain and the compensation must be just and equitable. In *Helen C. Rebello v. Maharashtra State Road Transport Corporation 2* (1998) ACC 512 (SC) : AIR SC 3191, the Supreme Court held that the provisions of the 1939 Act are clearly a beneficial legislation, hence should be interpreted in a way which confers benefit and not which usurp its benefit.

25. The Supreme Court in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, , has held that new situations and new dangers require new strategies and new remedies. At paragraph 9 the Supreme Court held as follows:

Clauses (b) and (c) of Sub-section (1) of Section 110-A of the Act provide that an application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorised by all or any of the legal representatives of the deceased. The proviso to Sub-section (1) of Section 110-A provides that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. The expression "legal representative" has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines "legal representative" as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in

law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of Sub-section (1) of Section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and Clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it. The proviso to Sub-section (1) of Section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf for the benefit of all the legal representatives of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent, and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. Both the person or persons who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in Section 110-A of the Act. This section in a way is a substitute to the extent indicated above for the provisions of Section 1A of the Fatal Accidents Act, 1855 which provides that in every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased". While the Fatal Accidents Act, 1855 provides that such suit shall be for the benefit of the wife, husband, parent and child of the deceased. Section 110-AW of the Act says that the application shall be made on behalf of or for the benefit of the legal representatives of the deceased. A legal representative in a given case need not necessarily be a wife, husband, parent and child. It is further seen from Section 110-B of the Act that the Claims Tribunal is authorised to 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. This provision takes the place of the third paragraph of Section 1-A of the Fatal Accidents Act, 1855 which provides that 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. Persons for whose benefit such an application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with by Section 110-A and Section 110-B of the Act and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act, 1855 insofar as motor vehicles accidents are concerned. These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal

Accidents Act, 1855. New situations and new dangers require new strategies and new remedies.

(Emphasis supplied)

26. From these pronouncements of the Supreme Court it is clear that Courts interpretation of legislation which has a bearing on compensation to victims must be considered by Courts as beneficial legislation and in the words of the Supreme Court "should be interpreted in a way which confers benefit and not which usurp its benefit".

27. In that view of the matter it could be argued that the rule in Kannamma's case may require reconsideration in the light of the pronouncements of the Supreme Court. However, being bound by the Full Bench judgment of this Court in Kannamma's case and it is clear from the pronouncement in Kannamma's case that where death does not occur as a result of bodily injuries, all avenues are barred for the legal heirs to recover the medical expenses, loss of income during the period the deceased was out of employment on account of the injuries or any other compensation that the deceased could have been entitled to, if he was alive.

28. It is exactly to overcome the rigour of Section 306 of the Indian Succession Act, the Division Bench of this Court as far back on 25th August, 1983 pronounced that further amendment is required to Section 306 of the Indian Succession Act to enable the cause of action in case of personal injuries to survive to the deceased by making suitable amendment to Section 306 of the Indian Succession Act [See S. Muniyappa and Ors. v. H.L. Narasimhaiah and Ors. (supra)]. In spite of the recommendation no effort has been made to amend Section 306 of the Indian Succession Act.

29. On the contrary, by Act No. 8 of 1977 the Kerala Torts (Miscellaneous Provisions) Act, 1977 was introduced in the State of Kerala to enable an action to be sustained by the legal representatives of the deceased with respect to injuries sustained by the deceased wherever there is no nexus between the death of the deceased and the injuries sustained by the deceased.

30. It is not known why such a legislation was not brought into effect taking into account the number of road accidents that take place in the State of Karnataka where persons are grievously injured and subsequently died during the pendency of the claim petition out of natural causes. It is a matter of anguish for the Courts to hold that no action can survive to the estate of the deceased even with regard to the medical expenses and other consequential expenses if the deceased dies subsequently not as a result of the accident. This is particularly so that while a deceased dies in the State of Kerala in an accident the legal heirs can prosecute the case under the Motor Vehicles Act and the same is not possible if a person dies in the State of Karnataka.

31. Accordingly for the reasons stated the Court has no alternative except to

dismiss the appeal. Accordingly the appeal is dismissed.

32. In view of the enormous expenses incurred by the deceased during his hospitalisation as a result of the accident, which will have to be ultimately borne by the legal heirs, I direct the State Government to consider granting ex gratia compensation of Rs. 50,000/- to the appellants.

33. It is also necessary to impress upon the State Government to make suitable amendments as was suggested by this Court in Muniyappa's case (cited supra) as far back in the year 1983 by following the example of Kerala.

34. The Registry is directed to send copies of this judgment to the Chief Secretary, Government of Karnataka, to the Law Commission of India and to the Ministry of Law, Justice & Company Affairs for proposing suitable amendment.

This Court places on record the invaluable assistance rendered by Mr. H.G. Ramesh, the learned Counsel for the respondent-2.