(1990) 10 KL CK 0022

In the High Court Of Kerala

Case No : O.P. No. 8684 of 1990-H

C. Chellappan APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 19-10-1990

Acts Referred:
Fatal Accidents Act, 1855 — Section 1A, 2

Citation : (1991) ACJ 170 : (1991) 1 ILR (Ker) 536

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : S. James Vincent, for the Appellant; N.N. Sugunapalan, Sr. Central Government Standing Counsel and Molly Jacob, Government Pleader, for the Respondent

Judgement

K. Sreedharan, J.—When C.M.P. No. 15204 of 1990 came up for orders I heard learned counsel appearing on either side in detail. I am disposing of the original petition.

2. Petitioner is the father of deceased C. Sudhakaran who was working in Kuwait. Sudhakaran died in a motor accident in Kuwait on 22.10.1988. Legal proceedings for claiming compensation on the death of Sudhakaran were conducted by the Indian Embassy in Kuwait at the request of the petitioner and on the basis of the power of attorney executed by him in favour of the Indian Embassy. Indian Embassy realised a sum of 13,000 Kuwait Dinars towards compensation. After deducting the lawyer''s fee of 1,330 Kuwait Dinars the balance was remitted in favour of 3rd respondent, the District Collector, Thiruvanantbapuram, by draft No. 151310224 dated 17.2.1990 drawn on the State Bank of Travancore, M.G. Road Branch, Thiruvananthapuram. Third respondent informed the petitioner that he should produce succession certificate from court for disbursing the amount deposited as per Exh. P-2, viz., Rs. 6,80,040.79. Petitioner appeared before third respondent and produced heir-ship certificate issued by the Tahsildar, Nedumangad. In spite of that third respondent refused to disburse the money.

Hence this original petition.

3. Learned Central Government Standing Counsel submitted that the Indian Embassy could collect the money on account of the death of Sudhakaran, son of the petitioner only on account of the power of attorney executed by the petitioner. The Central Government has no objection in disbursing the money to the petitioner.

4. Learned Government pleader made available to court a statement prepared on behalf of third respondent dated 12.10.1990. The contentions taken therein are to the following effect: Government of Kerala as per Circular No. 40147/p3/80/ Home dated 18.4.1983, G.O.(MS) No. 239/85/Home dated 28.12.1985 and G.O.(MS) No. 68/86/Home dated 5.4.1986 has prescribed the procedure to be followed to enable successors living abroad for getting compensation sent by the Indian Embassy abroad as quickly as possible. According to the above orders the succession certificate from the court of law for the amount to be disbursed or a legal heirship certificate with an indemnity to the effect that money will be refunded to the Government if it is later found that the claimants are not rightful successor supported by one surety solvent to the amount involved or Government servant having a minimum of 12 years'' service for retirement on superannuation is necessary for disbursement of the money. As per the above orders a heirship certificate is necessary for disbursing the amount. In the instant case succession certificate was insisted as the amount involved is more than six lakhs. It was to avoid further controversy in the matter. The certificate produced by the petitioner from the Tahsildar is only an enquiry report and not heirship certificate. A heirship certificate of a deceased person can be issued only after notification in the Gazette. It is further stated that the amount can be released to the petitioner only after observing the formalities by production of succession certificate or heirship certificate. It went on to state that the petitioner is not justified in finding fault with 3rd respondent in not disbursing the amount based on Exh. P-4 (a) certificate.

5. C. Sudhakaran who died in a motor accident in Kuwait on 22.10.1988 is the petitioner''s son. Legal proceedings for claiming compensation on the death of Sudhakaran were conducted by the Indian Embassy in Kuwait as per the power of attorney executed by him in favour of the Embassy. Exh. P-1 is the attested copy of the power of attorney. Four persons who executed the power of attorney are the surviving members of the family of deceased Sudhakaran as per Exh. P-4 (a) certificate issued by the Tahsildar, Nedumangad. On behalf of the said four persons the Indian Embassy in Kuwait initiated proceedings for getting the compensation. As a result of those proceedings, they could realise 11,670 Kuwait Dinars equivalent to Rs. 6,80,040.79 as compensation. That amount was transferred to 3rd respondent, District Collector, for being passed on to those who executed the power of attorney. When they approached the District Collector they were told that the amount can be released only on their producing succession certificate or heirship certificate. The stand taken by the District

Collector is under challenge.

6. In the statement filed on behalf of the 3rd respondent reliance was made on Government circular and Government orders dated 18.4.1983, 28.12.1985 and 5.4.1986 respectively in support of the stand taken by the Collector that the petitioner should produce succession certificate or heirship certificate. From the statement it appears that those orders relate to the procedure to be followed to enable the successors living abroad for getting compensation sent by Indian Embassy abroad. How those circular and Government orders will apply to the facts of this case is anybody''s guess. The issue raised in this case is covered by a Division Bench decision of this court in K. Lekshmi Vs. Chairman, Kerala State Road Transport Corporation, . Dealing with this aspect the Division Bench observed:

The assumption that a succession certificate is necessary for payment of compensation to the dependants of a person who dies on account of accident is evidently not correct. In two decisions of this court in State Insurance Officer Vs. Thankamma John and Others the scheme of the Indian Fatal Accidents Act has been adverted to. Evidently that enactment is brought into existence to enable dependants of a person whose death has been caused by wrongful act, neglect or default to claim compensation. But for that Act there would be no case for the heirs of a deceased to claim compensation on account of death caused by wrongful act. It is to meet this situation Fatal Accidents Act has been enacted. It enables the dependants, namely, the wife, husband, parent and child of the person whose death has been caused, to claim loss resulting to them from such death. Had the deceased lived his normal span of life he would have been of benefit to the dependants. That benefit they have lost by the reason of the death and it is to compensate them for loss of such benefits that provision in Section 1-A has been made. The estate would lose on the death of such person only if after meeting the expenses for himself and his dependants there would have been surplus in his hands. Such accumulated surplus would have been available on his death. In that event it would have passed on to his heirs as part of his estate. What would be inherited by his estate is entirely different from what would have been obtained by the dependants during his lifetime. Section 2 of the Fatal Accidents Act provides for the claim by the estate of any pecuniary loss to the estate. It is hence evident that a claim u/s 1-A, namely, a claim by the dependants, is not as legal representatives of the deceased, but on their own account. It is compensation for loss caused to them by the death of the deceased secured to them as a statutory right u/s 1-A of the Fatal Accidents Act. If so, there is no question of any succession being relied on in respect of such claim. A succession certificate can be sought only where on the death of the person the right devolves on the applicant as a legal representative. That being not the case here, the dependants are entitled to make the claim on their own account. Therefore, there is no question of producing any succession certificate.

In view of this statement of law, the circular and Government orders relied on by the 3rd respondent have no relevance to the issue that arises for consideration here.

7. Learned Central Government Standing Counsel has rightly submitted that the entire amount which was collected by the Embassy for and on behalf of the petitioner and three others mentioned in Exh. P-4 (a) is now with 3rd respondent. The money is due to these four persons only. The District Collector who was to pass on the money to the four persons had no right to retain the same. On account of this attitude taken by the District Collector, petitioner and three others did not get the benefit of the money which they could have had way back in March, 1990. Even though this was a hostile attitude taken by the 3rd respondent, I am not directing the 3rd respondent to pay interest on the amount because reliance was made on Government circulars and orders, though wrongly. Third respondent is directed to disburse the money to the petitioner and three others who are mentioned in Exh. P-4 (a) certificate without any delay. This payment must be made on or before 31.10.1990. In case the payment is delayed, the amount will carry interest at the rate of 12 per cent per annum from 1.11.1990 till the date of payment. After paying the interest, Government can, if considered necessary, initiate action against the officers concerned in delaying the payment, for recovering the interest paid to the petitioner as ordered above.

The original petition is disposed of with the above direction.

Issue photo copy of the judgment to the parties on usual terms.