

(2007) 07 KAR CK 0061

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5576 of 2005

Chamansab Jambagi

APPELLANT

Vs

Parappa Ujjanshettar (Deceased by his L.Rs. Smt.
Parwatevva, Noorundappa Ujjanshettar, Smt. Ratnavva
Korishettar and Mallappa Ujjanshettar)

RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 166 (1) (c)

Citation : (2008) ACJ 321 : (2008) 1 KarLJ 233

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Dinesh R. Kulkarni, for the Appellant; F.S. Dabali, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the counsel for the parties.

2. The facts of the case are as follows:

The appellant is the brother of one Mardanbi. On 28-10-1995, Mardanbi after drawing water from a public hand pump, was on her way home when she was hit by a tractor- trailer. She died as a result of the injuries suffered. Mardanbi was aged about 45 years at the time of her death, she was a widow without any children. She was living in the home of the appellant.

The appellant claimed that on account of the death of his sister he suffered loss and hardship and claimed compensation u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for brevity), against the driver and the owner of the vehicle involved in the accident. The Motor Accidents Claims Tribunal rejected the claim of the appellant, though it was found that Mardanbi had died on account of the injuries suffered in the accident and which was attributable to negligence of the driver of the offending vehicle.

The Tribunal has held that the appellant was not entitled to claim any compensation as he was not a legal heir of the deceased. The Tribunal reasoned that the deceased was a married woman, though widowed. And, secondly, held that the appellant could not have been dependant on the purported earnings of Mirdanbi, as a coolie, since she herself was dependant on "old age pension" for her survival. It is this which is under challenge in the present appeal.

3. The Counsel for the appellant contends:

That in terms of Section 166(1)(c) of the Act, 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. In the present case the deceased being an issueless widow, who had come to live with the appellant after her husband's death and the appellant being the natural brother of the deceased, the Tribunal was not justified in declaring that the appellant was not a legal heir of the deceased.

4. The counsel places reliance on the judgment of the Supreme Court in the case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , to support the contention that the brother of a deceased person is entitled to maintain a petition under the Act, if he is a legal representative of the deceased.

5. The counsel would submit that in the face of the fact that there was no objection from any quarter as to the appellant's claim as a legal representative, the Tribunal was clearly in error. It is also contended that the pension received by the deceased was a supplement to her earnings as an agricultural coolie and the Tribunal was clearly in error in finding that the deceased was not earning any money which she could have contributed to the family of the appellant.

6. Per contra the counsel for the Respondents would seek to support the award and would contend that even if it could be accepted that the appellant was a legal representative of the deceased, a claim for compensation cannot be sustained unless there was a tangible loss to the claimant on account of the death. The appellant had failed to establish this. And further, in the proceedings before the Tribunal, the driver of the vehicle who was a respondent had been placed ex-parte. The owner of the vehicle had died during the pendency of the proceedings. The present respondents are the legal representatives of the said owner. Their obligation to meet any claim is totally absent. The counsel would hence contend that the Tribunal had rightly rejected the claim.

7. On the above contentions, the following questions would arise for consideration in the appeal:

a. Whether the appellant could be considered as a "legal representative" of the deceased, for purposes of Section 166(1)(c) of the Motor Vehicles Act, 1988?

b. Whether the appellant could, as a legal representative, claim compensation without reference to dependency?

8. In so far as the first question is concerned, the apex court has, in Ramanbhai Prabhalbhai's case supra, dealt with the same at some length. In that case, a boy aged 14 was run over and killed by a State Transport Corporation bus. While alleging negligence of the bus driver, the brothers of the deceased claimed compensation, u/s 110-A of the Motor Vehicles Act, 1939. The Claims Tribunal had awarded Rs. 32000 to the claimants. This was affirmed in an appeal, by the Corporation, before the High Court. In a SLP before the Supreme Court it was contended that the Tribunal and the High court were in error in not taking note of the fact that the brothers of the deceased were not entitled to any compensation under the provisions of the Fatal Accidents Act, 1855. On account of the divergence of opinion prevailing in respect of the question in various High Courts the Supreme Court examined the issue at length.

9. The apex court took note of the fact that in the course of application of the principles of the English law of torts in India, the Indian courts came to recognize and apply the maxim - *actio personalis moritur cum persona* - a personal action dies with the parties to the cause of action. But with the enactment of Fatal Accidents Act, 1846, in England, the Fatal Accidents Act, 1855, was enacted in India. These Acts were identical in content. The said legislation provided for a departure from the above principle and named the persons for whose benefit an action for compensation could be brought on the death of a person, namely, the wife, husband, parent and child of the deceased.

10. In England, The Act of 1846 underwent amendments and modifications, over the years, to include among the persons who could bring an action for compensation an adopted child, a half-blood relative, an illegitimate child of the reputed father etc., the several Fatal Accident Acts from 1846 to 1959 were consolidated under the Fatal Accidents Act, 1979. However, in India, the Fatal Accidents Act, 1855, has remained unamended.

11. It was also noted, that in making its recommendations on claims for compensation under Chapter VIII of the Motor Vehicles Act, 1939, the Law Commission of India, even as late as 1980, had recommended that the entitlement, to claim compensation on the death of a person - should be confined to the spouse, parent and children of the deceased as specified in the Fatal Accidents Act, 1855, overlooking the amendments made in England and other countries by expanding the list of relatives, who are entitled to claim compensation on the death of a person.

12. The apex court while taking note of the fact that the expression "legal representative" has not been defined under the Motor Vehicles Act, observed that u/s 2(11) of the Code of Civil Procedure, 1908, the expression "legal representative" is defined 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 court has observed that the above definition would not in terms apply to a

case before the Motor Accidents Claims Tribunal, though the definition is clearly how it is understood in common parlance.

13. The court after considering the effect of the amendment of the Motor Vehicles Act, 1939, on the Fatal Accidents Act, 1855, with particular reference to Section 110A, which corresponds to Section 166 of the Motor Vehicles Act, 1988, held, that the legal representative contemplated under the said provision need not necessarily be a wife, husband, parent and child. That the right provided to the legal representative was a substantive one and not merely procedural. And that the right cannot be hedged in by the limitations of an action under the Fatal Accidents Act, 1855.

14. As regards the cleavage of opinion amongst the High Courts in India, regarding the maintainability of an action u/s 110A of the MV Act, 1939, by persons other than the wife, husband, parent and child of the person who dies on account of a motor vehicle accident- the apex court held that the view taken by the Gujarat High Court in the case of Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others, was in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. The Gujarat High Court was considering the maintainability of a claim petition u/s 110A by the nephew of a deceased person in the above case. The said court considered all the cases decided by the various High Courts. The first set of cases laid down that every claim application for compensation arising out of a fatal accident would be governed by the substantive provisions in Section 1-A and 2 of the 1855 Act, and no dependent other than a spouse, parent or child would be entitled to commence an action for damages against the tort-feasors. Namely, P.B. Kader and Others Vs. Thatchamma and Others, & Dewan Hari Chand and Others Vs. Municipal Corporation of Delhi and Another, . The second set of cases, Perumal v. Elluswamy Reddiar 1974 ACJ 182 (Mad) & Vanguard Insurance Company Ltd. v. Hanumantha Rao 1975 ACJ 344 (AP), which laid down that while compensation payable u/s 1-A of the Fatal Accidents Act, 1855 is restricted to the relatives of the deceased therein, the compensation payable u/s 2 there of may be awarded in favour of the representatives of the deceased who are entitled to succeed to the estate of the deceased. The third group of cases, namely, Mohammed Habibullah and Another Vs. Seethammal, ; Veena Kumari Kohli v. Punjab Roadways 1967 Acc CJ 297 (Punj) & Ishwar Devi Malik and Others Vs. Union of India and Others, took the view that a claim for compensation arising out of the use of a motor vehicle would be exclusively governed by the provisions of Sections 110 to 110 F of the Act and bears no connection to claims under the 1855 Act and the Claims Tribunal need not follow the principles laid down under the latter Act. The Gujarat High Court, agreed with the view taken in the third group of cases above and accordingly held that the application made by the nephew of the deceased who died on account of a motor vehicle accident was maintainable.

15. The apex court while approving the view taken by the Gujarat High Court in

Megjibhai's case supra, observed that in an Indian family brothers, sisters, brothers' children and sometimes foster children live together and they are dependent upon the bread winner of the family and there is no justification to deny them compensation while referring to the provisions of the Fatal Accidents Act, 1855, which stands substantially modified by the provisions contained in the Motor Vehicles Act. The Court held that the brother of a person who dies in a motor accident is entitled to maintain a petition u/s 110-A, as a legal representative of the deceased.

16. The apex court has added, that although the Act was extensively modified, pursuant to the 85th report of the Law Commission, the Parliament did not choose to amend Section 110A of the Act by defining the expression "legal representatives" in relation to claims under Chapter VIII of the Act as "the spouse, parent and children of the deceased" as recommended by the Law Commission. The Commission had opined that the same meaning be given to the expression "representative" as had been given to the expression, for purposes of the Fatal Accidents Act, 1855! The fact that the Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression "legal representative" in Section 110A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.

17. In this view of the matter, in the present case on hand, it can be said that the appellant was a legal representative of his deceased sister, for purposes of Section 166(1)(c) of the Act, even though she was married but later widowed and had been living in the home of the appellant.

18. On the second question, whether the appellant, claiming as a legal representative of the deceased, would be entitled to compensation without establishing dependence, it is to be noticed that the appellant had preferred the claim petition u/s 166(1)(c) of the Act. Before considering whether the appellant would be entitled to claim such compensation, it is necessary to keep in view the provisions of the Act under which a claim petition could be preferred and the scope of such provisions, Chapter X of the Act provides for liability without fault in certain cases. Section 140 provides for liability to pay compensation on the principle of no fault which reads as follows:

140. Liability to pay compensation in certain cases on the principle of no fault. -

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of (fifty thousand rupees) and the amount of compensation payable under that sub-section in respect of

the permanent disablement of any person shall be a fixed sum of (twenty five thousand rupees).

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163-A.

In a petition u/s 140 of the Act, the petitioner would have to satisfy the Tribunal (a) that an accident arose out of the use of a motor vehicle, (b) which resulted in imminent disablement or death of a person and that (c) the claim is made against the owner and insurer of the motor vehicle involved in the accident. These ingredients would be sufficient to entitle the claimant including the legal representative of a deceased victim, to receive the fixed sum prescribed under the Section without having to establish any other fact or circumstance. The Supreme Court in *Smt. Manjuri Bera v. Oriental Insurance Co. Ltd.* 2007 AIR SCW 1962 has held that a claim petition filed by a married daughter of a motor accident victim is maintainable and that she would be a legal representative as defined u/s 2(11) of Code of Civil Procedure, 1908, and that a legal representative, who is not dependent, is entitled to compensation, which would not be less than the liability u/s 140 of the Act. An opinion is also expressed that the "no fault liability" envisaged in Section 140 of the Act is distinguishable from the rule of "strict liability". The compensation amount is fixed and it is a statutory liability. It is an amount which could be deducted from an amount of compensation payable under a claim petition, also filed u/s 166 and that the Section is a Code by itself within the Motor Vehicles Act, 1988.

19. The next provision under which a claim petition can be brought is Section 163-A. Section 163-A of the Act reads as follows:

163-A. Special provisions as to payment of compensation on structured formula

basis:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation:- For the purposes of this subsection, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

(4) This Section, which was introduced by Act No. 54 of 1994 and which came into force with effect from 14.11.1994, has been inserted to provide for a pre-determined structured formula for payment of compensation to the motor vehicles accident victims on the basis of age and income of the deceased or the person suffering permanent disability.

This Section is again a Code by itself. It is a new devise that was introduced in order to grant expeditious and efficacious relief to victims falling within a particular category. And, it is intended to provide immediate relief to a section of people, whose annual income is not more than Rs. 40,000/-. The Section contemplates a speedy determination of the compensation payable without recourse to a long drawn out trial. This Section read with the Second Schedule appended to the Act, provides for passing of an award, which shall be in full and final settlement. The compensation payable, however, is certainly relatable to the benefit that the claimants have lost by way of loss of dependency. u/s 163-A of the Act, it would be necessary for the claimant to establish loss and hardship or loss of dependency, as the case may be, though the compensation payable is determined in terms of the structured formula prescribed.

20. The third provision under which a claim can be made is Section 166. Section 166 of the Act 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.

(2) Every application under Sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident...incurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of who jurisdiction the defendants resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

This corresponds to Section 110-A of the Motor Vehicles Act, 1939. It provides for the form of application, the person who may claim compensation, the time within which an application should be filed etc. It even provides that the Claims Tribunal may treat an accident report forwarded to it by the concerned police officer as prescribed u/s 158(6) of the Act, as an application for compensation.

21. The claim under this Section is on a "fault liability". The determination of the claim requires a full-fledged trial, unlike u/s 163-A. Special damages can be claimed in addition to general damages. The Tribunal would have to consider several factors in a claim u/s 166, namely, the dependents, their age and the multiplier to be applied as future prospects, apart from the income of the deceased at the time of death, is taken into account. Compensation towards damage to property may also be claimed u/s 166. Income of the deceased and loss of estate needs to be proved unlike u/s 163-A of the Act, where a minimum is adopted.

22. In the present case, the appellant had contended before the Lower Court, that the deceased was contributing her income to the appellant's family and that on account of her death, he had suffered loss. The appellant was not before the court seeking compensation u/s 140 of the Act. The fact, however, remains, that the appellant, who is a legal representative of the deceased, would certainly have been entitled to compensation upon establishment of the fact that the deceased

died as a result of a motor accident and that the claim was against the owner of the vehicle. Therefore, to the limited extent that the appellant had established these circumstances and in view of the finding of this Court that the appellant could be considered as a legal representative, the claim could be treated as one u/s 140 of the Act. The appellant would be entitled to the statutory amount prescribed under the Section, as this would constitute the amount payable to the estate of the deceased. However, since the owner of the vehicle had died during the pendency of the proceedings, the question remains whether the amount could be recovered from the legal representatives of the deceased owner, who are presently on record. Since the Tribunal did not have occasion to address this aspect of the matter, it would be necessary to remit the matter to the Tribunal to address the limited issue whether the appellant would be entitled to recover the fixed sum of compensation of Rs. 50,000/- in the hands of the respondents.

23. The appeal is accordingly allowed. The impugned judgment of the Tribunal is set aside. The matter is remitted to the Tribunal for adjudication on the limited aspect as stated hereinabove. No costs.