

(1995) 09 KL CK 0023
In the High Court Of Kerala
Case No : M.F.A. No. 538 of 1987

Cheriyakutty Mammi

APPELLANT

Vs

Ummerkutty and Others

RESPONDENT

Date of Decision : 15-09-1995

Acts Referred:

Contract Act, 1872 — Section 23
Criminal Procedure Code, 1973 (CrPC) — Section 165
Fatal Accidents Act, 1855 — Section 1A
Motor Vehicles Act, 1988 — Section 165, 165(1), 166(1), 166(1)(a), 166(1)(c)

Citation : (1996) ACJ 402 : AIR 1996 Ker 182 : (1995) 2 CivCC 612 : (1996) 1 ILR (Ker) 23

Hon'ble Judges : K.T. Thomas, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : S.V. Balakrishna Iyer, for the Appellant; P.K. Appa Nair, C. Vathsalan, Smt. M.R. Sreelatha and D. Peethambaran, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—Appellants are the brother and two sisters of one Khadeesa Umma who died in a motor accident on 5-6-1984. She was married but had no children. Her husband made a claim for compensation before the Motor Accidents Claims Tribunal (for short "Claims Tribunal"). While the claim was pending adjudication appellants got themselves impleaded in the claim proceedings as respondents. Claims Tribunal passed an award in the said proceedings against the driver and owner of the motor vehicle which was involved in the accident and mulcted the insurance company with liability under the award. Claims Tribunal, however, apportioned the awarded sum (Rs. 86,000/-) in the ratio of 2 : 1 and allotted the larger portion to the husband and the smaller portion to the siblings of the deceased (appellants). This appeal is in challenge of the ratio adopted for such apportionment. Appellants contend now that under Mohammedan Law the husband of a Muslim lady (who died childless) would be entitled only to one half share of the estate of the deceased and the other half would go to her siblings

and hence the Claims Tribunal should have allotted one half of the awarded amount to the appellants.

2. The above contention is advanced on the strength of Sec. 166 (1) (c) of the Motor Vehicles Act, 1988 (for short "the Act") which enables the legal representatives of the deceased to apply for compensation. Though the Act does not contain any definition for the words "legal representatives of the deceased", Rule 2 (k) of the Kerala Motor Vehicles Rules, 1989 contains a definition for that expression as persons "who in law are entitled to inherit the estate of the deceased if he had left any estate at the time of his death and includes any legal heir of the deceased and the executor or administrator of the estate of the deceased".

3. In order to determine the said question we should first gauge the amplitude of the jurisdiction of Claims Tribunal in awarding compensation to the legal representatives of deceased victims in motor accidents. Before the establishment of Claims Tribunals under the provisions of Motor Vehicles Act, 1939, civil courts were exercising jurisdiction to dispose of all claims for compensation arising from motor accidents. With the establishment of Claims Tribunal, civil court's jurisdiction in respect of such claims in that area stood transposed to the Claims Tribunal. Sec. 165 of the Act (which corresponds to Sec. 110 of the old Motor Vehicles Act, 1939) concerns the establishment of Claims Tribunals and a reading of that provision would make the position clear that Claims Tribunal is vested with plenary jurisdiction to deal with all such claims. Sec. 165(1) empowers the State Government to constitute Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents arising out of the use of motor vehicles. Practically all claims for compensation arising out of motor accidents are covered by the jurisdiction now vested with the Claims Tribunal. This can further be seen from the fact that once a Claims Tribunal is established jurisdiction of the civil court would stand completely evacuated in respect of claims for compensation arising from motor accidents (vide Sec. 175). In other words, a Claims Tribunal is made the substitute for civil court for such claims.

4. Even so the substantive law governing such claims continue to be the law of torts. It is in common law that claims were entertained by courts of equity in England based on civil wrongs. The principles followed by such equity courts were followed almost fully by the civil courts in India. So a claim for compensation can be made by a person entitled to such compensation because he has the right to do so in common law. Right to claim compensation based on fault is not the creation of any statute and the provisions of Motor Vehicles Act have only provided procedural rights in respect of such claims. This view has been adopted by the Orissa High Court in Orissa Co-operative Ins. Society Ltd. Vs. Bhagaban Sahu and Others and a division bench of the Karnataka High Court has followed it in K.S.R.T.C. v. Peerappa (AIR 1979 Kar 154) We are in respectful agreement with it. The corollary is that whatever a civil court could do in respect of claims arising under the law of torts (so far as motor accidents are concerned)

can now be done by the Claims Tribunal, and civil court cannot do it now in areas where there is such a claims tribunal.

5. It was once thought that Fatal Accidents Act, 1855 would overlap the provisions in the Motor Vehicles Act governing claims of compensation. A division bench of Gujarat High Court in a detailed discussion, after surveying through the case law on the subject and the relevant provisions in both Acts, reached the conclusion in *Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others*, that the claim for compensation arising out of the use of a motor vehicle is exclusively governed by the provisions of the Motor Vehicles Act and bears no connection to claims under Fatal Accidents Act. Ahammadi, J. (as His Lordship then was) drew the distinction that M.V. Act is a Special Act whereas the Fatal Accidents Act contained only the general provision and hence the former would override the latter. The said legal principle has been approved by the Supreme Court in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*,

6. In the above background, we extract here Sec. 166(1) :

166. Application for compensation -- (1) An application for compensation arising out of an accident of the nature specified in subsection (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.

7. The above sub-section specifies that whatever claims for compensation could be preferred in respect of a motor accident all such claims should be made through applications filed before a Claims Tribunal under one of the clauses in the sub-section. It is clause (c) which deals with application by legal representatives as the other clauses do not relate to any legal representative. However, an application falling within the ambit of Clause (c) relates to the estate of the deceased victim in a motor accident who died either due to the injuries sustained in the accident or otherwise. The legal representatives are required to make the application on behalf of or for the benefit of all the legal representatives of the deceased if all such persons do not join in making the

application. The requirement in the proviso that the legal representatives who do not join in the application should be made respondents would further indicate that the claim made through the application falling within the ambit of clause (c) is only in respect of the estate of the deceased. In this context the definition of the word "legal representatives of the deceased" as used by the rule making authority (extracted in para-3 supra) becomes very relevant. Rule 2(k) says that legal representative is a person who in law is entitled to "inherit the estate of the deceased if he had left any estate at the time of his death". This means, if he had not left any estate, there is no question of any legal representative stepping in. The definition clause in the Rule further shows that even an executor or administrator of the estate of the deceased is a legal representative for the purpose of this clause. This also makes the position abundantly clear that the application contemplated in clause (c) is with reference to the estate of the deceased.

8. What would happen to a person who is neither a legal representative of the deceased victim nor even the injured in the accident, but is entitled to compensation due to the death of a person in a motor accident. For instance, a philanthropist or an altruist was looking after a crippled person by providing him food and shelter and other amenities, but the philanthropist died in a motor accident. Here the crippled person is not a legal representative as defined in rule 2(k). Before the formation of the Claims Tribunal that person would have been entitled to file a civil suit for loss of dependency. If so, would he lose his right to get compensation with the establishment of the Claims Tribunal?

9. One of the learned counsel suggested that such a person can apply under clause (a) of Sec. 166 (1) of the Act. The argument is that the word "injury" mentioned in that clause cannot be confined to bodily injury or physical injury alone. The argument appears to us to be sound. If the word "injury" in that clause is intended to be understood as bodily injury alone the legislature would have used the expression "bodily injury" in the clause, especially when such an expression has been used in Sec. 165 (1).

10. Can the word "injury" in Sec. 166 (1) (a) be confined to bodily injury alone. We think that the word "injury" is used there for a larger import. Black's Law Dictionary contains the definition for the word "injury" (at page 706 in the 5th Edition) as "any wrong or damage done to another either to his person, rights reputation or property". The alternative meaning given therein is equally apposite in this context. It is the following: "The invasion of any legally protected interest of another". We may also refer to the book "Words and Phrases" composed by West Publishing Company. The judicial pronouncement in Department of Highways vs. Lykes Bros has been reproduced therein thus: "Injury is any wrong or damage done to another either his person, rights, reputation or property". Though not in the same context it is not totally out of place to remember that the authors of Indian Penal Code have understood the word injury as "any harm whatever, illegally caused to any person in body, mind

reputation or property". We may refer to our own decision reported in *Narayanan Sudhakaran v. Rajamany* (1995 (2) KKJ 233) wherein we found that the word "injury" in Sec. 23 of the Contract Act should be understood as covering any wrong or damage sustained either to one's person or rights or property. The same view can profitably be imported into the field of damages in accident cases also. In this context it is useful to refer to, a decision of the division bench of the Bombay High Court in *Abdulkadar Ebrahim Sura and Another Vs. Kashinath Moreshwar Chandani and Others*, that the word "injury" in Sec. 1A of the Fatal Accidents Act is a word of larger import and cannot be restricted to physical or monetary injury.

11. From the above discussion, we do not see any reason to restrict the meaning of the word "injury" in Sec. 166 (1) (a) to physical injury alone particularly since such an interpretation would not be congenial to the interest of those who, though not legal representatives, are entitled to compensation on account of death of the victims of the motor accidents.

12. The conclusion which can be made is that under Sec. 166 (1) (a) of the Act a claim can be made by any person who suffered on account of accident arising out of the use of a motor vehicle. Such person would include those who lost dependency, consortium and any other kind of support as a consequence of death of the victim in the accident. Sec. 166 (1) (c) relates to claim by legal representatives of a deceased victim in respect of the loss or damages endured to the estate of the deceased. When all the legal representatives have not joined in such a claim the application should be made on behalf of or for the benefit of all of them and such others should be made respondents in the claim.

13. The claim made in this case by the husband of Khadeesa Umma falls only under Sec. 166 (1) (a) as the said claim is based on his loss of dependency and consortium. The application does not show that any claim was made in respect of the estate of the deceased. Smt. M.R. Sreelatha, learned counsel who addressed studied arguments for the respondents, pointed out that appellants have not made any separate claim for the estate of the deceased and instead they had only got themselves impleaded as parties in the claim proceedings initiated by the respondent (husband of the deceased) probably under a mistaken impression regarding the basis and also the nature of the claim. Therefore, according to the counsel the appellants cannot contend in this case that the award amount should be apportioned in accordance with the law of succession applicable to the parties. We find that the said contention has been factually founded in this case. Of course, appellants have already received a benefit by getting one third of the awarded amount. But in the absence of an appeal at the instance of the husband of the deceased, we cannot disturb that allotment to the disadvantage of the appellants.

In the result, we dismiss this appeal. Before we part with this appeal we wish to express our gratitude to Shri. K. Prabhakaran and also Shri. T.R. Ramachandran Nair, Advocates, who helped us with their well merited arguments, on our

request, when the matter was discussed in open court.