

(1999) 06 MAD CK 0064

In the Madras High Court

Case No : C.M.A. No's. 1171 and 1172 of 1993

Cholan Roadways Corporation Ltd.

APPELLANT

Vs

Pavunraj and Others

RESPONDENT

Date of Decision : 17-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Motor Vehicles Act, 1988 — Section 166, 2

Citation : (2000) ACJ 616 : (2000) 1 LW 796 : (1999) 2 MLJ 716

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : A. Lakshmi, for P. Balasubramanian, for the Appellant; V.M. Ravichandran, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—These two appeals are being disposed of in the common judgment as they both arise out of a common award passed by the Motor Accidents Claims Tribunal (District Judge), Pudukottai in M.C.O.P. Nos. 199 and 200 of 1990 respectively.

2. Cholan Roadways Corporation Ltd., challenging the award in M.C.O.P. No. 199 of 1990 on the file of Motor Accidents Claims Tribunal (District Judge), Pudukottai directing for the payment of compensation of Rs. 20,000 and against the award in M.C.O.P. No. 200 of 1990 on the file of the Motor Accidents Claims Tribunal directing the payment of compensation of Rs. 1,00,000 have filed these two appeals.

3. The facts that are required for the disposal of these two appeals are as follows:

The deceased in this case is one Durairaj aged about 40 years. On 29.6.1989 he travelled in the town bus belonging to the appellant Corporation proceeding from Aavanam to Neduvasal. When the bus came to Neduvasal and stopped at the bus stand, the passengers were getting down from the bus. While the deceased, as

the last person was getting down, the driver of the bus suddenly started the bus in a rash and negligent manner as a result of which the deceased fell down from the bus and got under the rear wheels and consequently, he died at the spot.

4. One Pavunraj, son of the deceased through his first wife, filed a claim petition seeking compensation of Rs. 2,00,000 in M.C.O.P. No. 199 of 1990 before the Claims Tribunal. The other claimants, viz., Laxmi, the second wife of the deceased, Samudran and Iyappan, the minor sons of the deceased filed the claim petition in M.C.O.P. No. 200 of 1990 before the Claims Tribunal claiming compensation of Rs. 6,00,000. Both the petitions were entered into and tried together.

5. On behalf of the claimants three witnesses were examined. PW 1 Pavunraj and PW 2 Laxmi are the son of the first wife and the second wife respectively. PW 3 is the eyewitness who travelled as the co-passenger in the bus. Through these witnesses Exhs. A-1 to A-6 were marked. On the side of the appellant Corporation, Selvaraj, RW 1, the driver was examined. According to PW 3 the co-passenger, the accident that took place, which resulted in the death of the deceased was due to the rash and negligent driving of the driver. According to RW 1 the deceased got down from the bus when the bus was moving and as such he was not negligent.

6. However, considering the materials placed before the Tribunal by the parties, it was concluded that the driver was negligent and all the claimants in both the applications were entitled to a total compensation of Rs. 1,20,000. The Tribunal, however, directed that Pavunraj, the petitioner in M.C.O.P. No. 199 of 1990 would be entitled to Rs. 20,000 and the petitioners Laxmi and the other two minor children in M.C.O.P. No. 200 of 1990 would be entitled to Rs. 1,00,000 in total as compensation.

7. This common award and decree has been challenged by the appellant Corporation in these two appeals.

8. The main ground urged by the learned counsel for the appellant in C.M.A. No. 1171 of 1993 challenging the award of compensation of Rs. 20,000 to Pavunraj, the petitioner in M.C.O.P. No. 199 of 1990, is that the claimant Pavunraj who is already married was living separately and since he was not dependent upon the income of the deceased, he is not entitled for any amount of award as compensation.

9. To substantiate this plea, the learned counsel for the appellant Corporation would cite the decision in the case of Revaben and Others Vs. Kantibhai Narottambhai Gohil and Another, wherein the Division Bench of the Gujarat High Court has held that the major sons of the deceased who are living separately are not entitled to any compensation.

10. On the other hand, the learned counsel for the respondents in C.M.A. No. 1171 of 1993 would submit on the strength of the judgment in the case of Piara

Singh Vs. Punjab State and Others, that the Full Bench of the Punjab and Haryana High Court has held that even though the claimant was living separately after marriage, he is entitled to a portion of the compensation, since he is the legal representative as provided u/s 166 of the Motor Vehicles Act.

11. On perusal of the judgment of the Gujarat High Court in Revaben and Others Vs. Kantibhai Narottambhai Gohil and Another, , it is clear that there is no ratio decided in the said case that the major married son living separately cannot maintain the petition for compensation u/s 166 of the Motor Vehicles Act. On the other hand, it was held in the said decision that the major sons after marriage separately living on their own income would not be entitled for compensation. The question that arises in that case is that whether he was dependent upon the income of the deceased?

12. In the instant case, the evidence of the claimant Pavunraj examined as PW 1 would show that though he got married while his deceased father was alive he was a dependent under his father as the deceased used to give Rs. 1,000 per month to him out of his total income Rs. 3,000 per month. Therefore, there is material available on record in the instant case that he was one of the dependants on the income of the deceased.

13. To maintain an application u/s 166 of the Motor Vehicles Act, the condition precedent is that a person so maintaining should be a legal representative. The object of the Act is to provide opportunity and remedy to all the legal representatives to approach the court for award of compensation if they are otherwise entitled to receive such compensation by the Tribunal. The provisions of the Act do not permit exclusion of a person who is living separately though he is a legal representative. To decide whether a particular legal representative is entitled to compensation or not is one thing; the question whether the legal representative could maintain the petition u/s 166 of the Act is another thing.

14. Section 166(1)(c) of the Act provides that an application for compensation arising out of an accident in the case of death may be filed by all or any of the legal representatives of the deceased. The Act does not define the expression "legal representative" in Section 166 of the Act or in any of the defining sub-sections of Section 2 of the Act. Therefore, the definition of "legal representative" as provided in Section 2(11) of the CPC has to be referred to which reads thus:

"Legal representative" means 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.

Thus a person, who in law, represents the estate of deceased or a person who intermeddles with the estate of the deceased would be the legal representative of the deceased within the meaning of the Act.

15. As pointed out by the Full Bench judgment of the Punjab and Haryana High Court in *Piara Singh Vs. Punjab State and Others*, the object of the Act is to secure payment of compensation to the depending legal representatives at the earliest and in conformity with the settled principles of law. The relief contemplated by the statute is intended mainly to benefit a class of persons, i.e., dependant legal representatives.

16. Once the claimant in M.C.O.P. No. 199 of 1990 Pavunraj being the son of the deceased through his first wife is considered as a legal representative, then it is to be held that he is entitled to become a party in the main petition filed by the other legal heirs. In other words, the Tribunal will have to test the basic question whether the claimant was dependent upon the deceased and if so whether he is entitled to any compensation.

17. This aspect has been considered by the Tribunal and taking into consideration that he was living separately with his wife, the compensation payable to him was fixed at Rs. 20,000. Therefore, the contention of the learned counsel for the appellant in this appeal that the claimant who is married and living separately, is not entitled for any compensation has to fail and accordingly, the appeal in C.M.A. No. 1171 of 1993 is dismissed.

18. In C.M.A. No. 1172 of 1993, challenging the award of Rs. 1,00,000 to the claimants the main point urged is that in computing the compensation payable to the claimants the Tribunal wrongly adopted the multiplier of 25. According to the claimants the deceased was earning around Rs. 3,000 per month. The Tribunal fixed monthly dependency at Rs. 500 and by adopting 25 as a multiplier fixed the compensation at Rs. 1,50,000. After deducting Rs. 30,000 towards uncertainty of life, the Tribunal fixed the compensation at Rs. 1,20,000.

19. According to the learned counsel for the appellant since the deceased died at the age of 40 years, the maximum multiplier will be 18 and not 25. Even if 18 is applied as the multiplier, if the monthly dependency is fixed at Rs. 500 and if some more amount is awarded under the heads like loss of consortium, loss of love and affection, the total calculation works out to nearly about the similar figure, which is arrived at by the Tribunal. Therefore, even with regard to quantum, I do not see any reason to disturb the findings of the Tribunal as in my view the said amount is quite reasonable and proper and, therefore, this appeal in C.M.A. No. 1172 of 1993 also fails.

20. In the result, both the appeals are dismissed. No costs.