
(2008) 08 KL CK 0005
In the High Court Of Kerala
Case No : M.A.C.A. No. 781 of 2003

Clara and Another

APPELLANT

Vs

Yasoda and Others

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Family Courts Act, 1984 — Section 7, 7(1), 8
Motor Vehicles Act, 1988 — Section 166, 175

Citation : (2008) 08 KL CK 0005

Hon'ble Judges : V.K.Mohanani, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : J. Harikumar and S. Harikumar, for the Appellant; Nagaraj Narayanan, Saijo Hassan, Sabu Sreedharan, T.A. Unnikrishnan, K. Satheeshkumar and P.R. Ramachandra Menon, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The main dispute that arises in the appeal for consideration is whether the Appellants herein, who are additional Respondents 5 and 6 in the claim petition before the MACT, are the wife and son respectively or whether Respondents 1 to 3 herein, who were claim Petitioners before the MACT, are the wife and children respectively of the deceased Y. Philipose. The said Mr. Philipose died in a motor accident on 14-7-1990. The Appellants herein, namely the wife and son respectively of the deceased, filed claim petition and total compensation of Rs. 1,45,600 was awarded by the MACT in O.P. (MV) No. 782/92. However, when Respondents 1 to 3 filed another claim petition, namely O.P. (MV) No. 719/92, the Insurance Company was not aware of the earlier award granting compensation for the death of the very same person in favour of the Appellants. The case of the Insurance Company is that even though counsel was entrusted with the matter and counter was also prepared and handed over to him, he did not appear and consequently an ex parte award was passed in favour of Respondents 1 to 3. However, when the company faced execution

proceedings pursuant to the ex parte award, it came to the notice of the Company that another award was obtained by the Appellants earlier for the death of the very same person and therefore, the Company approached the MACT for setting aside the ex parte award and for deciding heirship for the purpose of award of compensation. It is seen that the MACT has impleaded Appellants as additional Respondents, took evidence and came to the conclusion that Respondents 1 to 3, who are claimants in the O.P. (MV) No. 719/92, are the legally wedded wife and children of the deceased and therefore the compensation is awarded in their favour after holding that Appellants have not established any relationship with the deceased. It is against this award this appeal is filed.

2. We have heard learned Counsel appearing for the Appellants and learned Standing Counsel appearing for the Insurance Company and learned Counsel appearing for Respondents 1 to 3.

3. The first contention raised by the learned Counsel for the Appellants is the jurisdiction of the MACT in deciding as to who among the contending parties is the legal representative eligible for the compensation. Even though learned Counsel for the Insurance Company objected raising of this ground as Appellants did not chose to contest it before the MACT, we feel, since it is a pure legal question, we should decide the matter more so for the sake of guidance for future cases. Obviously, the power of the MACT has to be considered with reference to the statutory provisions under which applications for compensation is maintainable. The question of identity arises only in cases of claim for compensation for death of a person. Section 166 of the Motor Vehicles Act authorises parties to make application for compensation for injury as well as for death. In the case of injury, the victim himself or herself will be the applicant and probably in the case of minors their guardian will represent. However, in the case of death, Clause 166(1)(c) authorises filing of application for compensation by any of the legal representatives of the deceased.

4. The first question to be considered by the Tribunal is whether the application filed by the claimant is maintainable or not. In order to decide the maintainability of the application, the Tribunal has to consider whether the applicant is a legal representative of the deceased. MACT has the authority to decide this issue because without deciding as to who are the legal representatives of the deceased, the maintainability of the application cannot be decided at all. It is also to be noted that jurisdiction of the Civil Courts are specifically excluded and the Motor Vehicles Act confers exclusive jurisdiction to the Accidents Claims Tribunals to decide all matters pertaining to award and disbursement of compensation to the eligible claimants. We, therefore, hold that MACT has full powers to decide as to who are the legal representatives and if there is any contest among parties to decide it also. In fact, in order to avoid mistake of the kind committed in this case, we feel the Tribunals should demand convincing evidence from the claimants to prove that they are the legal representatives, even though no other rival party has made the claim. Even though learned

Counsel for the Appellants relying on Section 7(1)(b) of the Family Courts Act, 1984 contended that exclusive jurisdiction to declare as to whether there was a valid marriage or not between parties is on the Family Court, we do not think the said provision stands in the way of the MACT deciding as to who among the contesting parties is the legal heir for the purpose of award of compensation. However, if there is a prior decree of the Family Court pertaining to marriage, then the same may bind the MACT and no separate adjudication is called for in such a case. However, so far as the matter is not decided by the Family Court, then it is the duty of the MACT to decide the issue because without deciding as to who is the legal heir, the application filed before it u/s 166 cannot be proceeded with. Learned Counsel next relied on Section 8 of the Family Court Act and contended that for all matters covered u/s 7 of the Act, jurisdiction of the Family Court is exclusive and no other Court has power to decide the matter. We do not think the said provision can override Section 175 of the Motor Vehicles Act which provides for award of compensation to legal heirs for the death of a person in Motor Accident. Section 175 gives full authority to the MACT to declare legal heirs for release of the compensation awarded. Therefore, we reject the contention of the learned Counsel for the Appellants that Family Court only had jurisdiction to decide the issue in this case.

5. On the merits, the case of the Appellants is that they are wife and son respectively of the deceased Shri Y. Philipose. However, it is seen from the award that Appellants have produced no relevant records to establish their relationship with the deceased. On the other hand, consistent records were produced by Respondents 1 to 3 to establish that the deceased had married 1st Respondent while she was only 18 years of age and Respondents 2 and 3 are sons born in the marriage. Since the church does not have any marriage records for the periods back to 1965, 1st Respondent could not produce marriage certificate pertaining to her marriage with the deceased. However, apart from this the entire church records including evidence of burial of the deceased go to show that the 1st Respondent is the wife and Respondents 2 and 3 are the sons of the deceased. We find that the materials and evidence based on which MACT came to the conclusion in favour of the Respondents 1 to 3 are cogent, consistent and absolutely reliable. While Respondents 1 to 3 produced convincing evidences about their relationship that 1st Respondent was the wife and Respondents 2 and 3 are the sons of the deceased, the Appellants did not produce any evidence or document to establish the relationship they claimed with the deceased. Besides this, it is conceded that on the death of the deceased, 2nd Respondent collected the body from hospital and got the burial done in the parish church, where all of them were members. We, therefore, believe that the claim of the Appellants is thoroughly bogus and the earlier award obtained by them in O.P. (MV) No. 782/92 is obtained by fraud. Even though, MACT has neutralized the said award through the findings in O.P. (MV) No. 719/92, the said award remains not so far vacated. In the circumstances and in view of the findings of the MACT in the impugned award upheld by us, we vacate the award of the MACT, Attingal in O.P.

(MV) No. 782/92 in exercise of powers conferred under Article 227 of the Constitution of India. Since we have found that the Appellants have obtained the award through fraud, it is a fit case for prosecution for misrepresentation and for obtaining the award and consequently, receiving the amount of compensation from the Insurance Company through fraudulent basis. However, we feel one opportunity can be granted to the Appellants to refund the entire amount received by them from the Insurance Company without interest. Accordingly, one month's time is granted from the date of receipt of this judgment to the Appellants to refund the amount of compensation received, failing which recovery authorities will proceed for recovery immediately thereafter against them. Besides this, if refund is not made as above, there will be direction to the Insurance Company to launch prosecution against the Appellants for the fraud committed. It will also be open to the Insurance Company to proceed against the advocates involved, if they have complicity in the matter.

The M.A.C.A. is dismissed, but with the above directions and observations.