
(2016) 02 AHC CK 0040

In the Allahabad High Court

Case No : First Appeal From Order No. 461 of 2016

Divisional Manager, The Oriental Insurance Co. Ltd. Gorakhpur APPELLANT
Vs
Ramnaresh Chauhan And 2 Others RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Citation : (2016) AAC 1363 : (2016) 2 ACC 381 : (2017) ACJ 4 : (2016) 3 ADJ 397 : (2016) 162 AIC 939 : (2016) 3 AILLJ 293 : (2016) 2 AllWC 1914 : (2016) 116 ALR 59 : (2016) 2 TAC 890 : (2016) 3 TAC 293

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Sudhanshu Behari Lal Gour, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J. - Heard Sri S.B.L. Gour, learned counsel for the appellant.

2. This appeal has been filed challenging the award dated 23.11.2015 in M.A.C. No. 128 of 2014 passed by the Motor Accident Claim Tribunal/Additional District Judge, Court No. 4, Kushinagar at Padrauna awarding a sum of Rs.4,18,000 to the legal representative of the deceased Mala Devi who died in an accident on 13.1.2014 at about 2.30 P.M. near Government Godown village Bhatawalia, District Kushinagar caused by Mahendra Quanto Jeep bearing registration No.U.P. 57/Q- 9600.

3. Submission of learned counsel for the appellant is that the claimant respondent being the husband of the deceased Smt. Mala Devi and remarried after 8 months, is not dependent and, therefore, the compensation could not have been awarded under Section 166 of the Motor Vehicles Act 1988. He further submits that the evidence of P.W. 2 was not reliable.

4. I have carefully considered the submission of the learned counsel for the appellant.

5. So far as the first submission of learned counsel for the appellant is concerned, I find that neither any such/objection was raised before the courts below nor it is part of pleadings. On being asked, the learned counsel for the appellant could not show from the pleadings that any such objection was raised before the Tribunal. That apart Section 166(1) of the Act provides as under:

"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."

6. From the bare reading of Clause (C) of sub-Section 1 of Section 166 of the Act, it is clear that an application for compensation arising out of an accident of the nature specified in sub-Section (1) of Section 165, may be made by all or any of the legal representatives of the deceased if death has resulted from the accident. It is settled law that legal representative ordinarily means a person who in law represents estate of a deceased person or a person on whom the estate devolves on the death of an individual. Section 166 does not use the word "dependent" rather it specifically uses the words "legal representatives" who may file a claim. It is not the case of the appellant that the claimant-respondent is not the legal representative of the deceased.

7. In the case of Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbha Prabhatbhai and another, (1987) 3 SCC 234 Hon"ble Supreme Court has interpreted the phrase "legal representative of the deceased" and held as under:

"11. Clauses (b) and (c) of sub-section (1) of Section 110-A of the Act provide that 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 or by any agent duly authorised by all or any of the legal representatives of the deceased. The proviso to subsection (1) of section 110-A provides 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. The expression "legal representative" has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines "legal representative" 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 above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil "Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section (1) of Section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it. The proviso to sub-section (1) of Section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. Both the person or persons who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in section 110-A of the Act. This section in a way is a substitute to the extent indicated above for the provisions of section 1A of the Fatal Accidents Act, 1855 which provides that "every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased." While the Fatal Accidents Act, 1855 provides that such suit shall be for the benefit of the wife, husband, parent and child of the deceased, Section 110-A(1) of the Act says that the application shall be made on behalf of or for the benefit of the legal representatives of the deceased. A legal representative in a given case need not necessarily be a wife, husband, parent and child. It is further seen from section 110-B of the Act that the Claims Tribunal is authorised to make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid. This provision takes the place of the third paragraph of Section 1-A of the Fatal Accidents Act, 1855 which provides that in every such action, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be

brought. Persons for whose benefit such an application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with by section 110-A and Section 110-B of the Act and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act, 1855 in so far as motor vehicles accidents are concerned. These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies.

12. Amongst the High Courts in India there is a cleavage in the opinion as regards the maintainability of action under section 110-A of the Act by persons other than the wife, husband, parent and child of the person who dies on account of a motor vehicle accident. All these cases are considered by the High Court of Gujarat in its decision in *Magjibhai Khiraji Vira and another v. Chaturbhai Taljabhai*, AIR 1977 Guj 195. The first set of cases are those which are referred to in paragraph 5 of the above decision which lay down that every claim application for compensation arising out of a fatal accident would be governed by the substantive provisions in Sections 1-A and 2 of the 1855 Act and no dependent of the deceased other than the wife, husband, parent or child would be entitled to commence an action for damages against the tortfeasors. Amongst these cases are *P.B. Kader v. Thatchamma*, A.I.R. 1970 Ker 241 and *Dewan Hari Chand v. Municipal Corporation of Delhi*, A.I.R. 1973 Del 67. The second group of cases are those referred to in paragraph 6 of the decision of the Gujarat High Court. They are *Perumal v. G. Ellusamy Reddiar*, 1974 ACJ 182 (Mad) and the *Vanguard Insurance Co. Ltd. v. Chellu Hanumantha Rao*, 1975 ACJ 344 (AP). These cases lay down that while the compensation payable under Section 1-A of the Fatal Accidents Act, 1855 is restricted to the relatives of the deceased named therein the compensation payable under Section 2 thereof 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 are those referred to in paragraph 7 of the judgment of the Gujarat High Court. They are *Mohammed Habibullah v. K. Seethammal*, A.I.R. 1967 Mad. 123, *Veena Kumari Kohli v. Punjab Roadways*, 1967 ACJ 297 (P and H) and *Smt. Ishwar Devi Malik v. Union of India*, A.I.R. 1969 Del 183, which take 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. Having considered all the three sets of decisions referred to above, Ahmadi, J. who wrote the judgment in *Megjibhai Khimji Vira v.*

Chaturbhai Taljabhai AIR 1977 Guj 195, came to the conclusion that an application made by the nephews of the deceased who died on account of a motor vehicle accident was clearly maintainable under section 110-A of the Act.

13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, (supra) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased.

14. We have carefully gone through the decision of the High Court of Madhya Pradesh in Budha v. Union of India AIR 1981 MP 151. We feel that the view taken in that decision is a narrow one and does not give full effect to the object with which Sections 110-A and 110-B of the Act were enacted. We overrule the said decision.

15. Before concluding we may add that although the Act was extensively modified after the receipt of the report of the Law Commission, Parliament did not choose to amend section 110-A 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 Law Commission had observed in its 85th report that it would be appropriate to assign to the expression "legal representative" the same meaning as had been given to the expression "representative" for the purposes of the Fatal Accidents Act, 1855 and that would effectively carry out the purpose of social justice underlying Chapter VIII of the Act, to which the Fatal Accidents Act, 1855 was the nearest approximation. This recommendation was made after

referring to the divergent views expressed by the various High Courts on the meaning of the expression "legal representatives" in section 110-A of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression "legal representatives" in Section 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased."

8. Thus, the first submission of the learned counsel for the appellant deserves to be rejected.

9. So far as the second submission of learned counsel for the appellant is concerned, I find that it is wholly undisputed that the accident occurred on 13.1.2014 in which Smt. Mala Devi died. FIR was lodged and post-mortem was conducted on the body of the deceased. The said accident was caused by the offending vehicle bearing registration No. U.P. 57/Q 9600. In the impugned award the Tribunal has considered the evidence of P.W. 2 and recorded a finding of fact that no material came to light which may indicate the evidence of P.W. 2 to be false. Even learned counsel for the appellant could not point out any inconsistency or lacuna in the evidence of P.W. 2 or P.W.1, which may indicate their evidence to be unreliable. No other point has been argued by learned counsel for the appellant except the point as aforementioned.

10. Learned counsel for the appellant has also not disputed the quantum of compensation.

11. In view of the above discussion, I do not find any merit in this appeal. Consequently, appeal fails and is hereby dismissed.

12. Statutory deposit made before this Court shall be remitted to the tribunal concerned for adjustment.