
(1976) 01 KAR CK 0002
In the Karnataka High Court
Case No : M.F.A. No. 576 of 1972

Fakirappa Hanumanthappa

APPELLANT

Vs

Babnlal Makabal Sab and Others

RESPONDENT

Date of Decision : 08-01-1976

Acts Referred:

Motor Vehicles Act, 1988 — Section 110 A, 110 A (1) (c)
Succession Act, 1925 — Section 306

Citation : (1976) ACJ 487

Hon'ble Judges : Noronha, J;M. Sadanandaswamy, J

Bench : Division Bench

Advocate : R.H. Chandangoudar, for the Appellant; B.S. Raikote, for Respt. 1
and C.K. Kambeyanda, for the Respondent

Final Decision : Dismissed

Judgement

M. Sadanandaswamy, J.—This is an appeal against the judgment and award passed by the District Judge and Motor Accidents Claims Tribunal, Dharwar in Misc. Case (M.V.C.) No. 6/71 rejecting the claim of the Appellant for compensation in respect of the death of his father who, according to him died, as a result of the motor accident which took place at about 6-30 p.m. on 16-8-1970 near Fatima High School, Keshavpur, Hubli.

2. The case of the Appellant is that his father was proceeding on the road at Keshavpur when an autorickshaw bearing No. MYS 6134 belonging to Respondent 2 and driven by Respondent 1 in a rash and negligent manner came and dashed against the deceased with the result that he fell down on the foot-path sustaining injuries on his head, nose, chest etc. Subsequently he was removed to the K.M.C. Hospital, Hubli and was admitted on the same day at about 7-10 p.m. He was treated in the Hospital and was discharged on 27-8-1970. On 29-8-1970 he was again admitted to the Hospital as there was discharge from the wound on the head. He died in the Hospital on 30th August, 1970. There was a delay of 15 days in presenting the application, and the

Tribunal condoned the delay. The Tribunal held that accident was the result of rash and negligent driving of the autorickshaw in question. The Doctor who treated the deceased (Hanumanthappa) in the Hospital, stated in his evidence that the injuries caused by the accident were not the cause of death but that death was due to cardio respiratory failure complicating bilateral pulmonary T.B. The Tribunal relied on this evidence and came to the conclusion that death was not due to the injuries sustained by the deceased in the accident. There is no reason to differ from this finding of the Tribunal.

3. The Tribunal held that though the deceased Hanumanthappa could file a petition for compensation in respect of the injuries sustained by him, since the death was not due to the injuries sustained at the time of the accident, right to sue did not survive to his son the present Appellant. It accordingly rejected the claim of the Appellant.

4. In *Jogindra Kuer and Others Vs. Jagdish Singh and Others*, the Plaintiffs brought a suit claiming damages for injuries caused to him as a result of collision between the Plaintiffs' motor car and the truck, belonging to the Defendants. The suit was decreed awarding Rs. 2,000 as compensation in respect of the injuries, Rs. 1,000 incurred in respect of the treatment and Rs. 2,500 as cost of repairs of the motor car. The Plaintiff prayed for a decree for Rs. 12,300. During the pendency of the appeal the Plaintiff died and his legal representatives were substituted in his place. Considering the provisions of Section 306 of the Indian Succession Act it was held that since the Plaintiff did not die on account of the injuries sustained by him the cause of action in respect of the personal injuries did not survive after the death of the Plaintiff. In *Calcutta Insurance Ltd. Vs. Bhupinder Singh and Others*, the claim was preferred by the person who was injured, u/s 110-A of the Motor Vehicles Act. The claimant died during the pendency of the proceedings. It was held that the right to make the claim being personal to him, died with the claimant and did not survive to his legal representatives. In *Piriska Rozario and Others Vs. The Ford Foundation and Another*, one Rozario filed the claim case for compensation on account of the injuries sustained by him in a motor accident. During the pendency of the proceeding he died. It was held that the death was really as a result of the injuries received by him from the accident in question. It was held that the original cause of action to the extent that it was based on the personal injuries causing the death of the deceased did survive to his legal representatives and that the legal representatives are entitled to be substituted in place of the deceased claimant subject to the reservation that they would be entitled to prosecute only that part of the claim of the deceased which was attributable to the physical injuries causing the death of the deceased. It is clear, therefore, that, apart from the provisions of Section 110-A of the Motor Vehicles Act, the Appellants could not prosecute the claim in respect of the injuries sustained by the deceased.

5. It is, however, urged by Mr. Chandangoudar, appearing for the Appellant, that

Section 110-A of the Motor Vehicles Act, gives the Appellant the right to prosecute his claim. He relies on Sub-clause (c) of Section 110-A Clause (1) and contends that under that provision the legal representatives of the deceased are entitled to file an application for compensation. Under Sub-clause (a) an application for compensation can be presented by the person who has sustained the injury; under Sub-clause (b) the legal representatives of the deceased can present an application for compensation where death has resulted from the accident. It is clear from Sub-clause (b) that the legal representatives of the deceased cannot apply for compensation unless the death has resulted from the accident. Sub-clause (c) enables a duly authorised agent also to file an application for compensation, provided he is duly authorised by the person mentioned under Sub-clause (a) and (b). The contention of Mr. Chandangoudar is that the term "legal representatives of the deceased" in Sub-clause (c) is not governed by the clause similar to the one in Sub-clause (b) viz., "where death has resulted from the accident" and therefore an agent of the legal representatives of the deceased, if authorised is entitled to file an application, even in cases where death was not due to the accident. Such a construction would mean that though the legal representatives of the deceased cannot file an application unless the death was due to the accident, an agent duly authorised by them could do so in a case where death is not due to the accident. The only reasonable interpretation that can be put on Sub-clause (c) is that an application can be filed by an agent duly authorised by either persons who can do so under Sub-clause (a) or by persons who can file an application under sub-clause (b). Hence the contention of the Appellant has to be rejected.

6. This appeal is therefore, dismissed. No costs.