

(1987) 04 MAD CK 0001
In the Madras High Court

Govindan and Others

APPELLANT

Vs

Cholan Roadways Corporation and Another

RESPONDENT

Date of Decision : 01-04-1987

Acts Referred:

Citation : (1988) 2 ACC 125 : (1989) ACJ 194

Hon'ble Judges : Swamikkamu, J

Bench : Single Bench

Judgement

Swamikkannu, J.—This Appeal coming on for hearing on Monday the 23rd day of March 1987 and on this day upon perusing the petition

of Appeal, the order of the Lower Court, and the material papers in the case, and upon hearing the arguments of Mr. S. Rajagopalan, Advocate

for the Appellants and of Mr. Ravi Kumar for M/s. King and Partridge, Advocates for the 1st respondent, and of Mr. V. Ragupathi, Advocate for

the 2nd respondent, the Court made the following order:

2. The main point that is argued in this appeal is that the deceased would have lived upto sixty years of age and given half the income for the

maintenance of his family members and this has been abruptly cut short so far as the maintenance amounts for the other members of the family

maintained by the deceased is concerned, as a result of the occurrence in this case, viz. the death of the deceased due to the accident. This Court

has comprehensively gone into the evidence regarding the occurrence and it is needless to say that there is no other material which would warrant a

conclusion different from the one arrived at by the Tribunal with respect of the rashness and negligence on the part of the driver in driving the

vehicle which had involved in an impact with the deceased and caused his more

or less instantaneous death, in that the deceased died within four hours after the accident. It is only with respect to the quantum of the compensation, this appeal has been preferred by the claimants. The second respondent in this appeal is one Anjammal, who had married the deceased subsequent to the death of the first wife of the deceased. This aspect is not disputed. But, learned Counsel for the appellants would urge that Anjammal is not entitled to any share in the compensation since her first husband Veluswami, is still alive and when there is no proof of divorce as between her and Veluswami or even a customary divorce, it cannot be held that she is dependent on the deceased merely because she began to live with the deceased as his wife. It is well known that in Tamil Nadu there are two kinds of customary marriage prevailing among non-dwijas, which go by the name (in vernacular) and (in vernacular). These two customary marriages are prevailing among certain communities of Tamil Nadu, which cannot be disputed. Therefore, if the relationship between a husband and wife becomes so strained that there is no possibility of their living together as man and wife, then, as per the custom prevailing among such communities, the wife is entitled to declare a divorce by placing a (in vernacular) (straw) between her and the husband and declaring a cessation of the marital relationship between them. This is known as (in vernacular), and this has the effect of a divorce and thereafter each spouse is entitled to re-marry and is not held liable for an offence of bigamy as the divorce effected by the abovesaid custom is held valid. The other mode prevailing in certain communities is known as (in vernacular). By this custom, if for some reason or other, after a marriage, either customary or performed with rituals attended with chanting of mantras before the sacred fire, the spouses find it difficult to live together in harmony, those marriages also can be put an end to by the custom known as (in vernacular) by which, the husband takes away the tali from the wife permitting her to re-marry and makes himself qualified for contracting a second marriage. These customs are age-long customs prevailing among certain communities of Tamil Nadu from time immemorial.

3. Under the circumstances, though it is very much stressed by Mr. S. Rajagopalan, learned Counsel for the appellant, that the second respondent Anjammal should not be given a share in the compensation, this Court is unable

to uphold that contention in view of the fact that Anjammal admittedly began to live with the deceased as his wife subsequent to the death of his first wife. The second appellant is the mother of the deceased and the third appellant is a sister of the deceased. She was a minor aged 15 at the time of the institution of the claim petition and she must have attained majority by now, inasmuch as she has not yet been married, she must have been depending on the income of the deceased that was available to the family. Hence she is also entitled to a share in the compensation that is being awarded by court. No authority has been cited before me to uphold the contention of the first appellant, who is the father of the deceased that he is entitled to a share in the compensation as he was depending on the income of the deceased. It is submitted that the Tribunal is incorrect in having rejected the claim made by the first appellant on the basis of that he is not a Class I heir of the deceased. The learned Counsel for the first respondent would support the finding of the Tribunal and would refer to the following decisions in support of his contention : Construe India v. Mahindra Pal Singh Ahluwalia 1975 ACJ 177, Manmohan Sarup Kaushal v. Mela Kam 1977 ACJ 140, State of Orissa v. Gaya Janardhan Behera 1977 ACJ 459, Fateh Narain Hajela v. Rawal Singh 1978 ACJ 345, Mela Ram v. Mohan Singh 1978 ACJ 381, Jam Shri Staji Digvijaysingji and Others Vs. Daud Taiyab and Others, , BriJ Kali Devi v. Ramchand Bishan Singh 1979 ACJ 164, A.N. Chaudhary v. Debahuti Pattnaik 1977 ACJ 455, H.P. Road Transport Corporation v. Pandit Jai Ram 1980 ACJ 92, K.L. Kasar v. Haribabu Savlaram Shejwal 1985 ACJ 92 and Kamilesh Kumari Nagpal v. Oriental Fire and General Insurance Co. Ltd. 1985 ACJ 101. This Court is also of the opinion that the first appellant is not entitled to any share in the compensation. Therefore, the decision of the Tribunal in this regard is confirmed. So far as Anjammal, the wife of the deceased is concerned, the Tribunal has awarded a share to her in the compensation and this is correct and in accordance with law. No satisfactory evidence is available on record to enhance the compensation that has been awarded by the Tribunal. Under these circumstances, the appeal is dismissed, but there will be no order as to costs.