

(1991) 01 GUJ CK 0010
In the Gujarat High Court

Indiraben and Others

APPELLANT

Vs

Narayanbhai Jugabhai Rabari and Others

RESPONDENT

Date of Decision : 25-01-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110A

Citation : (1994) 2 ACC 458

Hon'ble Judges : R.A. Mehta, J;D.G. Karia, J

Bench : Division Bench

Judgement

R.A. Mehta, J.—Deceased Jitendra Kumar died in a motor accident and his widow and four minor children filed a claim petition for compensation. The compensation was assessed at Rs. 1,41,000/- by the Tribunal. However, the Tribunal awarded only Rs. 94,000/- to the claimants and refused the 1/3rd compensation amounting to Rs. 47,000/- on the ground that the father and mother of deceased Jitendra Kumar were not joined as parties. Therefore, the only question that arises in this appeal by the claimants is whether this amount of Rs. 47,000/- is also required to be awarded. If Yes, to whom?

2. Section 110-A of the Motor Vehicles Act, 1939, provides that an application for compensation arising out of a motor accident may be made, (b) where death has resulted from the accident, by all or any of the legal representatives of the deceased, and the proviso reads as under:

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.

Therefore, when the application was made on account of the death of Jitendra Kumar by some of the legal representatives of the deceased (widow and children of the deceased), it was maintainable even though it was not made by all the

legal representatives. Prior to the amendment in 1970, the requirement of Clause (b) was that the application was to be made by the legal representatives. However, by the amendment, it is made clear that application can be made by all or any of the legal representatives. However, such application is on behalf of and for the benefit of all the legal representatives of the deceased and the only thing which is required is that the legal representatives who had not been joined as applicants should be impleaded as respondents to the application.

3. In the present case, the father and mother of the deceased are admittedly not joined as claimants or respondents before the Tribunal. However, before the Tribunal both the father (Exh. 24) and mother (Exh. 25) of the deceased have filed affidavits stating that in respect of death of their son, his widow, Indiraben, has filed a compensation case on behalf of herself and her four minor children for getting compensation of rupees two lacs. It is further stated that they (the parents of the deceased) have no objection if the entire amount of compensation is paid to their daughter-in-law, Indiraben, for herself and as guardian of her minor children. It is further stated that if any amount is payable to the father and mother " of the deceased, the said amount also be paid to the applicants and award be passed in their favour.

4. In her deposition, claimant Indiraben has stated in the cross examination that her father-in-law and mother-in-law were alive and that she was residing with them and their younger son (Diyar). She has stated that her Diyar, his wife and children also live together. She has also stated that her Diyar was present in the Court. She also stated that her Diyar used to bear all expenses for their maintenance.

5. In this appeal, appellants Nos. 6 and 7 are joined. They are father and mother of the deceased. During the pendency of this appeal, respondent No. 6 father has expired and his heirs being his sons Jagdish Kumar and Prakash Kumar are joined as respondent Nos. 6/1 and 6/2, and a prayer is made that further award be passed so as to award an amount of Rs. 47,000/- by way of compensation payable to appellants Nos. 6 and 7 with 12% interest.

6. Appellants Nos. 6 and 7 were not parties before the Tribunal and they have straightway joined themselves as appellants in this appeal. Mr. Patel, learned Counsel for the appellants, made oral application for permission that these persons be permitted to be joined as appellants and leave be the granted. That request is granted.

7. The learned Counsel for the appellants submitted that none of the appellants have any objection to this amount of Rs. 47,000/- being awarded to any or all of the appellants. Appellants Nos. 1 to 5 have no objection if the amounts are awarded to appellants Nos. 6 and 7 and appellants Nos. 6 and 7 also have no objection if the amount is awarded to appellants Nos. 1 to 5. In these circumstances, the question raised in this appeal has become totally academic and only technical.

8. The learned Counsel for the respondent-Insurer submitted that claimants ought to have joined all the legal representatives as claimants and as all the claimants were not joined the application was liable to be dismissed wholly, as was done by the Claims Tribunal in a Punjab case of Kaushalya Devi and Another Vs. Mohan Lal and Others, . It further submitted that in the present case, the Tribunal, instead of dismissing the entire petition, had awarded the lawful claim of appellants Nos. 1 to 5 and as there was no other claimant, the claim was dismissed so far as the other legal representatives (the parents) were concerned. In the Punjab case as the Tribunal had totally dismissed the application for compensation, it had to be remanded back to the Tribunal. In that case, the claim was made by mother, brother and sister of the deceased and widow of the deceased was not impleaded as a party and her affidavit was filed stating that she had gone away to her parent's house and she had given up her claim to compensation due to death of her husband.

9. The Judgment in Kaushalaya Devi's case (supra) has no application to the facts of the present case. In the present case, there is no need to remand the matter back to the Tribunal for the sake of joining appellants Nos. 6 and 7 as parties because the question is a limited one about their being formally made parties and no further question of any evidence is required. In fact, there was no such need even in the Trial Court, having regard to the facts of the case. It is not that merely signatures are obtained on affidavits. In Kaushalaya Devi's case (supra), the widow of the deceased and the parents of the deceased were residing separately. The Widow of the deceased had gone away to her parents and the claim was made by the parents of the deceased. In the present case, the claim is made by the widow and her children. She has been residing with the parents and brother of the deceased. Brother of the deceased has been taking interest in the litigation and was present in the Court when her deposition was recorded. They are all living together. The brother of the deceased has been supporting the claimants for their maintenance. The widow could not have managed to produce the affidavits of the parents of the deceased, unless they were ? fully conscious and had voluntarily made these affidavits, more particularly when she has been residing with them after the death of her husband. Therefore, omission to join them as claimants or as respondents cannot be looked with any suspicion, nor the affidavits filed by the parents of the deceased can be discarded as of no consequence. On the basis of those affidavits, the Tribunal could have proceeded to treat them as claimants or supporting ?"?" opponents and could have passed the award for the benefit of all the persons entitled to compensation, because the application itself is required to be made and to be treated as application for the benefit of and on behalf of all the legal representatives. When these persons are treated as parties and they declare before the Tribunal that they have no objection to the award being passed in favour of claimants Nos. 1 to 5, the Tribunal could have, on being satisfied that in that was genuine and bona fide request, acted on it. If the Tribunal was not so satisfied, it could have taken a different view. But in the

present case, the Tribunal has taken a hyper-technical view that since the parents were not parties to the petition, their affidavits could not be taken as application for impleading them as legal representatives and therefore claim in respect of those legal representatives should not be allowed. The Tribunal has observed that the claimants have not cared to join the parents of the deceased as respondents in the petition and he would not like to keep the petition in abeyance, but the only consequence would be that 1/3rd which would fall to the share of parents would remain in abeyance and it would not be awarded to any of the applicants. It is not at all understood as to what the Tribunal means by keeping this 1/3rd amount in abeyance. No award has been passed in respect of that 1/3rd amount and there is no order keeping the award of that 1/3rd amount in abeyance till some contingency, which may be in the mind of the Tribunal, happens. If the Tribunal had felt any assurance necessary regarding consent of the parents, it could have issued notice to them and called then before the Court and it could have, passed appropriate order even in their favour. But he has merely dismissed the claim petition in respect of that amount of Rs. 47,000/- which is otherwise assessed to be due compensation for the death of Jitender Kumar.

10. Under the Hindu Succession Act, the only heirs to a Hindu deceased dying intestate are mother; widow, sons and daughters of the deceased. There are Class I heirs. All of them take simultaneous and equal share under Sections 8 and 10 read with Class I of the Schedule. The father is not one of these heirs. Therefore, appellants Nos. 1 to 5 and 7 each would be entitled to 1/6th share. Therefore, appellant No. 7 would be entitled to 1/6th share and appellant No. 6 would not be entitled to any share.

11. As a result of the aforesaid discussion, an additional award is passed directing the respondents to pay further compensation of Rs. 47,000/- (rupees forty-seven thousand only) with 12 per cent interest from the date of the claim petition till realisation and proportionate costs on this amount, of both the Courts. This amount of Rs. 47,000/- shall be invested in Fixed Deposits in the following proportions:

Rs. 23,500/- to be invested in the name of the appellant No. 7 for a period of five years. The balance amount to be invested in five equal Fixed Deposits of Rs. 47,00/- each in the names of appellants Nos. 1 to 5 respectively, for a period of 15 years or till the minor appellants attained majority, whichever is later. The periodical interest accruing on these deposits shall be permitted to be withdrawn by the respective claimants. The investments shall be made in a Nationalised Bank with usual conditions prohibiting raising of any loan or withdrawal of any amount prematurely. The amount of costs and interest is permitted to be withdrawn by appellant No. 1 by Account Payee Cheque.

12. The appellant is allowed accordingly with costs throughout.