

(1960) 08 BOM CK 0007
In the Bombay High Court
Case No : A.F.O. No. 115 of 1958

Kashibai and Another

APPELLANT

Vs

The Scindia Steam Navigation Co. Ltd., Bombay

RESPONDENT

Date of Decision : 05-08-1960

Acts Referred:

Constitution of India, 1950 — Article 372, 395
Independence Act, 1947 — Section 2(1)
India and Burma (Miscellaneous Amendments) Act, 1940 — Section 8
Interpretation Act, 1889 — Section 18
Judicature Act, 1873 — Section 25(9)
Maritime Conventions Act, 1911 — Section 5, 9
Supreme Court of Judicature (Consolidation) Act, 1925 — Section 22, 226, 33

Citation : AIR 1961 Bom 200 : (1960) 62 BOMLR 1017

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : S.S. Rangnekar and Dalvi, instructed by F.S. Paresh and Co.,
Attorneys, for the Appellant; F.S. Nariman and B. Zaiwalla, instructed by Payne
and Co., Attorneys, for the Respondent

Judgement

1. This is an appeal filed by the plaintiffs, the widow and the heirs of one Eknath Dhondurkar, who died as a result of the collision on the high seas between the defendant company's cargo boat "Jalamanjari" and the country craft "Pandavi". This widow and the heirs filed suit No. 72-5 of 1955 in the Bombay City Civil Court claiming damages to the tune of Rs. 20,000/-under the Fatal Accidents Act, 1855, on account of the death of Eknath Dhondurkar, It was contended by the defendant company that the suit fell within the Admiralty Jurisdiction of the High Court and that the City Civil Court had, therefore, no jurisdiction to entertain it. On behalf of the plaintiffs, however, it was contended that the suit was filed under the Fatal Accidents Act and that, therefore, it did not fall within the Admiralty Jurisdiction of the High Court. The learned Principal Judge did not agree with the contention of the plaintiffs and held that in spite of the fact that the claim in the plaint was stated to have been made under the

Fatal Accidents Act, it was really a claim for damages arising out of the death of Eknath Dhondu Adurkar as a result of a collision between the defendant company's cargo boat "Jalamanjari" and the country craft "Pandavi" on the high seas, and that, therefore, the suit fell within the Admiralty Jurisdiction of the High Court and that the City Civil Court had no jurisdiction to entertain it. The learned Principal Judge, accordingly, rejected the plaint and ordered it to be returned to the plaintiffs for being presented to the proper Court. The present appeal is directed against that order of the learned Principal Judge.

2. It is true that until 1911 it was held in England that "damage done by a ship" referred to in Section 7 of the Act of 1861 did not include an injury resulting in the death of any person and accordingly, in such cases no action in rem for damages could be entertained by the Admiralty Division of the High Court. In 1911, however, an enactment entitled "Maritime Convention's Act" was passed by the British Parliament and by Section 5 thereof it was provided as follows:-

"Any enactment which confers on any Court Admiralty Jurisdiction in respect of damages shall have effect as though references to such damage included references to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought in rem or in personam".

Since the passing of this Act actions for damages on account of the loss of life or personal injury caused by any ship on the high seas were brought within the Admiralty Jurisdiction of the High Court in England and proceeding in respect of such damages could be brought not only in rem but also in personam, thus excluding the jurisdiction of the Common Law Courts in respect of all claims arising out of damage "done by a ship" referred to in Section 7 of the Act of 1861 which not only conferred exclusive jurisdiction on the High Court of Admiralty in respect of such damage but also provided that proceedings in respect of such damage could be brought in that High Court either in rem or in personam. The question as to whether or not the jurisdiction conferred by the Act of 1861 in respect of such damage on the High Court of Admiralty was exclusive has been exhaustively dealt with by me in *Kamalakar Mahadev Bhagat Vs. Scindia Steam Navigation Co. Ltd.*, and, therefore, I need not discuss it in this appeal over again.

3. In this connection, reference may be made to a passage in "MacLachlan on Merchant Shipping". 7th Edition; at p. 238, which is as follows:-"Before the Maritime Conventions Act, 1911, it had been decided by the House of Lords that the Admiralty Division of the High Court could not entertain an action in rem for damages for loss of life under Lord Campbell's Act, 9 and 10 Vict. c. 93. The law, however, has now been altered by the Maritime Conventions Act".

4. At page 60 of Halsbury's Laws of England. Vol. 1, it is stated that damage "done by a ship" includes a claim for loss of life, or for personal injuries, but it does not include a claim for an indemnity in respect of statutory compensation paid either for personal injuries or for loss of life. This is evidently by virtue of the Maritime Conventions Act passed by the British Parliament in 1911. A

reference may also be made in this connection to "Roscoe's Practice", 5th Edition, at p. 66. It is there stated:-

"To give rise to an Admiralty action for damage by collision, there must be damage in the sense of injury or loss appreciable in the eye of the law including loss of life and personal injury, and resulting from negligence; in other words, the cause of action arises out of negligence producing damage and the infliction of injury without negligence creates no liability".

5. Even Marsden in his treatise "Collisions at Sea", 10th Edition, says at page 168 under the heading "Actions in respect of Loss of Life and Personal Injuries" :-

"The Admiralty rule did not apply to actions under the Fatal Accidents Acts; consequently the plaintiff if not himself in fault, could, although both ships were in fault, recover full damages. The High Court of Admiralty had no jurisdiction to entertain these actions, and the Judicature Act, 1873, Section 25(9) did not apply the rule of division of loss to them.

The rights of parties claiming in respect of death under the Fatal Accidents Acts (and, since 1934, under the Law Reform (Miscellaneous Provisions) Act, 1934), and for personal injuries, and of shipowners against whom such claims are made, were enlarged by the Maritime Conventions Act 1911."

It is pointed out at page 169 that Section 5 of the Maritime Conventions Act, 1911, was repealed with regard to the High Court by the Supreme Court of Judicature (Consolidation) Act, 1925, section 226 and Schedule VI, and the following provisions were substituted by the Act, Sections 22 and 33:-

"22. (1) The High Court shall, in relation to admiralty matters, have the following jurisdiction (in this Act referred to as "admiralty jurisdiction") that is to say --

(a) Jurisdiction to hear and determine any of the following questions or claims:-

(iv) any claim for damage done by a ship;

(2) The Provisions of paragraph (a) of Sub-section (1) of this section which confer on the High Court admiralty jurisdiction in respect of claims for damage shall be construed as extending to claims for loss of life or personal injuries.

33. (2) The admiralty jurisdiction of the High Court may be exercised either in proceedings in rem or in proceedings in personam".

6. It will be seen, therefore, that the provisions of Sections 22 and 33 of the Supreme Court of Judicature (Consolidation) Act, 1925, have the effect of including within the Admiralty Jurisdiction of the High Court claims for damages in respect of loss of life or personal injuries and enabling the High Court to exercise its Admiralty Jurisdiction

either in proceedings in rem or in proceedings in personam in respect of such claims.

7. "Clerk and Lindsell on Torts", 11th Edition, also refers to the Maritime Conventions Act of 1911 at page 97 and states:-

"By Section 5 of the Maritime Conventions Act, 1911, the Admiralty Court has jurisdiction to entertain proceedings for damages for loss of life both in rem and in personam."

It will thus be clear that since the enactment of the Maritime Conventions Act, 1911, actions for damages either in rem or in personam in respect of loss of life as a result of a collision on the high seas have become cognizable by the Admiralty Division of the High Court in England.

8. In my Judgment in *Kamalakar Mahadev Bhagat Vs. Scindia Steam Navigation Co. Ltd.*, I held that the High Court at Bombay which was declared as one of the Colonial Courts of Admiralty by Section 2 of the Indian Act 16 of 1891 was by the Colonial Courts of Admiralty Act, 1890, given as such Colonial Court of Admiralty such Admiralty jurisdiction as was then exercised by the High Court of Admiralty in England. I also held that the suit there being one for damages in respect of damage done to the country craft "Pandavi" by the defendant company's ship "Jalamanjari" was exclusively cognizable by the High Court on its Admiralty side.

9. The question in this case, however, is as to whether the suit or damage? in respect of death of Eknath as a result of the same collision was exclusively cognizable by the High Court on its Admiralty Side and the answer to that question depends upon whether the Maritime Conventions Act, 1911, was extended to British India. In that connection reference may be made to Section 9 of the Maritime Conventions Act, 1911. That section says:-

"9.(1) This Act shall extend throughout His Majesty's dominions and to any territories under His protection, and to Cyprus:

Provided that it shall not extend to the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland",

It cannot be disputed that British India was a part of His Majesty's dominions in 1911, and that it did not fall amongst the dominions or countries to which the Act was not extended. Accordingly, the provisions of the Maritime Conventions Act, 1911, can be said to have been extended to British India by virtue of Section 9 of that Act.

10. If there may be any doubt about British India having formed part of His Majesty's dominions in 1911, reference may be made to Halsbury's Laws of England. 3rd Edition, Vol. 5, at page 433, paragraph 987 which is as follows :-

"The term "Her Majesty's dominions" means all the territories under the sovereignty of the Crown, and the territorial waters adjacent thereto..... Reference to Her Majesty's dominions contained in statutes passed before India became a Republic are still to be construed as including India; it is usual to name

India separately from Her Majesty's dominions in statutes passed since India became a republic".

These statements make it dear that India was included amongst Her Majesty's dominions at the time when the Maritime Conventions Act was passed and even thereafter until India became a Republic on 26th January, 1950. The foot note (1) on the same page of the same volume of Halsbury's Law's of England clarifies this position. It is as follows:-

"British India which included the whole of India except the princely states (see the Interpretation Act, 1889, Section 18-A(1) and the Government of India Act, 1935, as amended by Section 8 of the India and Burma (Miscellaneous Amendments) Act, 1940), formed part of Her Majesty's dominions and was a British possession although it was not included within the definition of "colony" The territory comprised in British India was partitioned between the Dominions of India and Pakistan (Indian Independence Act, 1947, Section 2(1)), but the law relating to the definition of Her Majesty's dominions was not thereby changed, and it was continued in being by the India (Consequential Provision) Act, 1949, passed in contemplation of the adoption of a republican constitution by India. India adopted her republican Constitution on 26th January, 1950".

11. At page 529 of the same volume of Halsbury's Laws of England, in paragraph 115Q entitled "The Indian Independence Act", it is stated as follows:-

"From 15th August, 1947, the United Kingdom Government ceased to have responsibility for any of the territories in British India, and the suzerainty of the Crown over the states lapsed and with it, all treaties and agreements between the Crown and their rulers and all functions rights and obligations of the Crown in relation to them. Provision was made for the territories of the two Dominions: Pakistan consisted of the Provinces of East Bengal, West Punjab, Sind and British Baluchistan and (after a plebiscite) the North-West Frontier Province and India was to comprise all other territories included in British India. Indian States could accede to either Dominion.....

Existing laws were to continue in force until other provision was made by the competent authorities. The operation of these laws in relation to India remained unaffected by India's adoption of a republican Constitution".

In the foot note (m) at page 530 of the same volume it is s"ated:-

"The India (Consequential Provision) Act, 1949. Section 1 preserved in force all laws of England relating to India which were in existence at the date when the Republic came into existence". and at page 707 of the same volume, among the Acts that were passed by the British Parliament relating to the Commonwealth is included the Maritime Conventions Act, 1911, which by Section 9 thereof operated throughout Her Majesty's dominion and in protectorates, but expressly did not extend to Australia, Canada, New Zealand or South Africa.

12. Thus, it is clear that the Maritime Conventions Act, 1911, was extended to

British India ever since it was enacted by the British Parliament and it continued in force even up to 1930 when Independent India adopted the Republican Constitution for herself.

13. Article 372 of the Constitution provides:-

"Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

By this Article, all the law in force in the territory of India immediately before the commencement of the Constitution was continued in force and this law would obviously include the Maritime Conventions Act of 1911. The Indian Parliament does not appear to have either altered or repealed or amended that Act so far and accordingly, the entire Maritime Conventions Act of 1911 still continues in force in the Indian Republic.

14. Accordingly, the suit filed by the plaintiffs in this case, though in personam and not in rem, fell within the jurisdiction of the Admiralty Side of the High Court for the plaintiffs could well have filed the suit in rem if they had so wished, and, therefore, the City Civil Court had no jurisdiction to entertain it. Inasmuch as the suit thus falls within the exclusive jurisdiction of the High Court on its Admiralty Side, the contention raised by Mr. Rangnekar on behalf of the plaintiffs that the suit fell under the Fatal Accidents Act and that", therefore, the City Civil Court had jurisdiction to entertain it, cannot be sustained. The learned Principal Judge, therefore, was, in my opinion, perfectly right in holding that the suit did not fall within the jurisdiction of the City Civil Court and in ordering the plaint to be returned to the plaintiffs for being presented to the proper Court.

15. The appeal is, therefore, dismissed with costs.

16. Appeal dismissed.