

(2005) 06 KAR CK 0006
In the Karnataka High Court
Case No : M.F.A. No's. 2203 and 2413 of 2004

Leelawwa Vajramatti, Shashikala and Netra	APPELLANT
Vs	
Karnataka Handloom Development Corpn. Ltd. and Others	RESPONDENT

Date of Decision : 14-06-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 162, 166, 168

Citation : (2007) 1 ACC 815 : (2007) ACJ 299 : (2006) 3 RCR(Civil) 398

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Anil V. Katarki, for the Appellant; Veena O. Mahesh, for R2 in MFA No. 2413 of 2004 and for R4 in MFA No. 2203 of 2004, Vigneshwara S. Shastry, for R5 in MFA No. 2413 of 2004 and for R2 in MFA No. 2203 of 2004, R. Sridhara Hiremath, for R1 in MFA No. 2413 of 2004 and for R3 in MFA No. 2203 of 2004 and R. Rajagopalan, for R4 in MFA No. 2203 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—Both the appeals arise out of the same accident.

2. MVC No. 723/99 is filed by the mother and son of the deceased one Hanumanthappa Adivappa Vajramatti.

3. MVC No. 809/99 is filed by wife and two daughters of the deceased Hantamanthappa Adivappa Vajramatti, Both the cases pertain to death of same person and same cause of action.

4. The mother and son of the deceased are petitioners in MVC No. 723/99. It is their case that the first petitioner in MVC No. 802/99 deserted the deceased Hanumanthappa Adivappa Vajramatti, converted to I slain got married to one Mohammed Souse, Out of the said wedlock petitioners 2 and 3 are born, Therefore, the petitioners in MVC No. 802/99 are not the legal heirs entitled to compensation.

5. The petitioners in MVC No. 723/99 have produced Ex.P.S ration card. The oral

and documentary evidence substantiate their contention to disable the petitioners in MVC No. 802/99 to seek compensation,

6. Per contra, the counsel for the petitioners in MVC No. 802/99 contend that there is no legal divorce, Mere conversion to Islam is not a ground to deny compensation.

7. The provisions of Section 1-A of the Act reads thus:

1-A. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.-

Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to. felony or other crime.

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,

And 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 respective ", for whom and for whose benefit such action shall be brought and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant shall be divided amongst the before-mentioned parties or any of them in such shares as the court by its judgment or decrees shall direct.

8. The provisions of Section 168 of the M.V. Acts reads thus:

168. Award of the Claims Tribunal, -(1) On receipt of an application for condensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and subject to the provisions of Section 162 may make an award determining the amount of condensation which appears to it to be just and specifying the person or persons to whom condensation shall be paid and in making the award the Claims Tribunal shall ..specify; the amount which shall be paid by the insurer or owner or driver of the vehicle involved in. the accident or by all or any of them., as the case may be :

(UNDER LINE EMPHASIZED BY MS)

9. The provisions of law above noted makes it abundantly clear that the apportionment and disbursement of compensation is within the jurisdiction of the

court and not governed by personal law of succession of the parties.

10. The facts clearly disclose the conversion of the first petitioner in MVC No. 802/99 to Islam and that the other petitioners No. 2 and 3 are born out of the wedlock with Mohammed Souse. The fact that the first petitioner was not divorced; and she continues to be the wife, may be technically a sound contention. Merely because, the first petitioner in MVC No. 802/99 is the legal heir, it does not confer any legal right by itself to seek share in the compensation.

11. In the totality of the facts and circumstances, the denial of compensation to the petitioners in MVC No. 802/99 is sound and proper. Therefore, both the appeals are dismissed.