

(1969) 07 KAR CK 0002

In the Karnataka High Court

Case No : Civil Revision Petition No. 1074 of 1967

M. Ayyappan and Another

APPELLANT

Vs

Moktar Singh and Another

RESPONDENT

Date of Decision : 25-07-1969

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 342 (2)
Motor Vehicles Act, 1939 — Section 110, 110 (1)

Citation : AIR 1970 Kar 67 : (1969) ILR (Kar) 793 : (1969) 2 MysLJ 264

Hon'ble Judges : M. Sadanandaswamy, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : K. Jagannatha Shetty, for the Appellant; B.K. Ramchandra Rao, for the Respondent

Judgement

1. This is a revision petition referred to us for disposal under Sub-section (1) of Section 8 of the Mysore High Court Act, 1961 by A. Narayana Pai J. It is necessary to state the relevant facts leading to the reference. The petitioners Ayyappan and Katayani Amma are the parents of a child which died as a result of an accident caused by a motor vehicle at Davangere on 24-7-1963. They filed the suit O. S. 9/65 in the Court of the Civil Judge, Chitradurga, on 24-4-1965 against the owner of the vehicle, first defendant, and the Insurance Company which had insured the motor vehicle, defendant-2, for recovery of Rs. 10,000/- being the loss of future pecuniary benefit and Rs. 5,000/- towards the expectation of life, mental agony and loss of society.

2. The State Government, in exercise of the powers conferred by Section 110 of the Motor Vehicles Act, under a Notification No. H. D. 228 MVA 57 dated 28th June, 1963 and published in the Mysore Gazette on the same day, constituted the District Judges of various districts mentioned therein as Motor Accidents Claims Tribunals for the areas within their Jurisdiction with effect from 1st July 1963. Since there was no separate District Judge for Chitradurga District, the District Judge of Shimoga was constituted as the Tribunal for Chitradurga District

in which Davangere is situated.

3. Since on the date of the accident a Tribunal u/s 110 of the Motor Vehicles Act, hereinafter referred to as the Act, had been constituted for the area in question, the Civil Judge held that the jurisdiction of his Court as a Civil Court has been ousted by Section 110-F of the Act. He therefore ordered return of the plaint for presentation to proper Court. Against the said order the petitioners appealed to the District Judge of Chitradurga in 1966 by which time a separate District Judge had been appointed for Chitradurga District. The District Judge of Chitradurga was also the Claims Tribunal u/s 110 of the Act by the time he came to hear the appeal, under the Notification No. HD 565 TMA 65 dated 28th October, 1965. The District Judge confirmed the order of the trial Court and dismissed the appeal. Against that order the petitioners filed the present Civil Revision Petition.

4. If the claim for compensation made in the suit was a claim which is covered by Section 110 of the Act, and can be made to the Claims Tribunal which had exclusive jurisdiction to decide the claim, the jurisdiction of the Civil Court is excluded by Section 110-F of the Act.

5. The petitioners contend that at any rate, so far as the first petitioner, the father of the child is concerned, his right to compensation conferred by the Fatal Accidents Act (Central Act 13 of 1855) is not a right, the adjudication of which has been taken away from the jurisdiction of the Civil Court and placed within the exclusive jurisdiction of the Claims Tribunal. The argument in support of this contention is that whereas Section 110-A of the Act enables only the legal representative of the deceased to make an application for compensation to the Claims Tribunal the right conferred by Section 1-A of the Fatal Accidents Act is capable of being sued upon by a person who may not be the legal representative but nevertheless comes within the description of "representative of the person deceased" contained in the 2nd paragraph of Section 1-A of the Fatal Accidents Act. It is further contended that the word "representative" has a different meaning from the expression "legal representative" mentioned in Section 110-A of the Act.

6. The first contention urged on behalf of the petitioners is that the suit filed by the petitioners is one for recovery of damages and not for compensation and therefore the suit claim is not barred u/s 110-F. The argument of the petitioner's learned counsel was that u/s 110(1) of the Motor Vehicles Act, the Jurisdiction of the Motor Accidents Claims Tribunal for the area is restricted to claims for compensation in respect of accidents involving death or bodily injury arising out of the use of motor vehicles and that u/s 110-F, the jurisdiction of the Civil Court is barred in respect of any claim for compensation which may be adjudicated upon by the Claims Tribunal for the area. The first question, therefore, is whether a claim for compensation includes a claim for damages.

7. In *Md. Mozaharal Ahmad v. Mi Azimuddin* AIR 1923 Cal 507 it was observed that the term "compensation" as stated in the Oxford Dictionary, signifies that

which is given in recompense, an equivalent rendered, and that damages, on the other hand, constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained; the value estimated in money, of something lost or withheld. The term "compensation" etymologically suggests the image of balancing one tiling against an-, other; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. Thus, it is clear that the word "compensation" is a more comprehensive term and the claim for compensation includes a claim for damages and hence, the petitioners could have put forward their suit claim before the Motor Accidents Claims Tribunal.

8. u/s 110-A (1) (b) of the Act, an application for compensation arising out of an accident involving the death of a person arising out of the use of motor vehicles may be made by the legal representatives of the deceased. Under Clause (2) of Rule 342 of the Mysore Motor Vehicles Rules, 1963, it is provided that the term "legal representative shall have the meaning assigned to it under Clause (11) of Section 2 of the Code of Civil Procedure, 1908. In Section 2 Clause (11) of the CPC the term "legal representative" as a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Hence it is urged on behalf of the petitioners that so far as the claim put forward by the father is concerned, it could not be adjudicated upon by the Claims Tribunal constituted under the Act, and that therefore, the jurisdiction of the Civil Court to entertain the claim is not barred.

Under Section 1-A of the Indian Fatal Accidents Act (Central Act 13 of 1855) an action or a suit for damages in respect of the death of a person caused by wrongful act, neglect or default, of another person 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". It is further provided that the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought. Section 2 of the same Act provides that not more than one suit or action shall be brought for and in respect of the same subject matter of complaint, and the proviso to that section provides that in every such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

The Legal Representatives' Suits Act, 1855 (Act 12 of 1855) provides that an action may be maintained by the executors, administrators, or representatives of any person deceased, for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate, for which wrong an action

might have been maintained by such person. Both Act 12 of 1855 and Act 13 of 1855 were passed on the same day. The precise nature of the right conferred by Act 33 of 1855 was considered in *Johnson v. The Madras Railway Company* ILR (1905) Cal 479. It was held that as the preamble of the Act 13 of 1855 itself indicated the relations of another were not, prior to its enactment, entitled to claim compensation on account of the death, and that the right to claim compensation in respect of such a death was created by the said Act. It was contended in that case that in the case of Europeans and Eurasians, the only "representative" of a deceased man is his executor or administrator, and that in the said Act the word "representative" has no application to Europeans and Eurasians, but is used only with respect to Hindus and Mohammadans. It was held that the word "representative" is not equivalent to "heirs" since by Act 12 of 1855 passed on the same day, the right is given to bring a suit against "heirs or representatives" of the deceased wrong-doer. It was held that the word "representative" means and includes all or any one of the persons for whose benefit a suit under the Act can be maintained, and that these persons are the representatives of the deceased, in the sense, that they are the persons taking the place of the deceased in obtaining reparation for the wrong done. It was further held that where there is no executor or administrator or where there is one, and he fails or is unwilling to sue, then the suit may be instituted by, and in the name of, the representative of the person deceased, but one suit only is allowed to enforce the claims of all the persons beneficially entitled, -- it being provided that the rights of each and every one of them shall be adjudged and adjusted by the Court in such suit. The right of each beneficiary is only to receive compensation in proportion to the loss occasioned to him by the death of his deceased relative. The beneficiaries entitled to compensation under Act 13 of 1855 are not persons entitled to claim compensation jointly, but are parties entitled to relief severally, in respect of the same cause of action which is enforceable at the suit of all or any of them suing for himself and the rest.

8-A. The Indian Fatal Accidents Act 13 of 1855 was enacted on the same lines as the English Fatal Accidents Act, 1846. u/s 2 of the English Act, it is provided that the action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been caused and shall be brought by and in the name of the executor or administrator of the person deceased. Thus, it is only the executor or administrator of the deceased who could bring an action under the English Act. The English Act was amended by Fatal Accidents Act, 1864, which provided that in case there is no executor or administrator of the deceased or where there is an executor or administrator, no action is brought by him within the time prescribed, then such an action may be brought by and in the name or names of any of the persons for whose benefit such action could have been brought by the executor or administrator, and that every action so brought shall be for the benefit of the said person or persons. Thus, it enables an action to be brought by the persons beneficially interested under the Act.

9. It has been observed in *Palani Ammal v. The Safe Service Ltd.* 1966 Acc CJ 19

(Mad), a decision of the High Court of Madras, that Section 110 of the Motor Vehicles Act provides a speedier remedy, obviously conceived as a better one from the point of view of the injured person or his unfortunate dependants. No new right or even a new remedy has been created by that provision; the forum alone is changed. The right to claim damages by the legal representatives of a deceased in respect of an accident, where the latter met with his death, was actionable under the pre-existing law, in Civil Court. The effect of the new provision is to create a new forum thus taking away the jurisdiction of the ordinary Civil Court. The aggrieved person has, as before, a remedy for damages in respect of the injury. The forum alone is changed. The period of limitation has also been curtailed but those two are matters of procedure.

In *Mrs. E. V. Penheiro v. M. Mineey* AIR 1934 Cal 665 it was held that the word "representative" has a special meaning of its own. It has not the same meaning as "legal representative" in the Civil Procedure Code. The intention was that in the absence of an executor or administrator any one or more of the persons for whose benefit the right of action is given shall be deemed to be a "representative" of the deceased for the purpose of maintaining a suit under the Act. It could not have been intended that in such a case where there is no executor or administrator, the persons for whose benefit the right of action was given should be without a remedy. Consequently, a widow of a deceased European or Eurasian was held entitled to maintain a suit under the Fatal Accidents Act. The decisions in ILR (1905) Mad 479 and AIR 1934 Cal 665 were followed in *Goolbai Motabhai Shroff Vs. Pestonji Cowasji Bhandari*, wherein it was held that the suit brought by the widow, sons and daughters of a deceased Parsee under the Fatal Accidents Act was maintainable.

In *Jeet Kumari Poddar and Others Vs. Chittagong Engineering and Electric Supply Co. Ltd. and Another*, it was held, following the view of the Madras and Calcutta High Courts, that the word "representative" in the Fatal Accidents Act means not the legal representative of the deceased but the wife, husband, parent and children of the deceased, and that any one of them can also bring the suit for the benefit of the others. In *Mohammed Habibullah and Another Vs. Seethammal*, it was held that the claim preferred by the married sister of the deceased who died a bachelor, is maintainable u/s 110 (1) of the Act on the ground that Section 110-F provided for the foundation of a claim by any legal representative of the victim of the accident. The contention that such a claim be preferred only by the wife, child or parents who are the persons mentioned in the Fatal Accidents Act, was negatived. It has been held in *Seethamma v. Benedict D'Sa* (1966) 1 Mys LJ 576 : AIR 1967 Mys 11 that a claim for compensation can be made u/s 110-A of the Act not only against the owner of the motor vehicle and the Insurer, but also against the driver whose negligence produces the claim for compensation. In *Re: Crawford's Trust* (1854) 23 LJ Ch 625 it has been held that the word "legal" when added to "representative" only means the representatives reorganised by law and does not designate different persons from those who would be intended by the single word "representatives", any more than the term "legal heirs"

describes different persons from those who would be designated by the single word "heirs".

10. After the Motor Vehicles Act was amended by incorporating Sections 110 to 110-F, it is only the forum which has been changed in order to provide for a speedier remedy. In our Judgment, the term "legal representative" in Section 110-A includes the persons referred to as "representatives" in Section 1-A of the Fatal Accidents Act, namely, the wife, husband, parent or child of the deceased. Since both the petitioners come within the meaning of "parent" they could have made their claim before the Claims Tribunal. In that view, the Civil Court's jurisdiction to entertain the suit is clearly barred. The Courts below were right in returning the plaint for presentation before the proper forum.

11. Since we have held that the term "legal representative" used in Section 110-A of the Act cannot have the same meaning as that attributed to it u/s 2(11) of the CPC the right that could be exercised u/s 110-A of the Act cannot be confined to persons who come within the term "legal representative" as defined u/s 2(11) of the CPC only. The right of representatives of the deceased who do not come under the definition of the term "legal representatives" as defined in the CPC to put forward a claim u/s 110-A of the Act cannot be taken away by means of a rule framed under the Rule-making power conferred by Section 111-A of the Act. The power to make rules u/s 111-A is given to the State Government only for the purpose of carrying into effect the provisions of Section 110-A of the Act, and while acting for that purpose, the State Government cannot restrict the right given u/s 110-A of the Act to only some of the persons contemplated under that Section. Hence, Clause (2) of Rule 342 is beyond the Rule-making power of the State Government and is therefore invalid.

12. The revision petition is therefore, dismissed. But in the circumstances of the case there will be no order as to costs.

13. Petition dismissed.