

(1971) 06 KAR CK 0001
In the Karnataka High Court
Case No : Misc. First Appeal No. 4 of 1969

M. Basavalingaiah and Another	Vs	APPELLANT
T.P. Papanna and Others		RESPONDENT

Date of Decision : 02-06-1971

Acts Referred:

Hindu Succession Act, 1956 — Section 8
Motor Vehicles Act, 1939 — Section 110 A, 110 A (1), 110 F

Citation : AIR 1972 Kar 63 : (1971) 2 MysLJ 351

Hon'ble Judges : S.R. Range Gowda, J; D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : C.S. Shantamallappa, for the Appellant; C. Nagaraja Rao, for the Respondent

Judgement

Chandrashekhar, J.—Can a father maintain a petition for compensation u/s 110-A of the Motor Vehicles Act, 1939, (hereinafter referred to as the Act) in respect of the death of his son in an automobile accident, when the mother is alive? That is the question that arises for determination in this appeal.

2. One Basavalingaiah died as a result of an automobile accident in Davangere City on 16-12-1965. He was survived by his mother and his father. On 10-2-1966 the father (appellant 1) made a petition under S, 110-A of the Act before the Motor Vehicles Accidents Claims Tribunal, Chitradurga, (hereinafter referred to as the Tribunal) claiming compensation. More than a year later, i.e., on February, 1967, he made an application, I.A.IV, to implead the mother of the deceased as the second petitioner. Respondents 1 to 3 herein, namely, the owner of the motor vehicle involved in that accident, the Insurance Company (wherein that vehicle was insured) and the driver of that vehicle (who were also respondents 1 to 3 before the Tribunal), did not file any objections to I.A.IV. The Tribunal allowed that application on 3-3-1967 and the mother was added as petitioner 2 in the petition.

3. On 20-12-1967, petitioner 2 namely, the mother, made an application praying

for condoning the delay in making her claim. That application was opposed by the respondents. The Tribunal dealt with that application along with the main petition.

4. The Tribunal framed six issues. The third issue is whether the death of Basavalingaiah was on account of his own negligence; the first issue is regarding the right of the petitioners to claim compensation; the fifth issue is regarding the maintainability of the petition; and the second issue relates to the quantum of compensation.

5. On the third issue, the Tribunal held that the accident was due to the rash and negligent act of the driver of the motor vehicle.

6. The Tribunal considered issues Nos. 1 and 5 together and held that when the mother is alive, she alone is entitled to claim compensation and that the father is not entitled to do so, that the mother must be regarded as having made the petition for compensation only on the day on which the application, I.A.IV, was filed for being added as a petitioner, that at that time the period of limitation for making such petition had expired, and that the delay in making such petition could not be condoned as she had not shown that she was prevented by sufficient cause from making the petition in time. In that view, the Tribunal dismissed the petition and did not consider it necessary to give a finding on the second issue which relates to the quantum of compensation.

7. The petitioners have presented this appeal.

8. Mr. C. S. Shanthamallappa, learned counsel for the appellants contended that the view taken by the Tribunal that the father of the deceased could not maintain a petition for compensation u/s 110-A of the Act, was clearly unsustainable.

9. In order to appreciate the above contention, it is necessary to set out certain statutory provisions.

10. Sub-section (1) of Section 110-A of the Act reads:

"110-A (1). An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made:--

(a) by the person who has sustained the injury; or

(b) where death has resulted from the accident, by the legal representatives of the deceased; or

(c) by any agent duly authorised by the person injured or the legal representatives of the deceased, as the case may be.

11. In exercise of the powers conferred by Section 111-A of the Act, the Government of Mysore made rules called "the Mysore Motor Vehicles Rules, 1963". The title of Chapter VII of these Rules is "Motor Accidents Claims Tribunal Rules".

12. Rule 342 of those Rules contains certain definitions,

13. Sub-rule (2) of Rule 342 provides that the expression "legal representative" shall have the meaning assigned to it under Sub-section (11) of Section 2, C. P. C.

14. The expression "legal representative" had not been defined in the Code of Civil Procedure, 1882. The definition of that expression was embodied in Section 2(11) of the Code of Civil Procedure, 1908. The definition reads:

"2 (11). "legal representative" means 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 suing or sued."

15. Section 8 of the Hindu Succession Act provides, inter alia, that the property of a male Hindu dying intestate shall devolve firstly upon the heirs specified in Class I of the Schedule to that Act; and that if there is no heir of Class I, then upon the heirs specified in Class II of that Schedule. Son, daughter, widow and mother are among the heirs specified in Class I of the Schedule, while father comes in Class II of that Schedule.

16. The Fatal Accidents Act, 1855, was enacted to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.

17. Section 1-A of that Act reads:

"1-A. 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 to an action or suit 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 respectively for whom and for whose benefit such action shall be brought, and the amounts 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 decree shall direct."

18. The Tribunal took the view that as the mother of the deceased was alive, the

father could not be regarded as an heir of the deceased u/s 8 of the Hindu Succession Act, that the father could not be regarded as a legal representative of the deceased in view of the definition of the expression "legal representative" as contained in Section 2(11) Civil Procedure Code, which definition has been adopted in Rule 342 of the Mysore Motor Vehicles Rules and that hence petitioner 1 (the father) had no locus standi to bring a petition u/s 110-A of the Act claiming compensation.

19. In support of his contention. Mr. Shanthamallappa relied on the decision of this court in *M Ayyappan v. Moktar Singh* 1969 Acc. C.J. 439 : (AIR 1970 Mys 67). There, the question that arose was whether the adjudication of a father's claim to compensation for the death of his son by an automobile accident, was taken away from the jurisdiction of the Civil Court and placed within the exclusive jurisdiction of the Motor Accidents Claims Tribunal. Sadanands Swamy, J., who spoke for the Bench, referred to the provisions of the Fatal Accidents Act 1855, and said that Sections 110 to 110-F of the Act have not created any new right or any new remedy but have only changed the forum for enforcement of the remedy, and that the term "legal representative" in Section 110-A included the person referred to as representative in Section 1-A of the Fatal Accidents Act, namely, the wife, or husband, parent and child of the deceased. His Lordship added that since the father comes within the meaning of "parent" he can make his claim before the Claims Tribunal and that the jurisdiction of the Civil Court to entertain his suit for such claim, is clearly barred.

20. Referring to Sub-rule (2) of Rule 342 (of the Mysore Motor Vehicles Rules) which adopts the definition of the term "legal representative" in Section 2(11) Civil Procedure Code. His Lordship said that that term used in Section 110-A of the Act, cannot have the same meaning as that attributed to it in Section 2(11) Civil Procedure Code, and that the right of the representative of a person who died of an automobile accident, to put forward a claim u/s 110-A of the Act," cannot be confined to persons who come within the ambit of the term "legal representative" as defined in Section 2(11) Civil Procedure Code. In that view. His Lordship held Sub-rule (2) of Rule 342 to be ultra vires of the Act and invalid.

21. The observations of the Supreme Court in *The Andhra Bank Ltd. Vs. R. Srinivasan and Others*, as to the scope of the expression "legal representative", do not appear to have been brought to the notice of the Bench of this court that decided the case 1969 Acc. CJ 439 : (AIR 1970 Mys 67) . In *The Andhra Bank Ltd. Vs. R. Srinivasan and Others*, the Supreme Court quoted with approval the following observations of Woodroffe, J., who spoke for the Bench in *Dinamoni Chowdhurani v. Balahadut Khan* (1904) 8 C WN 843.:

"From this review of the authorities it will appear that judicial decisions have extended the sense of the term "legal representative" beyond that of its ordinary meaning of "administrator, executor, and heir" and though such extension has been attended with doubt and has in some cases been the subject of conflicting decision it appears to me to be too late now to endeavour, however convenient it

might be, to secure for the term that which is perhaps its strict and legitimate sense. I agree, therefore, in holding that the term is not limited to administrators, executors and heirs and am of opinion that it must now be held to include any person who in law represents the estate of a deceased judgment-debtor."

22. The Supreme Court added that the view expressed by Woodroffe, J., has been embodied in the present definition of "legal representative" by Section 2(11) C. P. C.

23. The above observations of Woodroffe, J., which have been approved by the Supreme Court, would indicate that the term "legal representative" as defined in Section 2(11) Civil Procedure Code, is not restricted in its meaning to heirs, executors and administrators of the deceased as the Bench which decided *M. Ayyappan and Another Vs. Moktar Singh and Another*, seems to have thought. However, this does not affect the main conclusion of their Lordships that the term "legal representative" in Section 110-A of the Act includes the persons referred to as "representatives" in Section 1-A of the Fatal Accidents Act, namely, the wife or husband, parent and child of the deceased,

24. Mr. Shanthamallappa next relied on the decision of the High Court of Himachal Government Transport, Simla and *Another Vs. Joginder Singh and Another* There, the father of two boys who died of an automobile accident, had filed a claim application u/s 110-A of the Act. That application was resisted on the ground that the claim should have been made both on behalf of the father and the mother of the deceased and that as the father alone had made the claim, no amount could be awarded in respect of the loss caused to the mother. Repelling that contention. Sodhi, J., observed that under the Fatal Accidents Act, compensation is available to all those members of the family who suffer monetary loss as a result of the death of a member by accident, that the father is also entitled to compensation as a member of the family and that it is not necessary that all the members of the family should join as claimants.

25. In the light of the above decisions, it is clear that under the Fatal Accidents Act, the father of the deceased, is one of the persons who is entitled to the benefit of the compensation and that he can bring a claim petition as a representative of the person deceased. The view taken by the Tribunal that the father of the deceased is not a legal representative of the deceased, who can make a claim petition u/s 110-A of the Act, is clearly unsustainable. In that view, it is immaterial whether appellant-2, the mother of the deceased, did or did not join in that claim petition. It also becomes unnecessary to go into the question whether appellant-2 (the mother) was prevented by sufficient cause from making the claim for compensation within the time fixed in Section 110-A.

26. In the result, this appeal is allowed; the order of the Tribunal dismissing the petition is set aside and the same is remanded to the Tribunal with a direction to dispose of the petition according to law and in the light of this judgment.

27. The court-fee paid by the appellants on the memorandum of appeal will be refunded to them. The costs in this appeal will be costs in the cause. Advocate's fee Rs. 150/-.