

(2003) 11 CAL CK 0011
In the Calcutta High Court
Case No : F.M.A. No. 2885 of 2002

Manjuri Bera

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)
Motor Vehicles Act, 1988 — Section 140, 165, 166
West Bengal Motor Vehicles Rules, 1989 — Rule 329

Citation : (2004) 3 ACC 15 : (2005) ACJ 1622 : (2004) 2 CHN 370 : 108 CWN 175

Hon'ble Judges : Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Krishanu Banik, for the Appellant; Abhijit Gangopadhyay and Tanushree Dasgupta, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, (2007) 2 ACC 365 : (2007) ACJ 1279 : AIR 2007 SC 1474 : (2007) 5 JT 78 : (2007) 146 PLR 611 : (2007) 5 SCALE 193 : (2007) 10 SCC 643 : (2007) 4 SCR 590

Dilip Kumar Seth, J.—The short question that arises in this case as argued by Mr. Banik is that whether the expression "legal representative" appearing in Section 166 of the Motor Vehicles Act, 1988 (MV Act) includes married daughters in order to enable her to get compensation on account of death of her father irrespective of the question whether the daughter was dependant on the victim or not simply because of her being a legal representative. He had relied on various decisions with which we will be dealing with at appropriate stage.

2. The learned Counsel for the respondents points out that the legal representative who are dependent on the victim are only entitled to compensation. So far as the right to get compensation either u/s 140 or u/s 166,

there is no distinction except the question of establishment of liability which differs in the two kinds of cases. But it is only the dependency, which is the only determining factor on which entitlement to compensation is adjudged.

3. We find from the Scheme of the Act that the entitlement to the payment of compensation arising out of the accident provided in the MV Act is based on the compulsory insurance of the motor vehicle. We are of the view that the Statute has made a distinction in between the right to apply, and right or entitlement to the compensation. So far as Section 166 read with Rule 329 of the MV Act, and the West Bengal Motor Vehicles Rules, 1989 respectively are concerned, it refers to legal representative. The expression "legal representative" has not been defined either in the Act or in the Rules. Therefore, the widest meaning has to be ascribed on the expression "legal representative" that may follow from the definition in Section 2(11) of the Code of Civil Procedure. Even then, Section 166 MV Act had made it wider in the sense that even an agent of the legal representative or any one of them is entitled to make an application. Section 166 MV Act does not confer any right or entitlement to get the compensation but is procedural providing for right to make an application for claim. It is distinct from the right or entitlement to get the compensation.

4. Section 165 provides jurisdiction to the Court to determine as to whom the compensation is payable. Even if all the legal representatives apply, the Court has discretion to pay the compensation to some of them and to exclude the others with further discretion to apportion. The Scheme of compensation as it appears has been embodied in the Statute with an object to save vagrancy of the dependent of the victim. Therefore, the dependency of the legal representative is one of the factors, which is required to be taken into account. It is not that all the legal representative would be entitled to compensation. It is a compensation for the loss. The loss may arise from various factors. It is not only dependency but also loss of association or company. But this loss of association is not an independent question, which is only one of the factors in arriving at the quantum of the compensation. Question of loss of association would arise only when it is found that person-claiming loss of association was dependent on the victim. Unless this dependence is found, there is no question of compensation for loss of association. Even if we accept the proposition that without dependence, one is entitled to compensation on account of loss of association, then also it has to be proved that the victim was in association with the claimant.

5. Thus, dependency is a prima facie factor for obtaining compensation even though one may be the legal representative of the victim. Unless the dependency is proved, the factors relating to the compensation would not be relevant. Even if it is held to be relevant then also one has to prove that the victim was in association with the claimant.

6. Mr. Banik has relied upon the decision in the case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, . In the said decision, the extent of the meaning of the words "legal representative"

used in Sections 110 and 110A of the Motor Vehicles Act, 1939 (1939 Act) was considered and had been given a very wide meaning, but it had not proceeded on the basis of the right to get the compensation. We may accept the said proposition for the purpose of interpreting the expression "legal representative" used in Section 166 of the MV Act, so far as it gives right to a person to apply for compensation, but this decision does not help Mr. Banik with regard to question of determination of entitlement to compensation by such legal representative. The Scheme of the Act specifically makes it clear giving jurisdiction to the Court to whom the compensation would be payable. Therefore, unless this distinction is covered, the ratio cannot help us.

7. Mr. Banik had relied upon various other decisions, namely, Mohammed Habibullah and Another Vs. Seethammal, . But there also the entitlement to apply was considered. In that case, the deceased having died a bachelor, the married sister was held to be entitled to file the application for compensation. He also relied on the decision in the cases of The Vanguard Insurance Co. Ltd. Vs. Chellu Hanumantha Rao and Others and Bbagwatidin Vs. Gbeesalal and Others, , where it was held that the brother is entitled to claim compensation. But that was a case where it was found that the brother was dependent on the deceased. In Parkash Chand and Another Vs. Pal Singh and Others, the Court had also held that brothers and sisters are entitled to compensation (paragraph 23). Similar view was taken in The General Manager, Karnataka State Road Transport Corporation, Bangalore Vs. Peerappa Parasappa Sangolli and Others, . In Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others, , nephew was held to be the hearer heir. In Kishan Lal and Ors. v. Bharosi Lal and Ors. 2003(2) SCC 225, it was held that the legal representatives of the deceased are entitled to maintain application. All these decisions cited by Mr. Banik thus indicate the question of entitlement is not without dependency when the provisions of the Act empowers the Tribunal to determine the entitlement to the compensation.

8. On the other hand, the learned Counsel for the respondents had relied on the decisions in Shiv Kumar and Others Vs. Raj Kumar and Others, and Resham Kaur Vs. Ramesh Kumar, . In both these cases compensation was held to be payable to some of the legal representative while excluding married daughters which seems to have taken the same view which we have taken.

9. In the circumstances, it is dependent upon the Court to decide as to whether the person making an application though a legal representative would be entitled to compensation.

10. Now coming to the fact, we find from the supplementary paper book that evidence was recorded. The claimant had adduced the following evidence. We may better quote the entire evidence adduced :

"My name is Manjuri Bera.

My husband's name is Sri Badal Bera.

I am the petitioner. Deceased Batakrishna was my father who died by a small lorry accident. I am illiterate. I cannot say the number of the vehicle and the date of accident. It took place at Kapasaria High Road for which he died in hospital. He was a mason. I was dependent on him. I have filed all papers. I pray for Rs. 50,000/- (Fifty thousand) as compensation. I am only daughter of my father.

Cross-examination :

I have five children. The age of my eldest daughter is 13 (thirteen) yrs. I am living in my husband's house at Chakgajipur under Mahisadal P.S. My father's house is at Bamunia. I was brought up by my maternal uncle. My father used to live with me. After the death of my mother. My father started to live in my maternal uncle's house. My father was a mason and even on the last day of his death, he worked as a mason.

It is not a fact that I am not entitled to get any compensation for the death of my father I know nothing about the accident."

11. From the evidence, it appears that the victim was not living with the daughter. He was living with the maternal uncle of the claimant. At the same time, the claimant had contended that she was brought up by her maternal uncle. The father was a mason. Therefore, even the father did not bring her up. The father was also living with her maternal uncle not with her. She was married and residing in her matrimonial home. This clearly indicates that she was not dependent on the victim. It is also found that victim was not living with the daughter. Therefore, the daughter also cannot claim compensation for loss of association.

12. So far as Section 140 of the MV Act is concerned, the rigour of proof of liability may be exempted but it is not free from the question of determining the entitlement and dependency. The principle on which compensation u/s 140 of the MV Act 1988 is to be granted is one and the same for the purpose of determining the entitlement.

13. In the circumstances, we do not find any reason to interfere with the decision. The appeal, therefore, fails and is, accordingly dismissed.

14. There will, however, be no order as to costs.

15. Urgent xerox certified copy of this order, if applied for, be supplied within seven days.

R. N. Sinha, J.

I agree.