

(1996) 07 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 501 of 1995

New India Assurance Co. Ltd.

APPELLANT

Vs

Chando Khatun and Others

RESPONDENT

Date of Decision : 12-07-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A(1)

Citation : (1997) ACJ 1307

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Advocate : S.C. Srivastava, for the Appellant; Sandeep Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Lal Gupta, J.—This appeal by the insurance company has been directed against the award of the Motor Accidents Claims Tribunal, Jaipur, awarding a sum of Rs. 79,500/- as compensation to the respondent No. 1, Chando Khatun.

2. The relevant facts are that Yamin (20 years) was going on a cycle on 19.9.1986 at about 11.15 p.m. when bus No. RNB 117 coming with excessive speed hit the cyclist from behind. Yamin sustained injuries. He died in the hospital next day. Parents of Yamin filed claim case No. 540 of 1986 stating therein that they were the legal representatives of Yamin. That claim case was compromised in the Lok Adalat and a sum of Rs. 30,000/- was awarded as compensation. It is on 22.11.1988 that Chando Khatun filed this application for compensation stating therein that she was the widow of Yamin and she was entitled to compensation. She impleaded her father-in-law and mother-in-law as respondents Nos. 5 and 6. The respondent No. 4, insurance company raised preliminary objection as to the maintainability of the claim case on the ground that compensation has already been awarded as a result of the compromise in the Lok Adalat in the earlier case filed by the parents of the deceased.

3. The Tribunal framed 7 issues. After recording the evidence and hearing the parties, the Tribunal held under issue No. 1 that Yamin died because of the rash and negligent driving of the bus. Under issue No. 5-A it was held that the objection of the insurance company was not tenable and widow could maintain this claim case. Under issue No. 3, a sum of Rs. 1,00,000/- was held to be just compensation and deducting Rs. 30,000/- already allowed to the parents, Rs. 70,000/- were awarded to Chando Khatun. On account of the loss of consortium and funeral expenses a further sum of Rs. 9,500/- was awarded.

4. Mr. Srivastava, learned Counsel for the appellant contends that when award had already been passed in respect of the accident, the second claim application was not maintainable.

5. Mr. Sandeep Mathur on the other hand contends that there was concealment of fact on the part of parents of the deceased when they did not implead Chando Khatun in the claim petition and she cannot be debarred from getting compensation.

6. I have carefully considered the above arguments. It is no more in dispute that Chando Khatun is widow of deceased Yamin. She is, therefore, definitely legal representative of the deceased. In the Claim Case No. 540 of 1987, preferred by parents of the deceased, Chando Khatun was not impleaded as a party. Even it was not disclosed that Yamin was a married person. It was not possible for Chando Khatun to have knowledge of the proceedings launched by her in-laws. She being illiterate lady also could not know about her rights to get compensation. She has deposed in clear terms that her father-in-law never told her that he had filed claim case or that he had got some amount as compensation. Proviso appended to Sub-section (1) of Section 110-A of the Motor Vehicles Act, 1939 reads as follows:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

7. Thus all the legal representatives are entitled to file claim application and the aforesaid proviso requires that if any of the legal representatives does not join he or she should be impleaded as respondent to the application. However, in the claim case filed by the parents, Chando Khatun was not impleaded as a respondent.

It was also not averred in the claim application that Chando Khatun was the widow of the deceased and she was not willing to be impleaded as the claimant. As Chando Khatun was not impleaded as respondent so there is no question to apply the principle of res judicata. The principle of res judicata can be applied where the earlier matter was heard and finally decided and the concerned person was party to that litigation. True it is, that cause of action in both the matters is

same, but as Chando Khatun was not impleaded as party in the earlier claim case, the decision rendered in that case cannot operate as res judicata.

8. It is significant to point out that in the instant case claimant Chando Khatun has impleaded both the parents as respondents. They have been duly served and even the vakalatnama was filed on their behalf by the advocate. However, no reply was filed challenging the fact that Chando Khatun was the widow of Yamin. It is, therefore, obvious that the parents had suppressed important fact while filing the claim application. As there was concealment of fact, the insurance company cannot successfully raise a plea that this claim application filed by Chando Khatun was not maintainable.

9. What I feel is that the form of application for compensation prescribed under Rule 3 of the Rajasthan Motor Accidents Claims Tribunal Rules, 1964 did not provide a column or require a verification to the effect that no other legal representative of the deceased was alive. Item No. 2 (a) provided for writing the relationship of each applicant with the deceased only. It seems, the parents have taken the advantage of this position when they concealed the fact. I am surprised to note that even the Form R.S. 10.1 (rule 10.2) of the Rajasthan Motor Vehicles Rules, 1990 framed under the Motor Vehicles Act, 1988 lacks in this respect. Item No. 21 is regarding name and address of the applicant and the item No. 22 requires the mentioning of relationship with the deceased. There is no item requiring the mention of a fact that no other legal representative of the deceased was alive. Even at the end of application where verification is required to be made by the applicant, it is not the requirement that the applicant states that there is no other legal representative of the deceased.

10. In order that a legal representative may not be deprived of the compensation by the other legal representatives, who may file claim case without mentioning his or her name in the application for compensation, it is the need of the hour that application form for compensation is suitably amended. It needs to be provided in the application form that a verification shall be recorded by the applicant that no person other than the applicants is the legal representative of the deceased and was alive at the time of making application. Such a verification will deter the claimants to conceal the important facts and the situation which has arisen in the present case shall not arise.

11. No other point was pressed before me.

12. Consequently, I find that there is no merit in this appeal which is hereby dismissed.

13. The Registrar is directed to send a copy of this judgment to the State Government for necessary action.