
(1990) 06 KAR CK 0050
In the Karnataka High Court

Ramappa Puttappa Gourannawar

APPELLANT

Vs

Deveerawwa

RESPONDENT

Date of Decision : 21-06-1990

Acts Referred:

Citation : (1992) 1 ACC 208

Hon'ble Judges : M.M. Mirdhe, J;K.A. Swami, J

Bench : Division Bench

Judgement

K.A. Swami, J.—This Appeal is preferred against the award dated 20th December 1989 passed by the II Additional District Judge and M.A.C.T. Dharwad, in M. V.C. No. 410/1981.

2. The Tribunal has awarded a sum of Rs. 19,000/- as compensation to the petitioner with costs and interest at 6% per annum from the date of the petition till the date of payment. It has dismissed the petition as against the Insurance Company.

3. There was also another petition being M.V.C. No. 257/1981 filed by the mother and the brother of the deceased Channabasappa. In fact M.V.C. No. 257/1981 and M.V.C. No. 410/1981 were filed in time before the same Tribunal. Both the cases ought to have been clubbed together and decided. However, whether it was due to lapse on the part of the office of the Tribunal or wantonly or due to a mistake on the part of the parties, both the cases were not clubbed. M.V.C. No. 257/1981 was separately tried and decided on 15-2-1988. In that case, the Tribunal awarded compensation of Rs. 25,000/- to both the claimants viz., the mother and the brother of the deceased.

Subsequently, the MVC 410/1981 came up for trial before the II Additional District Judge and M.A.C.T. Dharwad, who after recording the evidence has passed an award awarding sum of Rs. 19,000/- as compensation to the claimant.

4. It is contended by Sri F.V. Patil, learned Counsel for the appellant that the claimant was divorced by Channabasappa the deceased; therefore, on the date

of death of Channabasappa she could not have become the heir of the deceased and as such she could not claim any compensation and could not be considered to be a dependant; that the second petition-MVC 410/1981 was not maintainable. It is not possible to accept boom these contentions which have been negated by the Tribunal also. The case of the appellant that the claimant was divorced by Channabasappa the deceased has been rejected by the Tribunal because no evidence is adduced by the appellant to prove that the claimant was divorced by Channabasappa. The marriage of the claimants with Channabasappa has been admitted by D.W.4. the brother of the deceased. That being so, the contention of the learned Counsel for the appellant that the claimant was divorced by Channabasappa has no substance because there is no evidence to prove the divorce. The Claims Tribunal is justified in rejecting this contention.

5. As far as the second contention is concerned, it is relevant to notice that each claimant is entitled to maintain his or her Claim. The fact that the Claim petition filed by some of the claimants has been disposed of without clubbing the Claim petition filed by the other claimants, does not take away the right of other claimants to Claim compensation nor does it take away the jurisdiction of the Tribunal to decide the Claim petition as long as the persons who are liable to pay the compensation are made parties to the petition and the Claim of the claimants has remained unsettled. The question of res judicata also does not arise. Of course, there will be a possibility of conflicting findings with regard to the essential and common issues as to rash and negligent driving and dependency of the claimants on the deceased. To what extent those conflicts are to be resolved need not be gone into in this case because such a conflict does not arise in this case. The award is passed for a sum of Rs. 25,000/- in MVC No. 257/1981. The compensation now awarded to the claimants in MVC No. 410/1981 is out of the aforesaid sum of Rs. 25,000/- awarded in MVC No. 257 of 1981. It has come in evidence that out of Rs. 25,000/- awarded by the Tribunal, only Rs. 6,000/- was paid to the claimants therein and they issued the certificate of satisfaction stating that they were satisfied with the Claim. Therefore, on taking into consideration this fact, the Tribunal has awarded the remaining sum of Rs. 19,000/- to the claimants herein.

6. In the facts and circumstances of the case, the questions as to dependency and whether the first respondent could be considered to be dependant need not be considered because there is no change in the amount awarded. As already pointed out, the Tribunal has awarded Rs. 25,000/- and within that amount only the compensation has been awarded to the first respondent. Hence in the facts and circumstances of the case, we do not consider it necessary to go into the question of dependency afresh.

7. However, it is necessary to mention the contention of Sri F.V. Patil, learned Counsel for the appellant that as the claimants was divorced by Channabasappa the deceased, she cannot be dependant heir of the deceased. This contention proceeds on wrong assumption. D.W.4, the brother of the deceased himself has

admitted the marriage of the claimants with Channabasappa and the appellant has failed to prove that Channabasappa had divorced the claimants. Hence we do not see any ground to admit the appeal. It is accordingly dismissed.