
(1981) 08 MAD CK 0053
In the Madras High Court
Case No : A.A.O. No. 261 of 1980

Ranganathan

APPELLANT

Vs

K. Gangabai and Others

RESPONDENT

Date of Decision : 12-08-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 110

Citation : AIR 1982 Mad 131

Hon'ble Judges : Sethuraman, J;Ramanujam, J

Bench : Division Bench

Advocate : K.N. Balasubramanian and T. Dhyanakumar, for the Appellant; M. Francis Rayar and T.M. Saminathan, for the Respondent

Judgement

Ramanujam, J.—This appeal has been filed by the claimant in M. A. C. T. O. P. No. 12 of 1977, on the file of the Motor Accidents Claims Tribunal, Pondicherry, against the order rejecting the claim on the ground

that the claimant in the claim petition being the father of the deceased is not a legal representative and as such he cannot maintain the Claim Petition for the death of his son in an accident.

2. On 17-3-1977 at about 4.30 P. m. at Cuddalore main road, opposite to the A. F. T. New Mills at Mudaliarpeth, Pondicherry lorry bearing registration number PYS 7857, belonging to the first respondent and insured with the second respondent, dashed against one Shivkumar, aged about 6 years, resulting in instantaneous death. Alleging that the said fatal accident was due to the rash and negligent driving of the lorry by its driver, the father of the deceased filed the said claim petition M. A. C. T. O. P. 12 of 1977, claiming a compensation of Rs. 30,000/- from the owner, the insurer and the driver of the vehicle who had been respectively added as respondents 1 to 3 in the claim petition.

3. The said claim petition was resisted by all the three respondents. Their defence was that the lorry was not driven in a rash and negligent manner, that

the deceased who is of tender age suddenly crossed the road and met with the accident, that the deceased was not properly looked after and maintained by his parents, that in any event the petitioner not being the legal heir to claim the compensation while the mother is alive is not entitled to file the claim petition that only in the absence of the mother who is a Class I heir, the father as Class II heir could file a claim petition and that the compensation claimed is, in any event, excessive.

4. On these rival contentions, the Tribunal took up the question as to whether the claim petition filed by the father of the deceased while mother is alive, is maintainable at all as a preliminary issue. The Tribunal found that the mother of the deceased is a class I heir under the Hindu Succession Act is alive and that the father of the deceased who is only a class II heir, cannot maintain the petition without impleading the mother as a co-petitioner or as a respondent. In this view the Tribunal dismissed the claim Petition as not maintainable without going into the merits of the other issues raised by the parties.

5. In this appeal filed by the appellant claimant, it is contended that even a class II heir under the Hindu Succession Act is entitled to maintain the claim for compensation as regards the death of the deceased the right to get compensation on the death of his son arises under the Fatal Accidents Act and not under the provisions of the Motor Vehicles Act and that, therefore, the expression legal representative, occurring in Section 110-A should be understood as including all those Persons referred to in Section 1-A of the Fatal Accidents Act which admittedly includes a parent of the deceased. Hence, the appellant being the father of the deceased who died in the accident is entitled to file the claim petition in a representative capacity for the benefit of all. The learned counsel for the appellant referred to the decision reported in *Kasturilal Gopaldas and Another Vs. Prabhakar Martand Patki and Another*, , in support of his contention that a claim petition is a representative action and that one legal representative can maintain a petition on behalf of all the others. However, in this case, the claim petition does not appear to have been filed in a representative capacity by the petitioner. As a matter of fact, the claim petition does not give the details as to who are the other persons who are entitled to claim compensation consequent on the death of the deceased. That one of the legal representatives can file a claim petition is clear from Section 110-A of the Motor Vehicles Act itself. That section says that where death has resulted from the accident, the claim petition can be filed by all or any of the legal representatives of the deceased. But the said section contains a Proviso, which says that where all the legal representatives ceased 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. This proviso to Section 110-A has been introduced obviously for the purpose of avoiding multifarious claims in respect of the same accident. If one of the many legal representatives can file a claim petition without reference to the others, then there is likelihood of many

claim petitions being filed in respect of the same accident. It is with a view to avoid such a situation and also to ensure that one legal representative does not get the compensation and run away with it without the knowledge of the other legal representatives the proviso has been introduced, Admittedly in this case the appellant has not followed the procedure set down in the proviso to Section 110-A. It appears that long after the filing of the claim petition, the mother of the deceased filed a petition to implead her as one of the petitioners in the claim petition, But that petition had been dismissed by the Tribunal on the ground that it is time barred having been filed more than six months from the date of the accident. Without going into the correctness or otherwise of the dismissal of the impleading petition filed by the mother of the deceased, we are of the view that in the interest of justice, the appellant has to be given an opportunity to amend the petition as one filed on behalf of all the legal representatives and to implead all the legal representatives who are entitled to get compensation on the death of the deceased as respondents in the claim petition. In this view of the matter, we allow this appeal and remand the claim petition to the Tribunal to enable the appellant to bring on record all the legal representatives as respondents and to prosecute the claim petition in a representative capacity, There will be no order as to costs, The appellant will take the necessary steps to amend the claim petition as one filed in representative capacity and to implead the other legal representatives as respondents within two months from the date of receipt of the records, by the Tribunal.

6. Appeal, allowed.