
(2009) 06 MAD CK 0217
In the Madras High Court
Case No : C.M.A. (MD) No. 478 of 2009

Selvi

APPELLANT

Vs

K. Alagarsamy and Another

RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)
Contract Act, 1872 — Section 23
Hindu Succession Act, 1956 — Section 14, 14(1), 24, 4, 8
Hindu Widows Remarriage Act, 1856 — Section 2
Motor Vehicles Act, 1988 — Section 140, 165(1), 166

Citation : (2012) ACJ 945

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : G. Prabhu Rajadurai, for the Appellant; C.R. Krishnamoorthy, for the Respondent

Judgement

Kirubakaran, J.—This appeal has been filed by one of the claimants for enhancement as the appellant was aggrieved by the judgment and decree of the Tribunal in awarding only a sum of Rs. 1,44,000 (rupees one lakh forty-four thousand) to be paid by the owner. Further grievance of the appellant is that the award should have been made against the insurance company also. The deceased was travelling as a load man in respondent No. 1's vehicle (lorry) bearing registration No. TN 59-B 2601 which was proceeding towards Madurai from Kamudakkudi. The driver of the lorry drove the vehicle in a rash and negligent manner and with high speed and due to which the driver lost his control and the vehicle got capsized and the deceased died on the spot.

2. A claim petition was filed and the same was contested by the respondent No. 2 insurance company. After inquiry the Claims Tribunal awarded only a sum of Rs. 1,44,000 (rupees one lakh forty-four thousand) against the respondent No. 1 owner and the said award is challenged by the claimant.

3. Learned counsel for the appellant submitted that the victim, namely, husband

of the appellant died at the age of 25 and he was earning a sum of Rs. 70 per day. However, the Tribunal fixed the daily earnings at Rs. 20 and arrived at Rs. 600 per month and awarded a sum of Rs. 2,16,000 only. After deducting his personal expenses Rs. 1,44,000 was determined as loss of income.

4. According to learned counsel for the appellant, the award amount is very low as per available evidence on record. He further submitted that no amount was awarded under the heads of "loss of consortium", "Toss of love and affection", "funeral expenses" and "transport charges" and hence, he prayed for enhancement of the award amount.

5. On the other hand, learned counsel for the respondent No. 2 contended that the driver of the vehicle did not have proper heavy vehicle licence to drive the vehicle and he was having only licence for driving light motor vehicle and hence the Tribunal was right in fixing the liability on the owner of the vehicle and there was no liability on the part of the insurance company. Secondly, he contended that the amount awarded as per earning capacity in the year 1992 and the same was on the higher side and in any event, the award given by the Tribunal is reasonable and the Tribunal only fixed the liability on the owner and the insurance company is in no way concerned with that. Thirdly, the learned counsel for respondent No. 2 contended that the mother of victim, namely, Kaliyammai died subsequently and the appellant, namely, Selvi got remarried and delivered two children through the second marriage and she is no more legal heir of the deceased Shangaiah and she lost locus standi to maintain the appeal.

6. The learned counsel relied upon the judgments in *Sardari and Others Vs. Sushil Kumar and Others*, and *The Oriental Insurance Co. Ltd. Vs. Sivammal and Others*, to drive home the point that non-possession of the driving licence by the driver at the time of the accident is a violation of conditions of contract of insurance policy and the insurance company cannot be fastened with liability. Hence, he contended that the Tribunal was right in fastening the liability on the owner, the respondent No. 1 herein.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent No. 2.

8. It is seen from the records that driver Karunanithi, as recorded in para 15 of the award, was possessing the driving licence for light motor vehicle TLR No. 1880/91 for the period 5.9.1991 to 4.9.1994. The said fact was confirmed by PW 4 who was working in Sivagangai Regional Transport Office. However, the driver did not have the proper licence for driving heavy vehicle. Since the vehicle involved in the accident was heavy vehicle, Karunanithi did not have the proper licence for driving it. The Tribunal came to the same conclusion that the driver did not have proper licence and hence, the liability could not be fixed on the insurance company.

9. In *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, a three-Judge Bench of Hon"ble Supreme Court upheld the doctrine of pay and recover.

Similarly in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, National Insurance Co. Ltd. Vs. Baljit Kaur and Others, ; Oriental Insurance Co. Ltd. v. Brij Mohan, 2007 ACJ 1909 (SC); National Insurance Co. Ltd. Vs. Kusum Rai and Others, National Insurance Co. Ltd. Vs. Yellamma and Another, ; The New Indian Insurance Company Vs. Darshana Devi and Others, reiterated the same view. A Full Bench of this court in Branch Branch Manager, United India Insurance Co. Ltd. Vs. Nagammal, Unnamalai and V.B. Krishnan, held that it is the discretion of the appellate court depending upon the facts of the case to decide whether pay and recover should be applied. In the recent decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, in similar circumstances, it was held that the insurance company had to pay the amount to the claimant with liberty to recover the same from the owner and the driver of the vehicle. In the said case, the driver was owning light motor vehicle licence and he drove a heavy vehicle and caused the accident. The Hon'ble Supreme Court after coming to the conclusion that there was a breach of condition of the insurance policy and the insurance company was directed to pay the amount and recover the same from the owner of the vehicle. The facts of the case are similar to the facts of the above said judgment.

10. Apart from the above, the peculiar circumstances of this case are that the appellant lost her husband at the age of 20 years and she is an illiterate lady and also does not have any source of income, hailing from socially and financially lowest rank. If the appellant is directed to get the compensation from the owner, it will be as good as denying the compensation after all these years. Hence, the respondent No. 2 is directed to pay the compensation to the appellant and recover the same from owner of the vehicle, viz., the respondent No. 1.

11. Regarding the quantum, at the time of the claim petition, it was contended that the deceased was earning Rs. 70 per day. The Tribunal, however, fixed the monthly income as Rs. 600 and arrived at the compensation of Rs. 1,44,000 (rupees one lakh forty-four thousand). Even as per clause 6 of Second Schedule of the Motor Vehicles Act, the notional income for compensation to those who had no income prior to accident for fatal and disability is as follows:

Fatal and disability in non-fatal accidents: (a) Non-earning persons Rs. 15,000 per annum (b) Spouse - Rs. 1/3rd of income of the earning/surviving spouse;"

12. Hence, even as per clause 6 of the Second Schedule of Motor Vehicles Act, if the notional income of Rs. 1,500 per month is taken into account the deceased would have earned Rs. 3,06,000 and after deduction of 1/3rd towards personal expenses, his contribution to his family would be Rs. 2,04,000 (rupees two lakh four thousand). Hence, the appellant is entitled to aforesaid towards dependency.

13. The Tribunal ought to have awarded amount for funeral expenses and loss of consortium and loss to estate. It is rudimentary principle in the motor vehicles cases that amounts have to be awarded under the heads. As the Tribunal did not

award any amount, a sum of Rs. 10,000 is awarded for funeral expenses and Rs. 20,000 is granted towards loss of consortium considering the age of the widow, i.e., 20 years. Towards transportation, a sum of Rs. 1,000 is awarded. Accordingly, the following formula emerges:

(i)

Loss of income

Rs. 2,04,000

(ii)

Transportation charges

Rs. 1,000

(iii)

Funeral expenses

Rs. 10,000

(iv)

Loss of consortium

Rs. 20,000

Total

Rs. 2,35,000

14. The point which has been urged by the learned counsel for the respondent No. 2 was that the appellant got no locus standi to file this appeal as she is no more legal heir of the deceased Shangaiah and she lost the dependency as she got remarried. To stress this point, the learned counsel relied upon para 5 of the appellant's affidavit filed in support of the petition to condone the delay in filing the aforesaid appeal that subsequently she got remarried and got two children and that person also deserted her with the children. Moreover, the claimant No. 2, namely, the mother-in-law of the appellant Kaliyammai also died. In para 5 of the counter-affidavit filed by the insurance company in the above said condone delay petition, the respondent No. 2 stated that the appellant lost locus standi to file the appeal. In view of that, learned counsel submitted that the appellant got no locus standi to maintain this appeal.

15. Merely by the marriage, the legal heirship of the appellant does not vanish as contended by the learned counsel for the appellant. As per Schedule 1 of the Hindu Succession Act, appellant being a widow of the deceased, is a class-I legal heir of the deceased Shangaiah. Moreover, the claim is made by the appellant as a legal heir and the award becomes her property by virtue of section 14 of the Hindu Succession Act. The right of the appellant is a statutory right and the

second marriage does not prohibit her statutory right. Moreover, there is no prohibition or restriction or exclusion under the Act curtailing her right in the event of second marriage. Widow's remarriages were encouraged by great leaders including Mahatma Gandhi. The government is also encouraging widow's remarriage. The contention of the insurance company as stated above is against the policy of the government and welfare of the State. Hence, the contention by the learned counsel for the respondent No. 2 is rejected.

16. The learned counsel for the insurance company submitted that the appellant has got no locus standi to file appeal as she got remarried. As per the law, there is no prohibition for the widow to get married. To appreciate the said contention, the provisions of the Hindu Widows Remarriage Act, 1856 (Act 15 of 1856) has to be seen. That was an Act to remove all legal obstacles to marry on the Hindu widows. The said Act legalizes the marriage of Hindu widows. The preamble of the Act reads as follows:

Whereas, it is just to relieve all such Hindus from this legal incapacity of which they complain, and the removal of all legal obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare; it is enacted as follows:

Section 2. Rights of widow in deceased husband's property to cease on her remarriage.--All rights and interest which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any Will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall upon her remarriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

17. The aforesaid Act was repealed by virtue of Act 24 of 1983 based on the recommendation of the 81st Law Commission Report. Even in the Hindu Succession Act, section 4 speaks about overriding effect of the Act which is extracted as follows:

Section 4. Overriding effect of Act.-- (1) Save as otherwise expressly provided in this Act,--

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force

providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

18. Though section 4 has overriding effect on the other laws, the repealing Act by virtue of Act 24 of 1983, the Hindu Widows Remarriage Act, was specifically repealed. Section 24 of the Hindu Succession Act speaks about certain disqualifications of widows. Section 24 of the Hindu Succession Act, 1956 is extracted as follows:

Section 24. Certain widows remarrying may not inherit as widows.--Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has remarried.

The above section 24 of the Act also was omitted by Act 13 of 2005 w.e.f. 9.9.2005.

19. The reading of the aforesaid section would reveal that there is absolutely no disqualification for a Hindu widow to inherit the property of the husband. The Motor Vehicles Act does not define legal heirs. It only mentions about legal representatives in section 166 of the Motor Vehicles Act, which is extracted as follows:

166. Application for compensation.-

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made--

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

(b) by the owner of the property; or

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

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

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.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain

such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(Emphasis added)

20. The Hon''ble Apex Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, held that a legal representative is one who suffers on account of the death of the person due to the motor accident and need not be wife, husband, parent and child.

21. In this case, the deceased Shangaiah expired on 8.1.1992, leaving the appellant as widow. Even as per the judgment in the Claim Petition No. 276 of 1995 a sum of Rs. 1,44,000 (rupees one lakh forty-four thousand) was awarded. The award has become part of the estate left behind by the deceased and the appellant is entitled to the same.

22. In Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, , the Supreme Court held that "legal representative" as defined in section 2 (11) of the CPC is inclusive in character and its scope is wide and is not confined to legal heirs only. In Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, the Hon''ble Apex Court ruled that a legal representative is one who suffers on account of death of a person due to a motor vehicle accident. Even in Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, the Hon''ble Supreme Court analysing the definition of legal representative, held that a married daughter of the deceased, though not dependent upon deceased, would come under the definition of legal representative mentioned in section 166 of the Motor Vehicles Act and she could maintain the claim petition. In the said judgment, it has been held that "legal representative" occurring in section 166 of the Act is to be construed in terms of its definition given u/s 2 (11) of the CPC guided by the above judgment, it has to be held that the appellant is entitled to maintain the appeal.

23. Hon''ble Supreme Court in Cherotte Sugathan (Died through LR''s) and Others Vs. Cherotte Bharathi and Others, analysed the overriding effect of Hindu Succession Act, 1956 on Hindu Widows Remarriage Act, 1856. It was held that section 2 of Hindu Widows Remarriage Act, 1856 would not prevail over the provisions of the Hindu Succession Act, 1956 having regard to sections 4 and 24 thereof. It is further held that Hindu widows were brought on equal footing in the matter of inheritance and succession along with the male heirs. Section 14 (1) of the Act stipulates that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, will be held by her as a full owner thereof. All the aforesaid Acts, namely, Hindu Widows Remarriage Act, 1856, Hindu Succession Act, 1956, Hindu Widows Remarriage (Repeal) Act, 1983 and Act 39 of 2005 which deleted section 24 of Hindu Succession Act w.e.f.

9.9.2005, recognise the right of the widows not only in remarriages but also in inheriting the properties of the late husband. In nutshell, the women including widows are treated as coparcener on par with the males.

24. When that is the position of law, it is very strange on the part of the insurance company, that too a Government of India undertaking, to put forth the contention that the appellant has got no locus standi as she got remarried. The contention of the insurance company is against the statute and it would amount to a stand which is opposed to the public policy. Hence, it is required to be condemned and deprecated.

25. Assuming for a moment that there was a disqualification after passing of the award, she became entitled to the award as a legal heir. Once she inherited/entitled to the award by virtue of section 14 of Hindu Succession Act, she is entitled to the fruits of the award. In the same way, aggrieved by the award, she is entitled to challenge the same before this court.

26. A similar contention was raised before Rajasthan High Court in Rajasthan State Road Transport Corporation and Others Vs. Kiran Lata and Others, in which subject matter of the appeal arose under Motor Vehicles Act. After analysing all the points, the learned single Judge of Rajasthan High Court held in para 24 as follows:

(24) One of the points which has been argued is the possibility of remarriage. To deny compensation on the ground of possibility of the remarriage of the widow is against the public policy and may be violative of section 23 of the Contract Act. One must also understand that there was a time when the widow marriage was prohibited. Now the society has recognised that the remarriage is the necessity of the life and a widow and particularly the young widow cannot be asked to lead a life of a widow and should remain throughout within the four walls of the house. Parliament in its wisdom enacted the Hindu Marriage Act and Hindu Succession Act, 1956 and codified the Hindu Law. After the death of the husband, u/s 14 of the Hindu Succession Act wife becomes an absolute owner of the property of the husband. Similarly, now there is no restriction on the widow remarriage. On the contrary, the society feels that the widow remarriage is the need of the society and for the welfare of the weaker sections of the society. If the courts start thinking about the possibility of remarriage, then the whole purpose of the legislation will be frustrated and it will remind us of the talk of the 19th century when we are thinking of moving into the 21st century. So, the argument about the possibility of remarriage cannot be accepted at all in the present-day society. On the contrary, I am of the view that even after remarriage, the wife is entitled to get compensation to which she is entitled in the normal course of life. One of the factors is that in the remarriage ordinarily, you cannot get a good partner like the earlier one and burns of the widowhood still remain in the widow even after the remarriage and she has to face the society. So the question of remarriage or possibility of remarriage does not come in the way at all and the compensation should not be based on the question of

marriage or possibility of remarriage.

27. In similar circumstances, the High Court of Punjab and Haryana in Behari Lal Sharma and Others Vs. State of Punjab and Others, , held that the status of the wife of the deceased was to be seen at the time of award and the subsequent change in the matrimonial status is not to be taken into account. In any case, marriages in such cases are not by choice/design, but are social compulsions. More so, the remarriage is not the substitute for the loss of an earlier husband. Section 14 of the Hindu Succession Act, 1956, considers the widow and u/s 8 of Schedule I the widow is considered as first class legal heir.

28. In view of the statutes and the relevant provisions and also provisions of the Motor Vehicles Act and the dictum of the Hon"ble Apex Court, the widow who got remarried cannot be said to be disqualified from inheriting the estate of the husband. The remarriage cannot take away the right of the appellant to challenge the award passed by the Tribunal.

29. In view of the above discussion, the locus standi of the appellant to maintain the appeal is sustained and she has got every right to prosecute the appeal and the question is answered against the insurance company.

30. The Tribunal awarded 12 per cent interest on the award amount from the date of the petition. Considering the prevailing bank lending rate as on date, the interest is reduced from 12 per cent to 9 per cent. However, in view of the order passed in the condone delay petition in M.P. (MD) No. 2 of 2008 in C.M.A.S.R. No. 41546 of 2008 dated 23.4.2009 the appellant is not entitled to any interest for 4,521 days. Accordingly, the respondent No. 2 is directed to pay a sum of Rs. 2,35,000 along with interest at the rate of 9 per cent excluding the period of 4,521 days from the date of petition till realization and to recover the same from the owner of the vehicle. In the result, the civil miscellaneous appeal is partly allowed and the total compensation is enhanced from Rs. 1,44,000 (rupees one lakh forty-four thousand) to Rs. 2,35,000 (rupees two lakh thirty-five thousand). No costs.