
(2014) 04 MAD CK 0035
In the Madras High Court
Case No : C.M.A. No. 1407 of 2014

Shriram General Insurance Co. Ltd.

APPELLANT

Vs

Bhuvaneswari and Others

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)
Constitution of India, 1950 — Article 14
Motor Vehicles Act, 1988 — Section 140 158 165 166 166(1)
Workmens Compensation Act, 1923 — Section 2(1)(d) 3

Citation : (2015) ACJ 1997

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Manikumar, J.

1. Daughter and son, aged about 36 and 31 years respectively, have claimed compensation of Rs. 6,00,000 for the death of their mother, aged about 58 years, stated to be a housewife and tailor, at the time of accident, which occurred on 25.7.2010, involving a heavy goods vehicle bearing registration No. TN 28-E 8406 insured with Shriram General Ins. Co. Ltd., Trichy, the appellant herein. Accident and the finding of negligence fixed on the driver of the above said vehicle have not been disputed in this appeal. Submission made to that extent by the learned counsel for the appellant is placed on record. Based on the entry in post-mortem report, Exh. P3, the Claims Tribunal has fixed the age of the deceased as 58 years, for the purpose of computing the loss of contribution to the family, which could be justified in terms of the decision of this court in The Managing Director, Tamil Nadu State Transport Corporation Vs. Mary, Inikko and Maria Kensy, . Placing reliance on the decision of this court in Managing Director, State Express Trans. Corpn. (Thiruvalluvar Trans. Corpn.) v. Shameem, 2012 (5) MLJ 1009, the Claims Tribunal has fixed the monthly income at Rs. 4,500. After deducting 1/3rd towards the personal and living expenses, took Rs. 3,000 as loss

of contribution to the family. Thereafter, by applying 9 multiplier awarded Rs. 3,24,000 as loss of contribution to the family. That apart, the Claims Tribunal has awarded Rs. 3,000 for funeral expenses, Rs. 2,000 towards transportation, Rs. 25,000 under the head loss of love and affection. Together, the Claims Tribunal awarded Rs. 3,79,000 with interest, at the rate of 7.5 per cent per annum, from the date of claim till the date of realization.

2. Assailing the award, Mr. B. Murugavel, learned counsel for the insurance company, submitted that in the absence of producing any documentary evidence, the Claims Tribunal has erred in holding that the respondent Nos. 1 and 2 are the legal heirs of the deceased. Without prejudice to the above, he further submitted that when the respondents were aged 36 and 31 years at the time of accident, they cannot be construed as dependants of the deceased, therefore, Tribunal ought to have dismissed the claim petition. Except the above, no other submissions have been made.

3. Heard the learned counsel for the appellant insurance company and perused the materials available on record.

4. Section 166 of the Motor Vehicles Act reads as follows:

"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 authorized 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 under section 140 is made in such application, the application shall contain a separate statement to that effect

immediately before the signature of the applicant.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act."

5. In the case on hand, claiming themselves as son and daughter of the deceased Rajeswari, claim petition has been made. Perusal of the award also shows that Bhuvaneswari, PW 1, has not only reiterated the manner of accident, but also spoke about the relationship of the deceased with the claimants. Though Shriram General Ins. Co. Ltd., Trichy, appellant insurance company, has denied the averments made in columns 3, 4 and 6, there is no dispute over the relationship of the respondents with deceased. There is no reason as to why the testimony of PW 1 as regards the relationship should be rejected. For the reasons stated, this court is not inclined to accept the submission of learned counsel for the appellant insurance company.

6. The issue as to whether married sons and daughters are entitled to claim compensation, has been considered by this court in Branch Manager, National Insurance Co. Ltd. v. Sumathi, 2014 ACJ 1454 (Madras) , wherein this court has considered the said aspect and at paras 25 to 28 and 34 held as follows:

"(25) "Legal representative" ordinarily includes the heirs as well as persons, who represent the estate of the deceased person or a person on whom the estate devolves on the death of an individual. Right to claim for compensation by any or all legal representatives under section 166 of the Motor Vehicles Act is a legal right. It is an assertible right enforceable before courts and administrative agencies, in its wider sense and, therefore, a legal right has to be understood, as any advantage or benefit conferred upon a person by a rule of law; and having regard to the manner in which a provision has to be interpreted, as held by the Supreme Court in the decisions stated supra, this court is of the view that the definition of "legal representative" cannot be restricted to exclude married daughters/sisters from making any claim under section 166 of the Act and consequently, restrict their claim, only under section 140 of the Act, which has been engrafted in the statute, with a specific object of compensating all the legal representatives, whether there is negligence on the part of the deceased or not. It is a "no fault liability" clause.

(26) Courts have consistently held that what has been specifically excluded by a legislation in a provision cannot be imported into the section by the decisions of court. By engrafting section 166 of the Motor Vehicles Act, enabling all the legal representatives to make a claim, in contradistinction to section 2(1)(d) of the Workmen's Compensation Act, which enables only the persons enumerated in the said section to claim compensation under section 3 of the Workmen's Compensation Act, the intention of the legislature is clear and the definition, "legal representative" cannot be narrowed down to mean only "dependants", excluding married daughters/sisters.

(27) There could still be a case where there is contribution of a portion of the

income of the deceased to a legal representative, who had preferred a claim and he/she would not be wholly dependent on the income of the deceased. A likelihood of loss of contribution from the deceased would give rise to a claim for compensation by him under section 166 of the Motor Vehicles Act, though he may not be a wholly dependant, as defined in section 2(1)(d) of the Workmen's Compensation Act.

(28) It is a well recognized rule of interpretation of statutes that the expressions used in the statute should ordinarily be understood, in which they harmonise with the object of the statute and which effectuate the objection of the legislature and the court should adopt an object-oriented approach, keeping in mind the language employed in the statute. When the legislature has used the words "legal representative" in section 166 of the Act, and having regard to the duty of the court to act upon the true intention of the legislature, "Mens or Sententia Legis", this court is not inclined to accept the submissions of the insurance company, interpret and circumscribe the meaning of the words "legal representatives" to mean only "dependants". Just because a brother or sister is married, the right to represent the estate of the deceased is not taken away and such an interpretation would make the provisions of law of succession ineffective.

(34) Limiting the payment of compensation to some of the legal representatives, as per section 140 of the Act, to the exclusion of others, would amount to violation of Article 14 of the Constitution of India. In the light of the above, the contention that married daughters are entitled to only compensation under section 140 of Motor Vehicles Act, under no fault liability claim of Rs. 50,000 alone cannot be countenanced. If the submissions of the learned counsel for the appellant insurance company are to be accepted, then it would be introducing a bar or prohibition against a married daughter to prefer a claim under section 166 of the Motor Vehicles Act, which apparently is not the intention of the legislature. Monetary dependency is not the only factor to award compensation to the legal representatives."

7. Some of the decisions on this aspect relied on by this court, in the above reported case, are as follows:

"(29) The expression "legal representative" has been explained in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , as follows:

"(10) Clauses (b) and (c) of sub-section (1) of section 110-A of the Act provide that an application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorized by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of section 110-A provides 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. The expression "legal representative" has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines "legal representative" as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section (1) of section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorized by all or any of the legal representatives of deceased to make it. The proviso to sub-section (1) of section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent, and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. Both the person or persons who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in section 110-A of the Act."

(30) Interpreting section 110-A [now amended as section 166(1)], vis-a-vis, a corresponding provision in the Fatal Accidents Act, 1855, the Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, . further held that:

"These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new", the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies."

(31) While confirming the decision of Gujarat High Court in Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others, , Supreme Court held that:

"(12) We feel that the view taken by Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the

conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realization of compensation and that is provided by sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of Torts that every injury must have a remedy. It is for the Motor Accidents Claims Tribunal to determine the compensation which appears to it to be just as provided in section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family, brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicle accidents."

(32) In *United India Insurance Co. Ltd. Vs. Kasiammal and Others*, , one of the contentions raised therein, challenging the award, was that a married son, who was living separately and not a dependant, is not entitled to claim compensation. The short question framed by this court, at para 6 of the judgment, was whether the claimants, who were married sons and married daughters, are entitled for compensation? While addressing the above said question, a learned Judge has considered three decisions relied on by the appellant insurance company therein in *Revaben and Others Vs. Kantibhai Narottambhai Gohil and Another*, , U.P. State Road Trans. Corpn. and *Another Vs. Tara Devi and Others*, and *Bbagwatidin Vs. Gbeesalal and Others*, and also the decisions of the Apex Court in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, and *Pushpam Vs. Nirmala and Another*, and at paras 15, 16 and 17 held as follows:

"(15) As pointed out earlier, the compensation amount is being paid to the legal representatives on account of untimely death of their ancestor. The dependency of the legal representatives is a question to be considered and does not mean only the dependants can claim compensation. The compensation being the amount for the loss to the estate of the deceased, it has to be considered as to whether the legal representatives had been put to loss because of the death of the deceased. Wherever the deceased is an earning member, naturally his savings is an accumulation for the estate which can be divided by the legal representatives after the death of the deceased. As the legal representatives had been put to loss of the earning of the deceased, the legal representatives are also entitled for the compensation.

(16) Further in this case there is absolutely no evidence to show that married

sons are living separately. When they are residing with the mother, naturally the married sons had lost not only the assistance of the deceased mother but also lost her valuable advice in family matters. The deceased, being a widow, naturally she could have lived with any one of the sons. When the legal representatives, the married sons of the deceased, are entitled for compensation even though they are residing separately, the claimants herein will be entitled for compensation; especially when they are residing with the deceased. Moreover, the aged parents in many a house are the watchdogs for the entire house, servants and the grandchildren except a few exceptional cases. When the claimants had lost such valuable services of their mother they are entitled for compensation. The loss cannot be substituted by any other confidant or responsible person either in the family or by appointing a servant. If the contention of the counsel for the appellant is accepted, I am not surprised that in future the appellant may plead that generally the aged ones are only a liability in the family and since due to the accident the aged one died, the family has got rid of the same and the driver should be suitably rewarded by the legal representatives instead of claiming any compensation for the death of the deceased.

(17) Further, if the contention of the counsel for the appellant that the claimants are entitled only for the no fault amount is accepted, then a person who sustained some grievous injuries will be paid more than the amount that would be paid to the legal representatives, i.e., the married sons and daughters of the deceased and in that case it would be cheaper to kill than maim. If the claimants are to be paid the no fault amount, that may mean that the claimants are being paid some ex gratia payment out of sympathy and not for the loss of life of their ancestor. Hence the contention of the counsel for the appellant cannot be countenanced and there is absolutely no merit in the appeal and is dismissed."

(33) It is worthwhile to reproduce the judgments in Pushpam Vs. Nirmala and Another, and Bbagwatidin Vs. Gbeesalal and Others, , which are as follows:

In fact in the judgment in Pushpam Vs. Nirmala and Another, , the question considered is whether in a petition claiming compensation for injuries sustained by the claimant, after his death whether the sister can come on record as the legal representative. Venkataswami, J. has held that the sister of the deceased claimant can be brought on record as the legal representative, in the following terms:

"(7) ...In more or less identical circumstances, V. Ramaswami, J., as he then was, in Thailammal and Others Vs. A.V. Mallayya Pillai and Others, after noticing a Division Bench judgment of this court in C.P. Kandaswamy and Others Vs. Mariappa Stores and Others, held that:

"...by introducing section 110-A in the Motor Vehicles Act, Parliament intended not to restrict the statutory right to claim damages to the injured alone. In the case of claims arising out of motor accidents, clause (b) provides that the cause

of action would survive to the legal representative where death has resulted from the accident. This was an exception to the general principle "actio personalis moritur cum persona". It is true there is a distinction between case of death resulting from the accident and a case of other personal injuries not causing the death of the party, i.e., the party dying subsequently during the pendency of the proceedings not due to the accident. But the Motor Vehicles Act does not, in my opinion, make any distinction so far as the right to claim damages. The claims in all these cases are not statutory rights. Therefore, there appears to be no reason to restrict the right to the injured alone". The learned Judge further distinguished the Division Bench case in C.P. Kandaswamy and Others Vs. Mariappa Stores and Others, on facts. Learned Judge ultimately held, as for the question of recovering the actual expenses incurred by the deceased, I have no doubt that the claim will survive since that amount if had not been spent might have been available as the estate of deceased to be succeeded by his legal representatives. In Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , the Apex Court has elaborately considered the expression "legal representative" in section 110-A of the Act. After noticing the divergent views of various High Courts, the Supreme Court has held as follows:

"In the light of the principles laid down in the above two judgments, I am of the view that the decisions cited by learned counsel for the respondent No. 1, namely, Videowala Vs. Union of India and Others, and C.P. Kandaswamy and Others Vs. Mariappa Stores and Others, , cannot be pressed into service. I am further of the view that the question of bringing on record or coming on record as legal representatives and the further question whether they are entitled to compensation on the facts and circumstances of the case are two different issues. Merely because they are brought on record, that does not automatically entitle them to get compensation. In the light of the wider meaning given to the expression "legal representative" by the Apex Court, though in a case of death in a motor accident, the order of the court below cannot be sustained. Therefore, I hold that the petitioner is entitled to continue the proceedings and it is for the court below to decide whether the petitioner is entitled to compensation at all, and if so, how much in the light of the principles laid down in Thailammal and Others Vs. A.V. Mallayya Pillai and Others, and other cases".

In the light of the above said decisions, this court is not inclined to countenance the objections of the insurance company. Quantum of compensation awarded has not been challenged. Hence, the civil miscellaneous appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Consequent to the dismissal of the appeal, the appellant insurance company is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P. No. 218 of 2010 on the file of Motor Accidents Claims Tribunal (Sub-Judge), Mannargudi, if not deposited earlier, within a period of 4 weeks from the date of receipt of a copy of this order. On such deposit, the respondents-claimants are permitted to withdraw their

share in the award amount, as apportioned by the Tribunal, by making necessary applications.