

(2000) 02 KAR CK 0066

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3756 of 1998 connected with
Miscellaneous First Appeal No. 3642 of 1998

Smt. Parvathamma

APPELLANT

Vs

C. Subramanyam and Others

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 166 (c)
Hindu Marriage Act, 1955 — Section 11, 5
Hindu Succession Act, 1956 — Section 16, 8

Citation : (2001) ACJ 876 : AIR 2000 Kar 309 : (2001) 1 DMC 498 : (2000) 6
KarLJ 322 : (2000) 3 KCCR 73 SN

Hon'ble Judges : V.G. Sabhahit, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sri B.M. Siddappa, for the Appellant; Sri D.S. Sridhar, for the
Respondent

Judgement

1. This order shall dispose of MFA No. 3756 of 1998 and MFA No. 3642 of 1998 filed by two different claims arising from the same judgment and award dated 16-2-1998 in MVC No. 903 of 1994 of the District Judge and MACT, Chitradurga (for short, "the Tribunal").

2. Facts:

Deceased Boraiah was the husband of Smt. Boramma-1 and father of Gowramma and Lakshmidevi. He was travelling in a KSRTC bus bearing No. KA.17 F-01 on 25th of May, 1994 at about 9.45 p.m. from Chitradurga to Bharamasagar. The bus met with an accident. Near Laxmisagara the lorry bearing No. AP-03/T-1116 came from the opposite direction at high speed which was driven in a rash and negligent manner. The lorry dashed against the KSRTC bus, resulting in the accident and causing grievous injuries to Boraiah; he was immediately taken to C.G. Hospital, Davanagere for treatment, where he died after 3 days i.e., on 28-5-1994 at about 11-45 p.m. He died due to the injuries sustained by him in

accident. Boramma-1 and her two daughters filed the claim petition u/s 166 of the Motor Vehicles Act, 1988 (for short, "the Act") seeking compensation in respect of the death of Boraiah. He was 48 years of age at the time of accident and was working as line man in K.E.B. at Bharamasagara having an income of about Rs. 5,000/- per month. Subsequently Smt. Parvathamma, Smt. Boramma-2 and Smt. Chandramma who became claimants 4 to 6 were added in the claim petition by virtue of their impleading applications claiming that they too were the wives of deceased Boraiah.

3. In the written statement filed by the 3rd respondent-Insurer, it was contended that the petitioners be put to strict proof of the averments made by them in their claim petition. That it was false to say that the accident occurred on account of any rash and negligent driving of the lorry by its driver. The Policy had been issued by the respondent subject to various terms, conditions and exceptions. The terms, conditions and exceptions of the policy be kept in mind while awarding compensation. Prayer was made that the petition be dismissed.

4. In the counter filed by the 4th and the 5th respondents, it was contended that KSRTC is not responsible to pay any compensation to any of the claimants as the accident had taken place due to the rash and negligent driving of the lorry. That the accident did not take place on account of the rash and negligent driving of the KSRTC bus by its driver.

5. On the basis of the above pleadings following issues were framed:

1. Whether the petitioners prove that Boraiah S/o Chinnappa died due to injuries sustained in a KSRTC Bus and lorry accident which occurred on 25-5-1994 at about 9-40 p.m. on N.H. 4 between Beeravara and Laxmisagara gate, due to rash and negligent driving of the lorry bearing Reg. No. AP-03/T-1116 and the KSRTC bus bearing Reg. No. KA. 17/F-01 by the 1st respondent and the driver of the KSRTC bus respectively?

2. Whether the petitioners prove that they are the legal representatives of the deceased and are entitled to claim compensation amount?

3. What is the quantum of compensation to which the petitioners are entitled and from which of the respondents?

6. On evaluation of the evidence on record, the Tribunal found that the accident took place due to the rash and negligent driving of the lorry by its driver. Quantum of compensation was determined at Rs. 3,19,000/-.

7. Under Issue No. 2 it was held that Boramma-1 being the first wife and only legally wedded wife and the two daughters alone were entitled to the amount of compensation. The other three claimants who were allegedly the subsequent wives of the deceased were not entitled to any part of the compensation.

8. Boramma-1 and the two daughters filed MFA No. 3769 of 1998 seeking enhancement of compensation. A Division Bench of this Court accepted the

appeal and enhanced the compensation to Rs. 4,29,000/-. The rate of interest awarded by the Tribunal was affirmed.

9. Parvathamma and Boramma-2 have filed MFA Nos. 3756 of 1998 and 3642 of 1998 respectively claiming enhancement of compensation as well as for setting aside the finding of the Tribunal that the appellants were not entitled to claim any share in the amount of compensation awarded.

10. The question regarding enhancement of compensation stands determined by this Court in MFA No. 3769 of 1998, dated 17-11-1999. The enhancement made and total compensation determined in that appeal be taken to be determined in these appeals as well.

11. The only point which remains to be determined is as to whether the appellants who are allegedly the second and the third wives of the deceased are entitled to claim a part of the compensation awarded.

12. Tribunal in its order has recorded the finding that Boramma-1 was the first wife and therefore the only legally wedded wife of the deceased. Any subsequent marriage/marriages contracted by the deceased with claimants 4 to 6 at different points of time would be void during the subsistence of the first marriage. That there was no evidence on record to show that claimants 4 to 6 were also the legally wedded wives under any law or customs permitting for such a marriage. Subsequent wives if they were so interested in claiming the compensation would have to approach the Civil Court and get themselves declared as the wives of the deceased to claim a part of the amount of compensation.

13. Counsel for the parties have been heard.

14. Section 166(c) of the Motor Vehicles Act, 1988 (for short, "the Act") provides that the petition for compensation where death has resulted from the accident could be filed by all or any of the legal representatives of the deceased. A legal representative ordinarily means a person who in law represents the estate of the deceased persons or a person on whom the estate devolves on the death of an individual. Section 5 of the Hindu Marriage Act, 1955 (for short, "the Act") lays down the conditions for a Hindu Marriage. It provides that a marriage may be solemnised between any two Hindus, on the fulfillment of certain conditions. Condition (i) states that neither party has a spouse living at the time of the marriage. Section 11 of this Act provides that any marriage solemnized after the commencement of the Act would be a nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5. A combined reading of Sections 5(i) and 11 would mean that any marriage performed during the subsistence of a marriage would be a void marriage. Wife is a Class I heir u/s 8 of the Hindu Succession Act. Succession would go to a legally wedded wife only. The subsequent marriages being void; the other woman would not be entitled to succeed to the estate and therefore not legal heir and legal representative. Admittedly Boramma-1 was the first wife of Boraiah. Out of this wedlock two daughters were born. Any subsequent marriage if performed by Boraiah during

the lifetime of the first wife without getting divorce from the first wife would be void and the subsequent wives cannot be termed as legal representatives of the deceased representing his estate. The children born out of the subsequent marriage may be entitled to succeed to the estate u/s 16 of the Hindu Succession Act, 1956, but the wives would not be entitled to succeed to the estate of the deceased.

15. The question as to whether the subsequent wives would be entitled to succeed to the estate of the deceased during the subsistence of the first marriage came up for consideration before the Supreme Court in *Rameshwari Devi Vs. State of Bihar and others*, . In the said case one Narayanlal who was working as the Managing Director of the Rural Development Authority of the State of Bihar, had taken a second wife during the subsistence of his first marriage. From the first wife he had one son and from the second marriage, 4 sons. The question arose who would be entitled to the payment of family pension and D.C.R.G. It was held by the Single Judge that the children born from Narayanlal from the wedlock with the first wife as well as the children born from the second marriage were entitled to share the family pension, land, DCRG and further that family pension admissible to the minor children would be available only till they attained majority. It was held that the second wife was not entitled to anything. Appeal filed by the first wife against the judgment of the Single Judge was dismissed by the Division Bench. According to her there was no marriage between Narayanlal and Yogmaya Devi and three children born out of second marriage, were not legitimate. They were not entitled to succeed to the estate of the deceased. The appeal was dismissed. Aggrieved against the order passed by the Division Bench of the High Court, Rameshwari Devi filed SLP in the Supreme Court of India. Supreme Court dismissed the appeal filed by Rameshwari Devi holding that the marriage between Narayanlal and Yogmaya Devi (second marriage) was in contravention of Section 5(i) of Hindu Marriage Act and was therefore, void marriage. u/s 16 of the Hindu Succession Act, children of void marriage are entitled to succeed to the estate of the deceased. Second wife could not be described the widow of the deceased, her marriage being void. The view taken by us finds due support from the judgment of the Supreme Court, though the Supreme Court has expressed this view under different set of facts. The principle laid down there would be applicable to the claim petition filed by the legal representatives under the Motor Vehicles Act as well. The question which required to be determined under both the Acts is as to who is entitled to succeed to the estate of the deceased. The subsequent marriage being void, the second wife would not be entitled to succeed to the estate of the deceased under the Hindu Succession Act and therefore could not be termed as legal representatives representing the estate of the deceased. Claim petitions for grant of compensation would not be maintainable u/s 166(c) of the Motor Vehicles Act on their behalf.

16. For the reasons stated above we do not find any merit in these appeals and dismiss the same with no order as to costs.