
(2004) 05 KL CK 0026
In the High Court Of Kerala
Case No : M.F.A. No. 1254 of 1997

Varghese

APPELLANT

Vs

Krishnan Nair

RESPONDENT

Date of Decision : 26-05-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2005) ACJ 392 : (2004) 2 KLT 783 : (2004) 4 RCR(Civil) 63

Hon'ble Judges : K. Thankappan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : S. Ananthasubramanian and S. Syam, for the Appellant; A.A. Mohammed Nazir, P.V. Elias and N.N. Elayath, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—Appellants are the parents of one Fr.Jose Vettukallumpurath who died in a motor vehicle accident. He was a member of Monastery called Carmel Provincial House, Muvattupuzha. The appellants filed a claim for compensation before the Motor Accidents Claims Tribunal, Muvattupuzha and it was numbered as O.P.(M.V.) No.662 of 1995. Monastery also filed a claim petition claiming compensation for the death of the very same Priest and it was numbered as O.P. (M.V.) No.663 of 1995. Both cases were heard together and a common award was passed. This appeal is filed against the award in O.P.(M.V.) No. 662 of 1995. The award in O.P.(M.V.) No.663 of 1995 granting compensation to the provincial house is not challenged. However, as directed by this Court, provincial house was impleaded as a party in this case and they were also heard. So, being a motor accident claim appeal, without going into the technicalities, we may consider whether the award of the Tribunal in granting compensation to the provincial house instead of to the parents of the deceased is correct or not. It is submitted that the Insurance Company has deposited the entire amount awarded and it was already withdrawn by the provincial house, the monastery, in which the deceased was a member.

2. The appellants, based on the decisions in *G.K. Kempegowda v. Lucinda* AIR 1985 Kar.231 and *In the matter of Indian Succession Act v. Rt.Rev. Casmir Gnanadesikan, Archbishop of Madras, Mylapore* 1990 (1) KLT 334 argued that merely because a Christian becoming a Nun or Priest will not lose their rights under the Indian Succession Act and they can inherit their property or their property can be inherited as statutory rights are not lost. It is further submitted that since the appellants are natural heirs, they are entitled to get compensation due to the death of their son.

3. Now, we will refer to the decision of the Supreme Court in *Rukhsana v. Nazrunnisa* 2000 (2) KLT 38. There the Supreme Court held that the amount awarded as compensation due to the death has to be disbursed to the legal representatives as decided by the Court and Succession Certificate as envisaged under the Indian Succession Act is not applicable. The amount now claimed is compensation due to the death of the deceased Priest who became a member of the monastery. Therefore, compensation has to be decided not on the basis of the Indian Succession Act. In this case, the total amount awarded by the Tribunal was Rs. 1,03,000/-, out of which Rs. 90,000/- was awarded as compensation for loss of service to the monastery, Rs. 3000/- for funeral expenses and Rs. 10,000/- for pain and suffering. Admittedly, funeral expenses were not incurred by the appellants and therefore they cannot claim the same. Major dispute is regarding the dependency income or compensation for loss of service. Before going into the merits of the case, we may consider the observations of the Supreme Court in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, , where the Supreme Court held that the object of providing compensation is to place the claimant as far as possible in the same position financially as he was before the accident. In paragraph 12 it is observed as follows:

"12. It is true that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, as stated by Lord Morris in *West v. Shephard* 1964 AC 326. Justice requires that it should be equal in value, although not alike in kind. The object of providing compensation is to place the claimant as far as possible in the same position financially as he was before the accident. Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; by amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded. Upjohn, L.J. in *Charterhouse Credit v. Tolly* (1963) 2 QB 683 remarked, "the

assessment of damages has never been an exact science; it is essentially practical" (All ER P.443 C)".

Admittedly, after the deceased monk joined monastery, the appellants were not getting any amount from him. They were not depending upon him. During examination, PW1, first appellant, admitted in the Court that he was not getting any money from the deceased, Therefore, they cannot claim any compensation for loss of dependency income. Even if he was alive, they would not have got anything and therefore there is no loss of dependency as admitted by him in the cross examination. Therefore, they are not entitled to any compensation for loss of dependency income. It is all the most clear from the evidence that the entire income of the deceased was received by the monastery. Therefore, on the factual aspects of this case, it can be seen that the appellants will not lose anything monetary due to the death of the Priest, even though he was their son At the same time, the entire income received by him were given to the monastery and he was serving the monastery. Certainly there was loss of service to the monastery due to the death of its member.

4. The Tribunal also considered the matter in detail in paragraph 14 of the award. It is stated that anything acquired by a member after he had taken the perpetual vow will go to the monastery and also as per Rule 31 of the Constitution of Monastery which he has accepted, all that is obtained by him will go to the community. Canon 468 of the Code of Canons of the Eastern Churches published by Oriental Institute of Religious Studies India also states as follows:

"Any temporal goods whatsoever which accrue to the member after perpetual profession in virtue of any title are acquired by the monastery".

The evidence adduced also shows that everything acquired after joining monastery till his death were given to the monastery. This matter was considered by a Division Bench of this Court in Mother Superior Adoration Convent, Kanjiramattom v. D.E.O., Kottayam and Ors. 1977 KLT 303. In paragraph 4 of the judgment it is stated as follows:

"4. As a preliminary to the question arising for consideration it is necessary to describe the formalities that are gone through by a person who takes to the religious profession among the Catholics. Catholic Encyclopedia, Vol. 12, page 287, describes what is meant by a religious life. It is described as a particular expression of the love of God through a following of Christ. It is approved by the Church as a public state of life by the profession of poverty, chastity and obedience through public vows and by some form of separation from the world, practised for the sake and service of the world. Religious profession is an act by which a person embraces the religious state by taking the three public vows of poverty, chastity and obedience. This is really an agreement made with the religious order which, when accepted by the competent superior, creates a whole series of reciprocal rights and obligations between the religious order and the religious. Before a person is admitted into this order he or she is put on

probation. "Postulantship" is intended to give the superiors an opportunity to observe the candidate and the candidate an opportunity of becoming acquainted with the general obligations of the religious life. After the period of this probation the candidate is admitted to the novitiate. Thereafter she is put to a Canonical examination to make certain that she is acting with full knowledge of the case and with full liberty. If she gets through the examination she is required to take a temporary vow which is generally for a period of three years. During this period the superior will judge the fitness of the person to take the perpetual vow. After the expiry of the period of three years the religious shall either make his or her perpetual profession or he or she can return to the world. Before the perpetual vow is taken the professed must renounce in favour of the person whom he or she likes, all the property which he or she actually possesses on condition however of his solemn profession subsequently taking place. After the solemn profession is taken all property which may come to the religious in any manner whatsoever accrues to the Order according to the constitution and if the Order cannot acquire or own any property it becomes the property of the Holy See. The effect of taking a perpetual vow and becoming a nun is described thus in Pollock and Maitland's History of English Law, Vol.I, page 434: -

"A monk or nun cannot acquire or have any proprietary rights. When a man becomes professed in religion, his heir at once inherits from him any land that he has, and, if he has made a will, it takes effect at once as though he were naturally dead. If after this a kinsman of his dies leaving land which according to the ordinary rules of inheritance would descend to him, he is overlooked as though he were no longer in the land of the living; the inheritance misses him and passes to some more distant relative. The rule is not that what descends to him belongs to the house of which he is an inmate; nothing descends to him for he is already dead. In the eye of ecclesiastical law the monk who became a proprietarius, the monk, that is, who aggregated to himself any proprietary rights or the separate enjoyment of any wealth committed about as bad an offence as he could commit".

This fiction however has its own limits. If a monk or nun does wrong or suffers wrong he or she is dealt with as though he were only an ordained clerk and tried by the ordinary courts. In respect of civil wrongs the rule is that the monk or nun could neither sue nor be sued without his or her sovereign. A monk or nun could make no contract. But he or she is capable of acting as the agent of his or her sovereign and even in litigation he or she could appear as the superior's attorney. In the History of French Private Law included in the Continental Legal History Series, Vol.III, para 585, it is stated thus:-

"Entering Religious Orders resulted in the eyes of the Church in death to the world. From this it should have been concluded that from the time of his entrance into a monastery the monk could not acquire anything, and that the possessions which he had at that time should pass to his heirs".

Thereafter the personality of the monk was absorbed by that of the monastery.

He acted as a means of receiving for the benefit of the monastery. Once he had entered a monastery, the monk, stripping off his own personality, could only receive for the benefit of his community. But the monastery did not take those possessions, which he had at the time of his entering it; he was regarded as being dead at that time and from this fiction there arose two consequences: 1st, his inheritance vested for the benefit of his relatives; 2nd, he was thence forward incapable of inheriting upon intestacy or by virtue of a will, either in his own interest or in the interest of the monastery. In this sense the civil death with which he was affected was the equivalent of real death. Similarly, in History of Italian Law included in the Continental Legal History Series, Vol. VIII, at page 512, para 299, it is stated thus:-

"A sort of civil death overtook one who took solemn religious vows, though limited in its effect to property and inheritance".

Again, in Catholic Encyclopedia, page 329 the legal effects on faking to a religious profession as set forth in the Canon Law are stated with reference to those who take temporary vows and who take the perpetual vow. It is stated at page 330 that any "religious" in simple minor vows, must before joining the profession make a will disposing of all his or her property and cannot retain any property which later comes to them. It automatically becomes the property of the Order to which he or she belongs. This principle was followed in *Kondol Row v. Swamulavaru* AIR 1918 Mad 402 to describe the status of a Sanyasi under Hindu Law also. In the case of a Sanyasi entrance to a religious Order generally operates as a civil death. The man who becomes an ascetic severs his connection with the members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter. In *Sital Das Vs. Sant Ram and Others*, , Justice Mukherjea stated the law thus at page 613, page 20:-

"It is well known that entrance into a religious order generally operates as a civil death. The man who becomes an ascetic severs his connection with the members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter, the other disciplines of his Guru are regarded as his brothers, while the co-disciples of his Guru are looked upon as uncles and in this way a spiritual family is established on the analogy of a natural family".

The contention that monastery cannot be a legal representative also cannot be accepted in view of the decision of another Division Bench in *Oriental Insurance Co. v. Mother Superior S.H. Convent* 1994 (1) KLT 868.

Considering the totality of the circumstances, we are of the view that no interference is required in the award of the Court below. The appeal is dismissed. However, on the facts of this case, there is no order as to costs.