SUPREME COURT OF INDIA

Montford Brothers of St. Gabriel

Vs.

United India Insurance

C.A.Nos.3269-3270 of 2007

(P. Sathasivam CJI., Ranjan Gogoi and Shiva Kirti Singh JJ.)

28.01.2014

JUDGMENT

SHIVA KIRTI SINGH,J.

1. Heard learned counsel for the appellants and learned counsel for the respondent-Insurance Company.

2. The facts relevant for deciding this appeal are not in dispute and hence noted only in brief.

3. The appellant No.1 is a charitable society registered under the Societies Registration Act, 1960. It runs various institutions as a constituent unit of Catholic Church. It is running various orphanages, industrial schools and other social service activities besides number of educational schools/institutions. Its members after joining the appellant society renounce the world and are known as "Brother". Such a `Brother' severs his all relations with the natural family and is bound by the constitution of the society which includes Article 60 quoted in paragraph 3 of the order dated 10.12.2003 passed in Review Petition No.4 of 2002 and in annexure P.5 as such:

> "Whatever the `Brother' receives by way of salary, subsidies, gifts, pension or from insurance or other such benefits belongs to the community as by right and goes into the common purse."

4. Appellant No.2 is Principal of St. Paul's Higher Secondary School, Aizawal, Mizoram and represents appellant no.1 as well.

5. One `Brother' of the Society, namely, Alex Chandy Thomas was a Director-cum-Head master of St. Peter High School and he died in a motor accident on 22.06.1992. The accident was between a Jeep driven by the deceased and a Maruti Gypsy covered by insurance policy issued by the respondent Insurance Company. At the time of death the deceased was aged 34 years and was drawing monthly salary of Rs.4,190/-. The claim petition bearing No.55 of 1992 was filed before M.A.C.T., Aizawal by appellant no.2 on being duly authorized by the appellant no.1-the society. The owner of the Gypsy vehicle discussed in his written statement that vehicle was duly insured and hence liability, if any, was upon the Insurance Company. The respondent-Insurance Company also filed a written statement and thereby raised various objections to the claim. But as is clear from the written statement under Annexure P.2 it never raised the issue that since the deceased was a `Brother' and therefore without any family or heir, the appellant could not file claim petition for want of locus standi. The issue no.1 regarding maintainability of claim petition was not pressed by the respondents. The Tribunal awarded a compensation of Rs.2,52,000/- in favour of the claimant and against the opposite parties with a direction to the insurer to deposit Rs.2,27,000/- with the Tribunal as Rs.25,000/- had already been deposited as interim compensation. The Tribunal also permitted interest at the rate of 12% per annum, but from the date of judgment dated 14.07.1994 passed in MACT case Nos. 55 and 82 of 1992.

6. Instead of preferring appeal against the order of the Tribunal, the respondent-Company preferred a writ petition under Article 226 of the Constitution of India before the Gauhati High Court and by the impugned order under appeal dated 20.08.2002, the High Court allowed the aforesaid writ petition (C) No.20 of 2002 ex-parte, and held the judgment and order of the learned Tribunal to be invalid and incompetent being in favour of person/persons who according to the High court were not competent to claim compensation under the Motor Vehicle Act. This was the only ground of challenge to the judgment and Award of the Tribunal. The High Court, however, did not disturb the Award of Rs.25,000/- already made as interim compensation. Review Petition preferred by the appellants was also rejected on 10.12.2003 but after noticing the relevant facts relating to locus of the appellants.

7. From the facts noted above, it is evident that there is no dispute between the parties with regard to the quantum of compensation determined by the Tribunal and the only issue is whether the High Court was correct in law in holding that the

appellants are not competent to claim compensation under the Motor Vehicle Act for the accidental death of `Brother' belonging to the appellant-society.

8. The only issue noted above requires to look into Section 166 of the Motor Vehicles Act, 1988, (hereinafter referred to as `The Act'). Sub- section (1) of Section 166 is relevant for the purpose. It provides thus:

> "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—
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> (a) by the person who has sustained the injury; or
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> (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 inured or all or any of the legal representatives of the deceased, as the case may be:
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> 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. "

9. The Act does not define the term "legal representative" but the Tribunal has noted in its judgment and order that clause (C) of Rule 2 of the Mizoram Motor Accident Claims Tribunal Rules, 1988, defines the term `legal representative' as having the same meaning as assigned to it in clause (11) of Section 2 of the Code of Civil Procedure, 1908, which is as follows:

> "Section 2(11)`Legal representative' means 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".

10. From the aforesaid provisions it is clear that in case of death of a person in a motor vehicle accident, right is available to a legal representative of the deceased or the agent of the legal representative to lodge a claim for compensation under the provisions of the Act. The issue as to who is a legal representative or its agent is basically an issue of fact and may be decided one way or the other dependent upon the facts of a particular case. But as a legal proposition it is undeniable that a person claming to be a legal representative has the locus to maintain an application for compensation under Section 166 of the Act, either directly or through any agent, subject to result of a dispute raised by the other side on this issue.

11. Learned counsel for the Insurance Company tried to persuade us that since the term `legal representative' has not been defined under the Act, the provision of Section 1-A of the Fatal Accidents Act, 1855, should be taken as guiding principle and the claim should be confined only for the benefit of wife, husband, parent and child, if any, of the person whose death has been caused by the accident. In this context, he cited judgment of this Court in the case of Gujarat State Road Transport Corporation, Ahmedabad vs. Raman Bhai Prabhatbhai & Anr.[1]. In that case, covered by the Motor Vehicles Act of 1939, the claimant was a brother of a deceased killed in a motor vehicle accident. The Court rejected the contention of the appellant that since the term `legal representative' is not defined under the Motor Vehicles Act, the right of filing the claim should be controlled by the provisions of Fatal Accident Act. It was specifically held that Motor Vehicles Act creates new and enlarged right for filing an application for compensation and such right cannot be hedged in by the limitations on an action under the Fatal Accidents Act. Paragraph 11 of the report reflects the correct philosophy which should guide the courts interpreting legal provisions of beneficial legislations providing for compensation to those who had suffered loss.

> "11. We feel that the view taken by the 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 realisation 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 Vehicles Accidents 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 some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner 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 vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, (AIR 1977 Guj.195) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased."

12. From the aforesaid quoted extract it is evident that only if there is a justification in consonance with principles of justice, equity and good conscience, a dependant of the deceased may be denied right to claim compensation. Hence, we find no merit in the submission advanced on behalf of the respondent-Insurance Company that the claim petition is not maintainable because of the provisions of the Fatal Accidents Act.

13. On behalf of the appellants it has been rightly contended that proceeding before the Motor Vehicle Claims Tribunal is a summary proceeding and unless there is evidence in support of such pleading that the claimant is not a legal representative and therefore the claim petition be dismissed as not maintainable, no such plea can be raised at a subsequent stage and that also through a writ petition. The objection filed on behalf of the Insurance Company, contained in annexure P.2, does not raise any such objection nor there is any evidence led on this issue. As noted earlier, the Tribunal did frame any issue regarding maintainability of the claim petition on law and fact as issue no.1 but the findings recorded by the Tribunal at page 41 of the paper book show that this issue together with issue nos. 2 and 3 were not pressed by the opposite parties during trial and were accordingly decided in favour of the claimants.

14. In the aforesaid circumstances, the order under appeal dated 20.8.2002 allowing the writ petition suffers from apparent mistake in not noticing the relevant issue decided by the Tribunal and also the fact that the Insurance Company, which

was the writ petitioner, had not pressed this issue. It had neither raised pleadings nor led evidence relevant for the said issue.

15. On coming to know about the High Court judgment the appellants filed a review petition in which they gave all the relevant facts including the constitution of the society appellant no.1 in support of their claim that a `Brother' of the Society renounced his relations with the natural family and all his earnings and belongings including insurance claims belonged to the society. These facts could not have been ignored by the High Court but even after noticing such facts the review petition was rejected.

16. A perusal of the judgment and order of the Tribunal discloses that although issue no.1 was not pressed and hence decided in favour of the claimants/appellants, while considering the quantum of compensation for the claimants the Tribunal adopted a very cautious approach and framed a question for itself as to what should be the criterion for assessing compensation in such case where the deceased was a Roman Catholic and joined the church services after denouncing his family, and as such having no actual dependants or earning? For answering this issue the Tribunal relied not only upon judgments of American and English Courts but also upon Indian judgments for coming to the conclusion that even a religious order or organization may suffer considerable loss due to death of a voluntary worker. The Tribunal also went on to decide who should be entitled for compensation as legal representative of the deceased and for that purpose it relied upon the Full Bench judgment of Patna High Court reported in AIR 1987 Pat. 239, which held that the term `legal representative' is wide enough to include even "intermeddlers" with the estate of a deceased. The Tribunal also referred to some Indian judgments in which it was held that successors to the trusteeship and trust property are legal representatives within the meaning of Section 2(11) of the Code of Civil Procedure.

17. In the light of the aforesaid discussions, we have no hesitation in holding that the High Court erred in law in setting aside the judgment of the learned Tribunal by ignoring the fact that the respondent-Insurance Company had not pressed issue no.1 nor it had pleaded and led evidence in respect to the said issue. The Court explained that the appellants were the legal representatives of the deceased. Such an issue of facts could not be decided by the High Court for the first time in a writ petition which could only be entertained under Article 227 of the Constitution for limited purpose.

18. Accordingly, orders of the High Court dated August 20, 2002 and December 10, 2003 are set aside and the judgment and order of the Tribunal dated July 14, 1994, is restored. The dues of compensation including interest, as per judgment of the Tribunal, shall be deposited by the respondent-Insurance Company with the Tribunal within eight weeks from the date of this order. The Tribunal shall permit the claimants to withdraw the same in the light of its order.

19. The appeals are allowed to the extent indicated above. No costs.

[1] AIR 1987 SC 1690