

Anwar Mohammed and Others Vs. K. Bava and Others

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Court : Karnataka

Decided On : Sep-11-2014

Judge : A N. Venugopala Gowda

Appeal No. : Writ Petition No.20382 of 2014 (GM-AC)

Appellant : Anwar Mohammed and Others

Respondent : K. Bava and Others

Judgement :

(Prayer: This Petition Is Filed Under Articles 226 And 227 Of The Constitution Of India, Praying To Quash The Impugned Order Dated 11.03,2014, On I.A.No.7, Produced At Annexure-A In Mvc.No.288/2011, Passed By The Learned Prl. Senior Civil Judge At Udupi and Allow This Writ Petition With Costs.)

1. Petitioners are the claimants in MVC No.288/2011, on the file of the Motor Accidents Claims Tribunal, Udupi. The said petition was filed under S.166 of the Motor Vehicles Act, 1988 (for short 'the Act') against the respondent Nos.3 to 5, to award compensation on account of the untimely death of one Suhail Anwar, who sustained fatal injury in a road traffic accident, which occurred on 18.11.2010, involving vehicles bearing registration Nos.KA-20-MJ-786 and KA-01-FA-2157. Respondent Nos.1 and 2, grand parents of deceased Suhail Anwar, filed I.A.No.7, under Order I Rule 10(2) read with S.151 of the Code of Civil Procedure, to permit them to come on record as supplemental petitioners. I.A. having been allowed on

II. 03.2014, this writ petition was filed to quash the said order.

2. Sri H.Pavana Chandra Shetty, learned advocate, submitted that the 1SL petitioner being the father and petitioner Nos.2 and 3 being the minor sister and minor brother respectively of the deceased, filed claim petition to award compensation and the applicants in I.A.No.7 being not Class-I legal heirs of the deceased, Tribunal has committed illegality in allowing I.A.No.7. Reliance was placed on the decision in DUNDAPPA MAHADEVAPPA BIDARANNAVAR Vs. NAGAPPA N. JANNANAVAR AND ANOTHER, 2009(1) KCCR 189 (DB). He submitted that impugned order being illegal, interference is called for.

3. Sri Shobhith N. Shetty, learned advocate for respondent Nos.1 and 2, on the other hand by placing reliance on the decision in GUJARAT STATE ROAD TRANSPORT CORPORATION, AHMEDABAD Vs. RAMANBHAI PRAEHATBHAI AND ANOTHER, AIR 1987 SC 1690, made submissions in support of the impugned order.

4. Sriyuths F.S.Dabali, A.N. Krishna Swamy and Y.P.Venkatapathl, learned advocates appearing for respondent Ncs.4, 5 and 6, submitted that compensation can be awarded only to the dependants, if any, of the deceased and not merely on account of claimants or applicants, being either the legal heirs or near relatives. They submitted that the petitioners and the respondent Nos.1 and 2, should establish their respective claims for grant of compensation, by proving that they were dependants on the deceased.

5. The Tribunal being of the opinion that proviso under S.166 of the Act, is not restricted to spouse, parents and children and that the Act being a beneficial provision, should be given wider meaning to the word "dependants" and by observing, whether the applicants are entitled to compensation is a matter of adjudication on merit, has allowed I.A.No.7.

6. Perused the writ record. Point for consideration is, whether the Tribunal has committed an irrational act or illegality in permitting the ground parents of the deceased to come on record of the case?

7. S.166 of the Act corresponds to S.110 of the Motor Vehicles Act, 1939. In terms of clause (c) of sub S.(l) of S.166 of the Act, in case of death, the legal representatives of the deceased become entitled to compensation and any such legal representative/s can file a claim petition. The proviso to the said sub-section makes the position clear that where all the legal representatives have not been joined in any such application for compensation, the legal representative/s who have not so joined shall be impleaded as respondents to the application. S.168 of the Act confers power on the Claims Tribunal to pass the award.

8. In GUJARAT STATE ROAD TRANSPORT CORPORATION (supra), Apex Court, with reference to S.110-A of the old Act, held that legal representative applying for compensation need not necessarily be one of the persons contemplated by S.1-A of the Fatal Accidents Act and brother of the deceased can maintain it, if he is a legal representative of the deceased.

9. In MANJIJRI BOHRA Vs. ORIENTAL INSURANCE CO. LTD., 2007(10) SCC 643, in the background of claim made by a married daughter of a motor accident victim, the question considered was, whether any compensation is payable where the claim application is filed by legal heirs of the deceased, who was not actually dependant on him. Apex Court, in the background of the relevant provisions of the Act, held as follows:

"15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act."

10. In UNITED INDIA INSURANCE COMPANY LIMITED Vs. SHILA DATTA AND OTHERS, (2011) 10 SCC 509, under the heading "Nature of a claim petition under the Motor Vehicles Act, 1988', Apex Court has held as follows:

"10. A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependent family members) before the Motor

Accidents Claims Tribunal constituted under Section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete Code in itself. We may in this context refer to the following significant aspects in regard to the Tribunals and determination of compensation by Tribunals:

(i) A proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (claimants) under Section 166(1) or Section 163-A of the Act or suo motu by the Tribunal, by treating any report of accident (forwarded to the Tribunal under Section 158(6) of the Act as an application for compensation under Section 166 (4) of the Act).

(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

(iii) In a proceedings initiated suo motu by the Tribunal, the owner and driver are the respondents. The insurer is not a respondent, but a noticee under Section 149(2) of the Act. Where a claim petition is filed by the injured or by the legal representatives of a person dying in a motor accident, the driver and owner have to be impleaded as respondents. The claimants need not implead the insurer as a party. But they have the choice of impleading the insurer also as a party-respondent. When it is not impleaded as a party, the Tribunal is required to issue a notice under Section 149(2) of the Act. If the insurer is impleaded as a party, it is issued as a regular notice of the proceedings.

(iv) The words "receipt of an application for compensation" in Section 168 refer not only to an application filed by the claimants claiming compensation but also to a suo motu registration of an application for compensation under Section 166(4) of the Act on the basis of a report of an accident under Section 158(6) of the Act.

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. On receipt of an application (either from the applicant or suo motu registration), the Tribunal gives notice to the insurer

under Section 149(2) of the Act, gives an opportunity of being heard to the parties to the claim petition as also the insurer, holds an inquiry into the claim and makes an award determining the amount of compensation which appears to it to be just. (Vide Section 168 of the Act).

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry (Vide Section 169 of the Act).

(vii) The award of the Tribunal should specify the person(s) to whom compensation should be paid. It should also specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them. (Vide section 168 of the Act).

(v-iii) The Tribunal should deliver copies of the award to the parties concerned within 15 days from the date of the award. (Vide section 168 (2) of the Act).

We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute."

(underlined by me for emphasis)

11. Under S.166 of the Act, the condition precedent is that only a person applying should be a legal representative, falling within the definition under S.2(11) of CPC, 1908. Relief contemplated by S.166(1)(c) of the Act is intended to benefit the legal representatives. The basic question whether the claimants/applicants were dependant on the deceased is required to be answered with reference to the evidence brought on record, by raising a specific issue. The Tribunal when determines the just compensation, should specify in the award the person or persons to whom the determined compensation shall be paid, since the proviso to S. 166(1) states that where all the legal representatives have not joined in any claim petition, application shall be made on behalf of or for benefit of all legal representatives and legal representatives who have not so joined shall be

impleaded as respondents to the claim application.

12. In DUNDAPPA MAHADEVAPPA BIDARANNAVAR (supra), keeping in view the definition of "dependants", under S.2(d) of the Workmen's Compensation Act, 1923, the provision was held to be totally archaic and not in tune with the modern mind of the society. Noticing the evidence in the case that the deceased was contributing his earnings on the maintenance of the family, it was held that, father also becomes partial dependant on the earnings of the deceased and entitled to seek compensation.

13. Since claim petition for compensation in regard to motor vehicle accidents before the Claims Tribunal is neither a suit nor adversarial lis and it is a proceeding in terms of and regulated by provisions of Chapter XII of the Act, which is a complete Code in itself, the Tribunal is justified in allowing I.A/No.7 and in permitting the applicants therein, to come on record as respondents Nos.4 and 5, by making it clear that, whether they are entitled for compensation is a matter of adjudication on merit. Thus, the impugned order is neither irrational nor illegal for being interfered with under Article 227 of the Constitution of India.

The petition being devoid of merit is dismissed subject to the observations made supra, with not order as to costs.

Claim petition having been filed on 04.03.2011 and there being inordinate delay, the Tribunal shall expedite the enquiry and decide the case within a period of six months from the next hearing.

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