

Margappa Shethappa Vadar Vs. Proctor and Gamble India and anr.

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SooperKanoon Citation : sooperkanoon.com/361819

Court : Mumbai

Decided On : May-02-2008

Reported in : 2008ACJ2802; 2008(4)BomCR820; 2008(4)MhLj922

Judge : Abhay S. Oka, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 140, 163A, 165, 165(1) and 166; [Fatal Accidents Act, 1855](#); Indian Penal Code (IPC) - Sections 312; Hindu Law

Appeal No. : F.A. No. 661 of 2004

Appellant : Margappa Shethappa Vadar

Respondent : Proctor and Gamble India and anr.

Advocate for Def. : S.R. Singh, Adv. for Respondent No. 2

Advocate for Pet/Ap. : G.S. Hegde, Adv.

Disposition : Appeal dismissed

Judgement :

Abhay S. Oka, J.

1. This appeal gives rise to a very interesting question. The said question is, whether a Motor Accident Claims Tribunal can grant compensation on a claim petition filed by father of a foetus or a still-born child in the womb of a mother on

account of loss of foetus as a result of an accident arising out of the use of motor vehicle.

2. It will be necessary to refer the facts and circumstances of the case in brief. The accident occurred on 28-1-1992. The wife of the appellant/claimant came to be knocked by a car owned by the first respondent which was validly insured with the second respondent. The appellant's wife succumbed to the injuries sustained in the accident. It is the case of the appellant that his wife was carrying at the time of accident and there was a 28 weeks of old foetus in her womb. The involvement of the vehicle owned by the first respondent is not in dispute. The fact that the vehicle concerned was insured with the second respondent is also not in dispute. There is a certificate issued by Bhabha Hospital which shows that the deceased mother was carrying a foetus in her womb when she succumbed to the injuries.

3. There is a separate petition filed by the appellant claiming compensation on account of demise of his wife. The appellant was granted compensation under Section 140 of the [Motor Vehicles Act, 1988](#) (hereinafter referred to as the said Act) in the said petition on account of the death of his wife.

4. A claim petition was filed by the appellant claiming compensation under Section 140 of the said Act on account of the 'death' of unborn child in the womb of his deceased wife. The said application has been rejected by the impugned judgment and order. The learned Member of the Tribunal referred to the definition 'person' in the [Fatal Accidents Act, 1855](#). He came to the conclusion that an unborn child in the womb will not be included in the definition of the word 'person'. The learned Member referred to a decision of Division Bench of Himachal Pradesh High Court in the case of Rakesh Kumar and Anr. v. Prem Lal and Ors. and held that a foetus is a part of the body of the deceased and no separate compensation was admissible on the ground of loss of foetus. Therefore, the learned Member of the Tribunal proceeded to reject the claim petition.

5. Shri Hegde, learned Counsel appearing for the appellant submitted that a foetus which was 28 weeks old in the womb was also a living being. He submitted that but for the accident, the wife of the appellant would have given birth to a child. He placed reliance on Section 312 and other relevant Sections of the Indian Penal

Code. He pointed out that a person can be penalised for causing death of a foetus. He submitted that as a result of the accident, life of the foetus has come to an end and life of the foetus is no different from human life. He placed reliance on a decision of learned Single Judge of the Madhya Pradesh High Court in the case of *Shraddha v. Badresh and Ors.* . He also placed reliance on a decision of learned Single Judge of Karnataka High Court in the case of *Bhawaribai and Anr. v. New India Assurance Co. Ltd. and Anr.* .

6. The learned Counsel appearing for the second respondent Insurer placed reliance on the decision of Himachal Pradesh High Court in the case of *Rakesh Kumar and Anr. v. Prem Lal* and submitted that the Tribunal has no jurisdiction to entertain such claim. He pointed out that under the scheme of the said Act, the compensation is payable not on the ground a death of a person in an accident but on account of a loss caused to a person or persons due to death or injury arising out of accident involving a motor vehicle. He submitted that the claim made by the appellant is in respect of a foetus which was never born as a human being. He submitted that foetus cannot be treated as a human being for the purposes of the said Act. He submitted that even assuming that a foetus is treated as a person, the ground on which compensation is claimed is very remote. He submitted that such compensation will have to be granted on assumption that the mother would have delivered a healthy child. He submitted that there is already a separate petition filed claiming compensation on account of death of the wife. He submitted that damage or injury to the foetus is just like damage or injury to any part of the body of wife of the deceased and therefore, a separate claim by the appellant/husband was not maintainable in law. He submitted that on a plain reading of Sections 165 and 166 of the [Motor Vehicles Act, 1988](#), claim petition filed by the appellant was not maintainable in law.

7. I have given careful consideration to the submissions made by the learned Counsel appearing for the parties. It must be noted here that I am dealing with the controversy relating to the maintainability of the claim petition filed by the appellant under the said Act. It must be clarified that I am not dealing with any other right or remedy which may be available in law to the appellant. It will be necessary to refer to Section 165 of the said Act of 1988. Sub-section (1) of Section 165 and

explanation to the said Sub-section read thus:

165. Claims Tribunals. - (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation - For the removal of doubts, it is hereby declared that the expression 'claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles' includes claims for compensation under Section 140 [and Section 163A].

Thus, a Tribunal is created for adjudicating upon the claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of use of motor vehicles, or damages to any property of a third party so arising or both. A Tribunal established under Section 165 of the said Act of 1988 can adjudicate upon the aforesaid claims and this is the limited jurisdiction conferred upon the Tribunal. Section 166 provides that an application for compensation arising out of an accident in the nature specified in Sub-section (1) of Section 165 may be made by any of the legal representatives of the deceased where a death has resulted from an accident involving use of a motor vehicle.

8. A claim for compensation is maintainable at the instance of legal representatives of a deceased person where the death of the person is as a result of an accident involving use of a motor vehicle or motor vehicles. The emphasis of Sub-section (1) of Section 165 is on the death of or bodily injury to persons. In the present case, the compensation is claimed on account of 'death' of a foetus in the womb of the mother. Therefore, question which arises is, whether the foetus or a child in the womb is a person. The word 'person' is not defined under the said Act. A contention is sought to be raised that a foetus in the womb also has a life. A foetus has a heart. A foetus can move his limbs and it is said that a foetus can react to the surroundings.

9. When the statute refers to a person, the reference is to a human being which exists in the world. It is true that a foetus may have a life or may have signs of life. However, a foetus or a child in womb becomes a human being or a person only after he or she is born.

10. Under Hindu Law, in certain contingencies, there can be a right vesting in an unborn person in the womb. But the right becomes available only after the person is born and comes into existence in the world. Reliance was sought to be placed on the provisions of Indian Penal Code. Merely because there are certain offences in the said Code relating to foetus in the womb, the Code has not given the status of a person to the foetus in the womb as is clear from the definition under the said Code.

11. Before a human being can be termed as a person, he has to be born. In the present case, we are not dealing with a human being who is born into this world. Therefore, the 'death' of a foetus in the womb cannot be termed as a death of a person within the meaning of Sub-section (1) of Section 165 of the said Act of 1988. Therefore, the Tribunal does not get jurisdiction to entertain such a claim.

12. There is another difficulty in the way of the appellant. Under Section 166, in case of a death of a person resulting from an accident arising out of a use of motor vehicle, the claim can be made only by legal representatives of the deceased or an agent duly authorised by the legal representatives of the deceased. There is no concept such as 'legal representatives' of a foetus or child dying in the womb. There can be legal representatives of a deceased person. A person has to be born before he dies. Here we are concerned with a child which was never born.

13. A reliance was sought to be placed on the decision of learned Single Judge of the Madhya Pradesh High Court in the case of *Shraddha v. Badresh and Ors.* . In para No. 7 of the said decision, it is held that:

It is not in dispute that claimant was pregnant and the child was in the womb of the mother at the time of accident. It is also not in dispute that the mother who is appellant herein has sustained grievous injuries and on account of which she was hospitalized. It is also not in dispute that if claimant had not suffered injuries, child

in her womb would not have been affected. She had to undergo a surgery and delivered a dead male baby. For the purpose of considering the case for awarding compensation even the stillborn baby has to be considered as child. Stillborn baby died in the womb due to the injuries sustained by the appellant in the accident. In the opinion of this Court there is a nexus between the accident and the cause of death of the child. Appellant is entitled for compensation on account of death of or stillborn male baby. It was first delivery of the appellant. Since, no separate amount has been awarded on that account, therefore, this appeal stands allowed. Appellant shall be further entitled for a sum of Rs. 1,00,000/- on account of death of stillborn male child.

Perusal of the said decision shows that the learned single Judge of the Madhya Pradesh High Court has not gone into the question of maintainability of the claim petition before a Tribunal of a limited jurisdiction. In the case of Bhawaribai and Anr. v. New India Assurance Co. Ltd. and Anr. , the learned Single Judge of the Karnataka High Court held that in case of abortion and death of a foetus in the womb, the said case should be considered at par with the case of a death of a minor. Even in the said decision, the Court has not considered the issue of maintainability of the claim petition in the light of Sections 165 and 166 of the said Act of 1988. Therefore, the said decisions cannot be read as binding precedents.

14. Therefore, in my considered view, the claim petition filed by father on account of loss/death of a foetus in the womb of mother is not maintainable under the provisions of said Act of 1988, considering the limited jurisdiction conferred on the Tribunal constituted under the said Act of 1988.

In the circumstances, it is not possible to interfere with the impugned judgment and award and the appeal is accordingly dismissed with no order as to costs.