

Malumbi Vs. Albln Abdul

Malumbi Vs. Albln Abdul

SooperKanoon Citation : sooperkanoon.com/384029

Court : Karnataka

Decided On : Feb-14-1991

Reported in : 1992ACJ955; ILR1991KAR2716; 1991(1)KarLJ592

Judge : N.Y. Hanumanthappa, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110A, 110B, 111 and 111A; ;Motor Vehicles Rules; [Land Acquisition Act, 1894](#) - Sections 11 and 18

Appeal No. : C.R.P. No. 375 of 1991

Appellant : Malumbi

Respondent : Albln Abdul

Advocate for Def. : S.P. Shankar, Adv. for R-3

Advocate for Pet/Ap. : Suman Hegde, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

Hanumanthappa, J.

1. This Revision Petition is filed against an order passed by the Motor Accidents Claims Tribunal, Dharwad on I.A.IX filed by the claimants requesting the Tribunal

to modify the award regarding its direction to deposit the compensation amount awarded to the claimants in any nationalised Bank in the manner indicated in the said award.

2. A few facts are; Deceased Dastagirisab met with a motor accident on 18-8-1985 who was the only bread earner to the members of the family. Because of his untimely and unforeseen death, his wife and four children became destitutes. They approached the Motor Accidents Claims Tribunal, Dharwad, with an application under Section 110A of the Motor Vehicles Act claiming compensation. The Motor Accidents Claims Tribunal after hearing both sides, namely, the claimants and so also the owner and driver of the vehicle and the Insurance Company, awarded compensation in a sum of Rs. 77,000/- to all the claimants, and then it apportioned in the following manner:

(i) The widow Smt. Malumbi is entitled to get Rs. 25,000/- with proportionate interest and costs;

(ii) The other claimants, namely, claimant Nos. 2 to 5, are entitled to get Rs. 13,000/- with proportionate interest and costs.

The operative portion of the award reads as follows:

'The petition is allowed with costs. Respondents 1 to 3 are jointly and severally liable to pay a sum of Rs. 77,000/- to the petitioners with interest at six per cent per annum from the date of petition till realisation.

Out of the compensation now awarded, first petitioner Malumbi, shall be entitled to Rs. 25,000/- with proportionate interest and costs. Out of this amount, she shall be paid Rs. 5,000/- with proportionate interest and costs. The balance of Rs. 20,000/- shall be deposited in her name initially for a period of five years in any nationalised Bank of her choice to be periodically renewed until such time she suggests a better and gainful investment.

The minor petitioners 2 to 5 shall each be entitled to Rs. 13,000/- with proportionate interest and costs. The same shall be deposited in their respective names during their minority in any nationalised Bank of the choice of the first

petitioner mother and next friend.'

3. Claimants as they felt that the amount awarded in the form of compensation to them as just and reasonable did not take step to seek its enhancement by filing an appeal before this Court, because they felt that they had already lost the bread earner and each day was a problem for them to eke-out their livelihood and satisfied that the compensation awarded came as a consolation to them. These illiterate and ignorant claimants felt that the amount awarded by the Tribunal would compensate the loss of their bread earner, namely, deceased Dastagirsab.

4. It is needless to say, compensation will be given after taking into consideration the loss caused to the family and the sufferings underwent. The idea behind awarding of compensation is not only to put the person in a position to feel that having lost one object but gained or replaced the same by some other object. But it is also a welfare measure which is the aim of any civilized society. As far as awarding of compensation and its determination under the [Motor Vehicles Act, 1939](#), concerned in case where compensation claimed either due to the death of the bread earner or by an injured person, the relevant provisions are Sections 110A and 110B, which read as follows:

'Section 110A. (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made -

(a) by the person who has sustained the injury; or

(aa) by the owner of the property; or

(b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

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.

(2) Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

Provided that where any claim for compensation under Section 92A is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident.

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.'

Section 110B - On receipt of an application for compensation made under Section 110A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an enquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 109B, may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall 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, as the case may be.

Provided that where such application makes a claim for compensation under Section 92A in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter VIIA:'

5. Reading of Sections 110A and 110B go to show who has to file application for seeking compensation, how the compensation has to be determined and what are

the factors that are to be taken into consideration. But nowhere in the Act it is said how the compensation has to be distributed. Sections 111 and 111A of the Act deal about Rule making powers of both Central Government and State Government, which read as follows:

'Section 111(1). The Central Government may make Rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such Rule may provide for -

(a) the forms to be used for the purposes of this Chapter;

(b) the making of applications for and the issue of certificates of insurance;

(c) the issue of duplicates to replace certificates of insurance lost, destroyed or mutilated;

(d) the custody, production, cancellation and surrender of certificates of insurance;

(e) the records to be maintained by insurers of policies of insurance issued under this Chapter;

(f) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of this Chapter;

(g) the furnishing of information respecting policies of insurance by insurers;

(h) the carrying into effect of the provisions of Section 108;

(i) adapting the provisions of this Chapter to vehicles brought into India by persons making only a temporary stay therein or to vehicles registered in the State of Jammu and Kashmir or in a reciprocating country and operating on any route on within any area in India by applying those provisions with prescribed modifications; and

(j) any other matter which is to be or may be prescribed.'

'Section 11A - A State Government may make Rules for the purpose of carrying into effect the provisions of Sections 110 to 110E, and in particular, such Rules may provide for all or any of the following matters, namely:-

(a) the form of application for claims for compensation and the particulars it may contain; and the fees, if any, to be paid in respect of such applications;

(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

(c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;

(d) the form and the manner in which and the fees if any on payment of which, an appeal may be preferred against an award of a Claims Tribunal; and

(e) any other matter which is to be, or may be, prescribed.'

Nowhere in the said Sections it is said that in the matter relating to amount awarded in the form of compensation either the Central Government or State Government, can regulate application of funds by making a request to the Tribunals. The Act being silent about application of the amount of compensation awarded, claimants 1 to 5 though awarded compensation, the Tribunal made a direction in its award for disposition of funds, namely, to deposit the same in the nationalised Bank. On petitioners' approach they were given legal advice and the said advise emboldened the claimants again to approach the Tribunal with I.A.9 seeking that order regarding disposition of application of compensation awarded by the Tribunal be modified and the entire amount be paid to them in the ratio determined earlier. It was submitted before the Motor Accidents Claims Tribunal in support of I.A.9 that the compensation awarded and the ratio fixed is not ordered to be paid to the claimants in toto and the very purpose behind awarding of compensation so far as these claimants are concerned, at least for temporary period, will be frustrated. However, the Motor Accidents Claims Tribunal did not appreciate the plea putforth by the claimants. The Tribunal said that in view of the order made earlier now the same cannot be modified on the application filed by

the petitioners, which reads as follows:

'The Judgment and award came to be passed by this Court on 2-3-1990 and it has become final as no appeal or review petition was filed against the Judgment and award passed by this Court. It has to be stated that while apportioning the award amount to the petitioners, the Court has observed that having regard to the degree of relationship of the petitioners with the deceased and their ages, out of the compensation amount of Rs. 72,000/- awarded towards the loss of dependency, the first petitioner was held to be entitled to Rs. 20,000/- while the minor petitioners 2 to 5 were held to be each entitled to Rs. 13,000/-. It was further directed in the award that the amount payable to the minor petitioners shall be deposited in their respective names during their minority in any nationalised bank of the choice of the first petitioner, mother and next friend. The award did not contain any direction for payment of interest on the F.D. invested in the bank in the name of the minor petitioners to the petitioner No. 1, obviously, for the reason that the first petitioner had been given the major share in the award amount and the minor petitioners were only held to be entitled to a sum of Rs. 13,000/- each. In the face of the above apportionment of the amount awarded to the petitioners and in the absence of any such direction in the award, this Court at this stage will not be justified in altering the terms of the award by invoking the provisions of Section 151 CPC, which will be prejudicial to the interest of the minors. In my opinion, therefore, the Court at this stage of the proceedings cannot add or alter the terms of the award which has become final on its notion of fairness or justice. The right accrued to the minors cannot be taken away by invoking the provisions of Section 151 C.P.C.'

6. Aggrieved by the said order, the petitioner has preferred this Revision Petition contending that the order passed by the Tribunal as incorrect and illegal.

7. When the matter came up for admission, on my direction Sri S.P. Shankar, learned Advocate, took notice for the Insurance Company.

8. The points to be considered in this revision petition are:

(1) Whether in the absence of a specific provision in the Act or the Rules, the Motor Accidents Claims Tribunals, discharging quasi judicial functions are authorised while awarding compensation to distribute or direct the compensation amount awarded to be deposited or utilised in a particular manner?

(2) Whether in the absence of any specific provision in the Act or Notification issued either by the Central Government or by the State Government, can the Tribunal act as agent of some of the nationalised Banks in saying so much portion of the compensation amount awarded shall be deposited in a nationalised Bank and whether such act affects the dignity and decorum of the Court or otherwise?

9. On these points, Sri S.P. Shanker, learned Counsel for the Insurance Company, submitted that as far as the application of funds by the Tribunal is concerned, it speaks of legality and propriety. Regarding legality, Sri S.P. Shanker took me through the provisions of [Motor Vehicles Act, 1939](#), including Sections 110A, 110B, 111 and 111A and then submitted that nowhere in the Act there is a provision that the Motor Accidents Claims Tribunal after awarding compensation can issue further direction regarding mode of its application as it has done in the instant case by directing that amount shall be deposited in the nationalised Bank. According to him, neither there is a power directly conferred on the Tribunal by any one of the provisions of the Act nor it can be implied by saying there is any residuary power the Tribunal can distribute the amount of compensation in the manner it likes. According to him, it is the duty of the Tribunal to decide whether so and so are the claimants and entitled for compensation. To put it in other words, all that the Tribunal can do is at best it can decide and quantify compensation and cannot order for its dispensation or application. He submits that after all an order of compensation or an award is nothing but a chose in action. It cannot be meddled with by any other agency including creating any lien or an order of attachment for the debts due either by the claimants or by others. Sri Shanker while emphasising on legality said when a person comes with an application saying that he has been deprived of a bread-earner, it is the duty of the Tribunal to see that justice is rendered to such claimants, but the same shall not be deprived of by putting other conditions not warranted under the provisions of the Act or the Rules. Thus, Sri Shanker submits that all that the Act speaks about is

quantification of compensation and its application. Of course, according to him, only under such circumstances when an applicant is minor, or idiot or in any way incapacitated, the Court under inherent powers, that too, to see that the compensation awarded shall not be misused, can take appropriate steps to safeguard their interest, lest the same being mis-applied or cheated by others, to deposit in the place the Court feels more safe, secure and appropriate. But not in all cases where the claimants who are well known and know how to make use of the compensation which is earmarked as the one belongs to them.

10. Regarding propriety, Sri Shankar, with all seriousness, argued that, let come what may, always the Court should maintain its dignity and decorum. It shall not act and others shall not feel that it is acting for the advancement of cause of some other institution because its concern is only dispensation of justice and not distribution of wealth in the manner it likes with a direction to deposit in a particular institution or association. Sri Shankar submits that even today the society respects the Judiciary and has utmost faith and confidence in its orders and decisions. Society may doubt acts of any other wings but definitely not the acts of the Courts. When the society has kept this in a high esteem, according to him, it is not proper such a high opinion gained by the Judiciary be shaken by some acts however pious they are but not authorised by any Act or order. Sri Shankar is not finding fault with the Courts or Tribunals in directing the compensation amount to be deposited in any of the nationalised Banks, but what he submits is that since there is no such authorisation the propriety demands Court shall not venture to such activities as otherwise it gives room for unnecessary suspicion and at times there may be scramble for mobilisation of funds by various institutions and organisations. Apart from this, ordering to deposit in a nationalised Bank is in no way a beneficial one because by such an act the claimants will be deprived of applying the said compensation amount for purchasing any property so as to make a source of permanent income for their livelihood. Deposit in a nationalised Bank cannot be equated to one of purchasing National Savings Certificate or other beneficial schemes launched by the Central or State Governments. After all a Bank is a commercial institution and not a philanthropic institution. For these reasons, Shri Shankar submits that the order under challenge deserves to be quashed. Whereas, Smt. Suman Hegde, learned Counsel for the applicant,

submits how harsh the order is, namely, even the request made by her client that at least to allow them to withdraw the interest accrued on the amount deposited, came to be refused.

11. After hearing Sri Shankar, learned Counsel for the Insurance Company and Smt. Suman Hegde learned Counsel for the applicant-claimant, I am of the view that the approach of the Motor Accidents Claims Tribunal in directing the amount to be applied in a particular manner, namely, to deposit in a nationalised Bank is (1) quite arbitrary and illegal; (2) nowhere in the Act or the Rules framed thereunder it is said that the compensation awarded can be distributed and utilised in the manner which the Judge or the Tribunal desires. When the Act is silent it is not the concern of the Courts to direct the amount to be deposited in a particular manner. Because when once compensation is awarded it is awarded for the loss caused to the family or the claimants and how it has to be spent or distributed or applied is the concern of the claimants and not the duty of the Courts. After all the duty of the Court is to see its dignity and decorum is maintained and not by giving direction that deposits to be made in a nationalised Bank as by such an approach it may lead to create a sort of thinking in the mind of the litigant public that of late Courts have started apart from discharging their duties of dispensation of Justice also acts mobilising the resources of some of the institutions. The Court shall also take into consideration compensation means to recompense, that is, to make the aggrieved person feel otherwise for the loss caused earlier. Compensation shall not be equated to one of compulsion as the Tribunal has now done by directing the parties to deposit whatever compensation awarded in the nationalised Bank even against the need and desire of the claimant. Hence there is no other go but to say that the duty of the Court or the Tribunal while considering the application whether it is under Motor Vehicles Act or Land Acquisition Act is to quantify and award the compensation and not to direct the compensation amount awarded to be spent or utilised in a particular manner. Hence, the order under challenge is liable to be set aside.

12. Before parting with the case I will be failing in my duty if I do not place on record the assistance given by Sri S.P. Shankar, Advocate, while rendering this Judgment though he has nothing to do with the case as, on my request, he agreed

to appear for the Insurance Company and assisted the Court.

13. Hence, this Revision Petition is allowed and the order under challenge is set aside and the matter is remitted to the Motor Accidents Claims Tribunal, Dharwad to reconsider I.A.9 filed by the claimant in the light of the observations made above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com