

**Manorama Vs. V. Mohammad and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/389013](http://sooperkanoon.com/389013)

**Court :** Karnataka

**Decided On :** Jun-03-2006

**Reported in :** 2007ACJ810

**Judge :** K. Ramanna, J.

**Acts :** Workmen's Compensation Act, 1923 - Sections 2(1); [Motor Vehicles Act, 1939](#) - Sections 110A; Motor Vehicles (Amendment) Act, 1994; Hindu Adoption and Maintenance Act - Sections 21

**Appeal No. :** M.F.A. No. 576 of 2001

**Appellant :** Manorama

**Respondent :** V. Mohammad and ors.

**Advocate for Def. :** B.V. Nagaratna and ;A.N. Krishnaswamy, Advs.

**Advocate for Pet/Ap. :** K.M. Nataraj and ;A.C. Vinayaraj, Advs.

**Judgement :**

**K. Ramanna, J.**

1. This appeal is filed by the wife of late P. Shetty against the judgment and award passed in M.V.C. No. 1683 of 1994 by the Prl. Civil Judge (Sr. Dn.) and Fourth M.A.C.T., Mangalore, whereby the Tribunal dismissed the claim petition filed by

appellant in M.V.C. No. 1683 of 1994 on the ground that within 1 year of the death of her husband she married to some other person and, therefore, she is not entitled to any compensation. But the claim petition in M.V.C. No. 12 of 1995 filed by the parents of deceased P. Shetty was allowed in part awarding total compensation of Rs. 52,500 with interest at 6 per cent per annum. Therefore, the appellant in M.V.C. No. 1683 of 1994 has come up with this appeal.

2. Heard the learned Counsel for the appellant and the insurer, respondent No. 2.

3. It is an admitted fact that late P. Shetty was the husband of the appellant herein. P. Shetty died in a motor vehicle accident on 14.11.1994 at 3.15 p.m. which took place between the vehicle, i.e., moped bearing registration No. KA 19-E 3358 and lorry bearing registration No. KA 19-4079 at Bendoor Road, Mangalore. Therefore, the appellant being the wife of P. Shetty filed a claim petition claiming compensation of Rs. 3,00,000 with interest.

4. During the course of the argument the learned Counsel for the appellant contended that the Claims Tribunal has totally erred in not awarding compensation to the appellant, when the marriage of the appellant with the deceased P. Shetty is not disputed. As a matter of right the appellant is entitled for compensation as she was a dependent. Further it is contended that the appellant got remarried but the Tribunal ought to have awarded the compensation for the loss of dependency till her remarriage but her claim petition came to be dismissed without proper appreciation of the evidence. In support of his contention, learned Counsel relied on several decisions. In the decision reported in the case of Jagar Nath v. State of Himachal Pradesh , wherein Himachal Pradesh High Court held that:

Workmen's Compensation Act, 1923, Section 2(1)(d)(i) - Dependant - Widow - Remarriage - Whether remarriage of the widow of a workman disentitles her from getting compensation - Held : no; eligibility is seen at the time of death of the workman and subsequent events like remarriage have no bearing.

In another decision reported in the case of Bhanwar Lal v. Munshi Ram 1988 ACJ 283 (Rajasthan), wherein Rajasthan High Court, Jaipur Bench, held that:

Quantum - Fatal accident - Principles of assessment - Remarriage - Whether amount of dependency of other claimants be reduced on account of remarriage of widow - Held : no; widow remarriage is a matter of satisfaction for all concerned but other members of the family should not suffer on this count; deductions may act as impediment in path of encouragement to widow remarriage; multiplier applied for fixing the compensation to the parents who are aged would be different than it would have been in the case of the widow, there is no reason to further reduce the amount of dependency on account of remarriage of the widow.

Therefore, learned Counsel for the appellant submitted that appellant being the wife and dependent is entitled to compensation along with the parents of her husband, i.e., claimants in M.V.C. No. 12 of 1995 and hence prayed for allowing of this appeal.

5. Per contra the learned Counsel for the respondent No. 2 submits that the appellant herein remarried within one year from the date of the death of her husband as observed by the Tribunal. Therefore, the Tribunal has rightly come to the conclusion that she is not a dependant and, therefore, her petition came to be dismissed, which is in accordance with law and the Tribunal has already awarded compensation to the parents of the deceased P. Shetty, a sum of Rs. 52,500 with interest at 6 per cent per annum. In support of his contention the learned Counsel relied on a Division Bench decision reported in the case of H.T. Bhandary v. Muniyamma : ILR 1985 KAR2337 , wherein this Court held at para 17:

(d) that the value of dependency so far as the dependants were concerned, might have the prospect of being replaced by some other source as in the case of the remarriage of the dependent widow. This, however, requires a far greater degree of reassurance as to the reality of that prospect;

The learned Counsel also relied on another decision reported in the case of Oriental Fire & Genl. Ins. Co. Ltd. v. Chandrawati AIR 1983 All 174, wherein Allahabad High Court held that:

Motor Vehicles Act (4 of 1939), Section 110-A - Persons entitled to compensation - Widow remarried after death of husband in motor accident - Is not entitled to

compensation under Section 110-A. : AIR1976 Delhi127 .

The learned Counsel for respondent No. 2 further relied on another decision reported in the case of State of Orissa v. Archana Nayak 1987 ACJ 772 (Orissa), wherein Orissa High Court held that:

Widow - Remarriage - Whether the widow will cease to be entitled to the compensation in the event of her remarriage - Held : yes; she is entitled to the compensation for the period from the death of her husband till her remarriage.

It is submitted that as the husband of the appellant died in a motor accident if she remarries some other person, she will not remain dependent as per Section 21 of the Hindu Adoption and Maintenance Act. Therefore, the Tribunal is right in dismissing the petition. Hence, this petition is liable to be dismissed.

6. Having heard the arguments of both counsel, the short point that arises for my consideration is whether the appellant is entitled to compensation under the head loss of dependency?

If so, whether the loss of dependency to be calculated till her remarriage or for her entire life?

7. As could be seen from the records the appellant lost her husband in a motor vehicle accident and it is also an admitted fact that she got remarried within one year to some other person. Considering the aforesaid decisions and also considering the fact that she lived up to one year without any maintenance or support from her parents-in-law side, for up-till her remarriage she is entitled to loss of dependency. Then the question arises what would be the quantum of compensation entitled by the appellant as loss of dependency.

8. As on the date of death, her husband's age was 28 years. He died on 14.11.1994, i.e., when the amended Act of the Motor Vehicles Act came into force. Therefore, the multiplier applicable is 16 to assess the loss of dependency. But in the instant case, application of multiplier method to assess loss of dependency to the wife, who got remarried within one year, is not proper. Already the Tribunal has awarded a sum of Rs. 52,500 under the head no fault liability to the parents of the

deceased by allowing M.V.C. No. 12 of 1995 in part. Therefore, ends of justice would be met if a global compensation of Rs. 50,000 is awarded to the appellant apart from awarding compensation of Rs. 52,500 to the claimants in M.V.C. No. 12 of 1995. Therefore, the conclusion arrived at by Tribunal holding that she is not entitled to any compensation since she remarried within one year is incorrect.

9. In the result and for the aforesaid reasons the appeal is allowed in apart. The judgment and award passed by the Tribunal dismissing the claim petition M.V.C. No. 1683 of 1994 is hereby set aside. The appellant is entitled to a global compensation of Rs. 50,000 together with interest at 6 per cent per annum from the date of the petition till the date of payment apart from awarding of compensation of Rs. 52,500 to the claimants in M.V.C. No. 12 of 1995 filed by the parents of the deceased. The respondent Nos. 1 and 2 are jointly and severally liable to pay the same. Respondent No. 2 being the insurer shall deposit the said award amount together with accrued interest within six weeks with advocate's fee of Rs. 1,000.

10. Accordingly, the appeal is allowed in part, the judgment/award passed by Tribunal dismissing the claim petition M.V.C. No. 1683 of 1994 is set aside and a sum of Rs. 50,000 with 6 per cent interest per annum is awarded to appellant as global compensation. Respondent Nos. 1 and 2 are jointly and severally liable to pay the compensation. Respondent No. 2, being the insurer, shall deposit the award amount with proportionate interest within 6 weeks.