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SooperKanoon Citation : sooperkanoon.com/509490

Court : Madhya Pradesh

Decided On : Jul-20-2007

Reported in : 2009ACJ730; 2007(4)MPHT399

Judge : U.C. Maheshwari, J.

Appellant : Ramu

Respondent : Narsi and ors.

Advocate for Pet/Ap. : Shri. A.D. Mishra

Judgement :

ORDER

U.C. Maheshwari, J.

1. This appeal is directed by the appellant being aggrieved by the Award dated 6-12-2004 passed by 2nd Additional Motor Accident Claims Tribunal, Betul in Motor Vehicle Claim Case No. 123/04 dismissing his claim for compensation.

2. The facts giving rise to this appeal in short are that the sister of the appellant Yenu Bai went at Village Sawalmendha in her relation on 26-9-2003, at about 2.30 when she was sitting at the side of the road respondent No. 1 while driving a truck bearing registration No. MP 07-G-3509 in rash and negligent manner met an accident with her, resultantly she sustained injuries and died on the spot. She was

working as labour and due to her untimely death appellant being her brother sustained mental pain and also deprived from her love and affection as she was residing with him. In respect of such accident an offence under Section 304A of IPC was registered at P.S. Bhaisdehi, after holding investigation the respondent No. 1 was charge-sheeted. The respondent No. 2 was the registered owner of such truck while the same was insured with respondent No. 3. With these pleading the appellant preferred his claims for compensation of Rs. 2,10,000/- and for interest.

3. Respondent Nos. 1 and 2 remained exparte in the Tribunal and even the reply has not been filed by them.

4. In reply of respondent No. 3 the averments made by the appellant are denied. In addition it was pleaded that the deceased was unknown mental disordered lady and the appellant was not depended on her in any manner. Even after her death the appellant did not identify her. The respondent No. 2 plied such vehicle under violation of terms and conditions of the insurance policy, as he did not possess the valid and effective driving licence. Thus, the liability of the claim could not be saddled against the Insurance Company.

5. During pendency of the claim in the Tribunal the respondent No. 4 was impleaded and noticed as husband of the deceased. In response of it he also filed his reply. According to it after some time of their marriage the divorce took place in between them as per the custom prevailed in their community. Thereafter he got remarried with some Jaywanti Bai, from whom he has children also, while no issue was born from the deceased. Subsequent to divorce she was residing with her brother the appellant and helping him in his agriculture. He did not give any sum to her for maintenance. He does not have any objection in awarding the claim to the appellant.

6. After recording the evidence on appreciation of it, the Tribunal dismissed the claim holding that the appellant could not be termed the legal representative of the deceased and respondent No. 4 on account of divorce is not entitled for any claim. While the death of Yenu Bai was held to be the consequences of the alleged accident caused by respondent No. 1 while driving the aforesaid truck in rash and

negligent manner, against such dismissal the appellant has come forward with this appeal.

7. Shri A.D. Mishra, learned Counsel for the appellant assailed the impugned award by referring the provision of Sections 15 and 16 of Hindu Succession Act along with the evidence led by the Tribunal and said that soon after the marriage the divorce took place in between the deceased and respondent No. 4 as per rite, ritual and custom of the community and subsequent to it she was residing with the appellant. She being agricultural labourer was earning Rs. 40-50 per day. In view of the provision of Section 29 of the Hindu Marriage Act the said divorce took place in accordance with law and the right of the respondent No. 4 as husband had been seized. Thus, on demise of his sister her rights are devolved in him as her legal representative. He being brother of the deceased has been deprived from the love and affection of his sister and also sustained mental agony of it. In the lack of information he could not manage and carry out her cremation but on this count his claim could not be defeated. With these submissions he prayed for awarding the claim by allowing this appeal.

8. In response of the aforesaid argument the Counsel for the respondent No. 3/Insurer, Shri R.K. Samaiya by justifying the impugned award said that the same is based on proper appreciation of the evidence and in conformity with law; it does not require any interference at this stage. He further said that in view of the provision of Hindu Marriage Act unless the decree of dissolution of the marriage by the Competent Court, the divorce in between deceased and respondent No. 4 could not be inferred and as per provision of Section 15 of Hindu Marriage Act the respondent No. 4 being husband of the deceased comes under the first category of heirs and no claim petition was filed by him. In the lifetime of the husband of the deceased the appellant could not be treated the legal representative of her. In such premises the claims of the appellant is not maintainable and prayed for dismissal of this appeal.

9. Having heard the learned Counsels after perusing the record and the impugned award, I am of the view that the Tribunal has committed grave error in dismissing the claim of the appellant.

10. As per findings of the Tribunal, Yenu Bai died in the aforesaid road accident which was the cause and consequence of rash and negligent driving of offending vehicle by respondent No. 1 and such findings has got finality as the same has not been challenged by either of the parties in any manner. Thus, such question does not require any further consideration in this appeal.

11. It is undisputed fact on the record that the deceased got married with respondent No. 4 long back and after some time of such marriage as per the admission of respondent No. 4 in his reply and also in deposition the divorce took place in between them as per rite, rituals and prevailed customs of the community. Such admission and evidence have not been rebutted by any of the respondent. Although as per provision of Section 5 of Hindu Marriage Act any spouse of married couple during subsisting such marriage could not remarry and such marriage could not be dissolved unless the decree of divorce passed by the Competent Court under Section 13 or 13B of the Hindu Marriage Act. Admittedly, no such decree was passed by any Court of law at any point of time in the lifetime of the deceased. But the aforesaid admission and evidence could not be brushed aside mere of the aforesaid provision. Such divorce requires the consideration in view of the provision of Section 29 of Hindu Marriage Act, which reads as under:

29. Savings.-(1)....

(2) Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3)....

(4)....

12. On taking into consideration such provision, in view of the admission of respondent No. 4 in his reply as well as in his deposition, it is apparent that long back divorce had taken place in between the deceased and respondent No. 4, as per prevailed customs of the community, resultantly the respondent No. 4 ceased to be the husband of the deceased from the date of the divorce. He was not

remained the husband of the deceased. Thus, respondent No. 4 could not be treated either husband or legal representative or heir of the deceased.

13. So far appellant is concerned he could be treated the heir and legal representative of the deceased by virtue of Section 15 of the Hindu Succession Act. The same is read in this manner:

General rules of succession in the case of female Hindus.:

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16:

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter and the husband);

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in Sub-section (1):

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of an pre-deceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the husband.

14. According to the aforesaid provision the appellant comes under the category of Clause (d) of Sub-section (1) of Section 15. have not found any evidence showing that mother, father or any children of the deceased was alive on her death, as per admission of respondent No. 4 no child was born from her. After seizing the capacity of husband, respondent No. 4 could not be treated as legal representative of the deceased. Under such circumstance the appellant being her real brother and heir of her father comes under the category of her heir and legal representative and he is the only person in whose favour the claim could have been awarded by the Tribunal. My aforesaid view is fully fortified by the decision of the High Court of Madras in the matter of Govindan v. Cholan Roadways Corporation reported in 1989 ACJ 194, in which it was held as under:

It is well known that in Tamil Nadu there are two kinds of customary marriages prevailing among non-dwijias, which to by the name (omitted as in vernacular) and (omitted as in vernacular). These two customary marriages are prevailing among certain communities of Tamil Nadu, which cannot be disputed. Therefore, if the relationship between a husband and wife becomes so strained that there is no possibility of their living together as man and wife, then as per the custom prevailing among such communities, the wife is entitled to declare a divorce by placing a (omitted as in vernacular) (straw) between her and the husband and declaring a cessation of the marital relationship between them. This is known as (omitted as in vernacular), and this has the effect of a divorce and thereafter each spouse is entitled to remarry and is not held liable for an offence of bigamy as the divorce effected by the above said custom is held valid. The other mode prevailing in certain communities is known as (omitted as in vernacular). By this custom, if for some reason or other, after a marriage, either customary or performed with rituals attended with chanting of mantras before the sacred fire, the spouses find it difficult to live together in harmony, those marriages also can be put to an end by the custom known as (omitted as in vernacular), by which the husband takes away the tali from the wife permitting her to remarry and makes himself qualified for contracting a second marriage. These customs are age-long customs prevailing among certain communities of Tamil Nadu from time immemorial.

15. Under the aforesaid premises, it is held that the Tribunal has committed grave error, perversity and infirmity in not awarding the claim of the appellant. Hence, the findings of the Tribunal in this regard and till this extent are hereby set aside and the appellant is held to be entitled for claim of compensation.

16. Coming to the question for assessing the compensation, I have not found any evidence on record showing that the deceased was earning Rs. 40/- or 50/- per day. As per the law laid down by the Apex Court in various cases the assessment of compensation in respect of a non-earning person could be assessed on the basis of notional income as mentioned in the Second Schedule of Motor Vehicle Act, 1988. Thus the notional income Rs. 15,000/- is taken into consideration for deciding the dependency. Out of it firstly $\frac{1}{3}$ is deducted as expenses of the deceased which she would have spent on herself had she been alive then dependency comes to Rs. 10,000/- per annum and according to the age of the deceased 65 to 70 years as mentioned in the post-mortem report the multiplier of 5 is applicable as per aforesaid Schedule, on applying the same total dependency comes to Rs. 50,000/-. Besides this the appellant deserves for Rs. 2,500/- on account of loss of estate and Rs. 2,500/- for loss of expectancy of life, but he is not entitled for the funeral expenses as the same was not carried out by him. Accordingly, the appellant is entitled for compensation of Rs. 55,000/-.

17. Therefore, by allowing this appeal in part the claim of the appellant is awarded for Rs. 55,000/-. The same shall carry the interest @ 6% p.a. from the date of filing the Claim petition, i.e., 5-11-2003 till its realization. The cost of claim proceeding Rs. 2,000/- is also awarded in favour of the appellant. The liability to indemnify the aforesaid sum is saddled jointly and severally against respondent Nos. 1 to 3. Till this extent the award of the Tribunal is modified.

18. The appeal is allowed in part as indicated above.