

Pramila and ors. Vs. Sarvar Khan and ors.

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Court : Madhya Pradesh

Decided On : Mar-12-2001

Reported in : 2003ACJ542

Judge : Bhawani Singh, C.J. and ;Arun Mishra, J.

Appeal No. : M.A. No. 641 of 1995

Appellant : Pramila and ors.

Respondent : Sarvar Khan and ors.

Advocate for Def. : Sanjay Agrawal, Adv.

Advocate for Pet/Ap. : Shilpi Chaturvedi, Adv.

Disposition : Appeal allowed

Judgement :

Bhawani Singh, C.J.

1. This appeal is directed against the award dated 6.2.1995 of Motor Accidents Claims Tribunal, Mudwara in Claim Case No. 28 of 1988.

2. Claimants are widow of the deceased and his parents. On 19.7.1988, deceased (Anil Pandey) was going to his village Bichha from Katni by Luna. He was moving on the left side of the road but driver of bus No. UGH 930 came from opposite side

driving the bus rashly and negligently and dashed against the deceased, causing injuries as a result of which he died at the site of accident after some time. Deceased was a young man of 22 years. He was a bidi contractor earning Rs. 900 per month. From agriculture he was earning about Rs. 40,000/Rs. 50,000 annually since his family possessed 66 acres of land. Compensation of Rs. 27,44,900 has been claimed. The owner and driver of the vehicle have stated that the bus was not being driven rashly and negligently and allegation to this effect was untrue and manufactured. Accident had taken place due to rash and negligent driving of Luna by the deceased. Claim for compensation is exaggerated. Deceased did not possess a valid driving licence at the time of accident, therefore, the liability for payment of compensation is not theirs and in case any liability is established, the same be made payable by the insurance company. Defence of the insurance company is that the deceased was driving the vehicle carelessly. His mental state was not normal. He did not possess driving licence and the accident took place due to his carelessness for which he himself is responsible. The deceased was dependent on the claimants. He did not have independent source of income. He was not earning Rs. 900 per month from bidi trade nor anything out of agriculture. Since he did not possess driving licence, insurance company is not liable to pay compensation.

3. After trial of the case, the Tribunal found that accident dated 19.7.1988 was caused due to rash and negligent driving of the bus No. UGH 930. Due to this accident, deceased, aged 22 years died. With respect to income of the deceased, it is found that he used to contribute to the family Rs. 750 per month. Damage to Luna has not been established. Ultimately, compensation of Rs. 1,40,000 has been awarded carrying interest thereon at the rate of 12 per cent per annum. It is not proved that deceased did not have driving licence. Claimants are not satisfied with this award, therefore, it has been challenged through this appeal.

4. During the pendency of this appeal in this Court, appellant Nos. 2 and 3 (parents) preferred application LA. No. 5756 of 1997 dated 22.8.96 seeking deletion of the name of claimant No. 1 (Pramila, widow of the deceased) from the array of appellants on the ground that she had contracted second marriage with Shyam Sunder Mishra of village Devsari (Jabalpur), therefore, she was not entitled

to compensation. By order dated 4.11.1996, District Judge, Jabalpur was directed to conduct an enquiry and report whether appellant No. 1 Pramila had really entered into second marriage or not, as alleged by parents of the deceased. Report in this regard has been filed. It is dated 9.2.2001 on the record of the case. It is reported that Pramila has entered into second marriage with Shyam Sunder Mishra after death of her husband Anil Pandey (deceased). However, the report does not mention on which date the marriage was so contracted. Although Pramila has denied the second marriage, however, the report says otherwise.

5. Assuming that second marriage of Pramila has taken place, as reported, but date of taking place of the marriage has not been reported. But it could not have taken place on 16.1.1995 as stated in the application by the parents of the deceased, since had that been so, this fact should have been stated before the Claims Tribunal which decided the claim on 6.2.95. Further, this application should have been filed along with the appeal on 19.6.1995. The appeal has been filed by all the three claimants. They have signed same vakalatnama in favour of the same counsel. This goes to show that the remarriage had taken place after the award was announced by the Motor Accidents Claims Tribunal. With this background and for the reasons to be stated in the later part of the judgment, this application cannot be allowed and is, therefore, rejected.

6. There is no dispute with respect to the taking place of the accident in this case. Evidence clearly suggests that the driver of the bus No. UGH 930 was responsible for the accident that he was driving the bus rashly and negligently. The deceased was not driving the Luna rashly and negligently or carelessly. Finding of the Claims Tribunal in this aspect is patently sustainable and is, therefore, confirmed.

7. Next is the question about the compensation payable in this case. Perusal of evidence demonstrates that the deceased was 22 years old at the time of accident. He was a bidi contractor earning Rs. 900 per month out of it. He was one of the owners of the ancestral property of 66 acres of land making contribution towards growing crops thereon. Although it is stated in the memo of appeal that he was earning Rs. 40,000 to Rs. 50,000 per year out of agriculture, yet on evidence, the income from agriculture can be put at Rs. 12,000. With this kind of evidence,

we proceed to assess the just and appropriate compensation in this case. The income of deceased from the business of bidi contractor can be fixed at Rs. 900 per month and Rs. 10,800 per year. From agriculture, his contribution can be put at Rs. 12,000 per annum taking the total annual income to Rs. 22,800. After deducting 1/3rd therefrom towards personal expenditure, the deceased was contributing a sum of Rs. 15,200 to the family per annum. He was 22 years old at the time of accident. Proper multiplier in this case should be 17. Thus calculated, the amount of compensation comes to Rs. 2,58,400. In addition to this, Pramila would be entitled to loss of consortium of Rs. 5,000 and all claimants to Rs. 2,000 for funeral expenses, Rs. 2,500 towards loss to estate and Rs. 10,000 for loss of expectancy of life, taking the total amount of compensation to Rs. 2,77,900 (rupees two lakh, seventy-seven thousand nine hundred). The amount of compensation will carry interest at the rate of 10 per cent per annum from the date of application till payment.

8. After arriving at the amount of compensation payable to the claimants in the preceding para, we examine the question whether Pramila is disentitled to claim the compensation for having contracted second marriage as contended by claimant Nos. 2 and 3 (parents). Judgments in *Anju Mukhi v. Satish Kumar Bhatia* 1998 ACJ 400 (MP) and *Rajasthan State Road Transport Corporation v. Kiran Lata* 1993 ACJ 130 (Rajasthan), are brought to our notice. Before making reference to the first case, let us refer to the second case of the High Court of Rajasthan in which it is said:

(24) One of the points which has been argued is the possibility of remarriage. To deny compensation on the ground of possibility of the remarriage of the widow is against the public policy and may be violative of Section 23 of the Contract Act. One must also understand that there was a time when the widow remarriage was prohibited. Now the society has recognised that remarriage is the necessity of the life and a widow and particularly the young widow cannot be asked to lead a life of a widow and should remain throughout within the four walls of the house. Parliament in its wisdom enacted the Hindu Marriage Act and Hindu Succession Act, 1956 and codified the Hindu Law. After the death of the husband, under Section 14 of the Hindu Succession Act, wife becomes an absolute owner of the

property of the husband. Similarly, now there is no restriction on the widow remarriage. On the contrary, the society feels that the widow remarriage is the need of the society and for the welfare of the weaker sections of the society. If the courts start thinking about the possibility of remarriage, then the whole purpose of the legislation will be frustrated and it will remind us of the talk of the 19th Century when we are thinking of moving into the 21st Century. So, the argument about the possibility of remarriage cannot be accepted at all in the present-day society. On the contrary, I am of the view that even after remarriage, the wife is entitled to get compensation to which she is entitled in the normal course of life. One of the factors is that in the remarriage ordinarily, you cannot get a good partner like the earlier one and burns of the widowhood still remain in the widow even after the remarriage and she has to face the society. So the question of marriage or possibility of remarriage does not come in the way at all and the compensation should not be based on the question of marriage or possibility of remarriage.

9. In *Anju Mukhi v. Satish Kumar Bhatia* 1998 ACJ 400 (MP), this Court held that dependency for calculating compensation in case of a widow is calculated from the date of accident till remarriage. The contention that the second husband earns less and the marriage was performed for purposes of safety and security, therefore, dependency be assessed accordingly has been rejected on the ground that the widow, after remarriage, lost her entitlement to claim compensation as a dependant. This conclusion has been drawn on the ground that where dependency is to be determined, she ceases to be legal heir/ dependant of her first husband after remarriage, as is evident from Section 21(iii) of the Hindu Adoptions and Maintenance Act, 1955, the wife loses claim for maintenance after remarriage. Therefore, for maintaining an application to claim compensation for the death of her husband, she must not only be widow at the time of the death of her husband, she should also continue as such, to be the legal representative of the deceased husband until the final decision. For taking this view, the court placed reliance on *Manjula Devi Bhuta v. Manjusri Raha* 1968 ACJ 1 (MP); *Oriental Fire & Genl. Ins. Co. Ltd. v. Chandravati* AIR 1983 All 174; *State of Orissa v. Archana Nayak* 1987 ACJ 772 (Orissa); *Man Inderjit Singh v. Sardar Singh* 1985 ACJ 413 (P&H) and *Makbool Ahmed v. Bhura Lal* 1986 ACJ 219 (Rajasthan). It did not agree with the view of Patna High Court in *Sobha Jain v.*

Bihar State Tribal Cooperative Development Corporation Ltd. 1983 ACJ 327 (Patna).

10. Perusal of the judgment in Anju Mukhi's case, 1998 ACJ 400 (MP), demonstrates that the learned Judges accept the position that by virtue of Section 14 of the Hindu Succession Act, 1956, the property possessed by a female Hindu of her husband vested in her cannot be divested, meaning thereby once the widow acquires the absolute right over the property, she could not be divested from it on her remarriage, but creates exception in case where a Hindu widow marries after the death of her husband in a motor accident, she ceases to be the legal representative/ dependant of her first husband under Section 21(iii) of the Hindu Adoptions and Maintenance Act, 1956, therefore, loses right to be maintained; and under Section 25(3) of the Hindu Marriage Act, 1955, when a decree for divorce or judicial separation against her is passed, the order for payment of permanent alimony ceases by loss of her entitlement to maintenance.

11. Right to equality is a fundamental right. Parliament has enacted Section 14 to remove the pre-existing disabilities fastened on the Hindu female limiting her right to the property without the full ownership thereof. The discrimination is sought to be remedied by Section 14(1) of Hindu Succession Act, 1956 by enlarging the scope of acquisition of property by a Hindu female by appending an explanation with it. Section 14 has to be construed harmoniously, consistent with the constitutional goal of removing gender-based discrimination and effectuating economic empowerment of Hindu females. This provision has the protection of Clause (3) of Article 15 of the Constitution of India, being a special provision enacted for the benefit of Hindu women. Sub-section (2) thereof does not operate to take away the right duly conferred by Sub-section (1) of Section 14 of the Hindu Succession Act, 1956. It deals with the pre-existing order, decree, instrument, gift or will or award providing for restricted estate in such property. 'Property' includes both movable and immovable acquired by a female Hindu in any manner whatsoever. Sections 19, 21 and 22 of the Hindu Adoptions and Maintenance Act, 1956, provide for maintenance of daughter-in-law by her father-in-law or heirs of deceased from out of the estate inherited by them from the deceased, provided she has no property of her own, is unable to obtain maintenance from the estate of

her husband or her father/mother or from her son or daughter, if any, or his or her estate so long as she does not remarry. Maintenance under the Hindu Marriage Act, 1955 also ceases on remarriage and in other circumstances provided therein, but these factors, in our considered opinion, have no application for grant of compensation to a widow on the death of her husband.

12. 'Legal representative' ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Legal representative in a given case need not necessarily be a wife, husband, parents and child. However, it cannot be said that wife is not a legal representative of her deceased husband. She is qualified to represent his estate on his death, therefore, qualified to file application for compensation for the loss of her husband. Succession to the estate opens on the occurrence of death of husband. 'Estate' would include all kinds of properties, movable and immovable, left by the deceased husband. It would include claim for compensation which arises on the death of husband. Her entitlement to the estate/ compensation is settled on the taking place of the accident resulting in the death of the husband. She cannot be divested of this right, being absolute and inalienable, even if she remarries. This conclusion flows by operation of Article 15(3) of the Constitution of India and Section 14(1) of the Hindu Succession Act, 1956. Provisions of Hindu Adoptions and Maintenance Act, 1956, have no application since their application is confined to limited field.

13. The term 'dependency' is not a principle of absolute application. It is a guide for arriving at a figure which is called compensation. Compensation is payable for loss caused to the victim in accident by the tortfeasor(s) and it is claimable even by a person who is well placed in life earning handsomely and is not actually dependent on the deceased, object being to penalise, by award of compensation, the tortfeasor(s) against loss sustained by the victim or his legal representatives, otherwise they would not suffer in any way by committing breach of positive duty to operate vehicles on highway/public place in a careful manner.

14. Proceeding further, husband is entitled to claim compensation in the event of death of wife even if he is earning himself and dependency is calculated on the

income of the deceased wife or contribution for the family. After the death of such a wife, the husband marries. Is his right to compensation forfeited? The answer to this question is in the negative. When this is so in case of husband, why different principle be made applicable in case of wife who marries after the death of husband? Compensation awarded by Motor Accidents Claims Tribunal under the Motor Vehicles Act, 1988, is not maintenance. It is a compensation for the loss sustained by the legal representative(s) for the death of their relation. The legal representatives become entitled to compensation on the occurrence of the accident and death of the relation. Widow has absolute right to compensation allowed by the Claims Tribunal which should not be influenced by the fact that the wife has married after the accident.

15. There is another reason for allowing the claim of the widow for full compensation, to which she has been held entitled by the Claims Tribunal, based on higher and broader perspective. National policy allows woman equal status with man, in all spheres of activities. Both are given equal rights. Government and nongovernmental organisations emphasise remarriage of a widow. When a man can remarry, why cannot a woman? It is understandable that life of a widow, after the death of her husband, in the family cripples abnormally. Generally, she is subjected to all kinds of indignities, compelling her to leave and fall back on parents where she is taken to be an eye-sore by the families of her brothers, particularly when parents are not alive, and even if they are alive, they can hardly look after her due to old age. With this background, it is considered necessary that a widow marries as early as possible. Therefore, in case she has done so, her claim for compensation cannot be defeated by remarriage. It would be highly improper to compel her to lead a life of widow till she receives the compensation on the termination of court case or else forfeit the right. The compensation continues to maintain her throughout her life since second marriage cannot be as good as the first marriage. It is by compulsion. She was not responsible for the death of her husband in the accident, therefore, she cannot be divested of the absolute right to claim compensation on remarriage. The Motor Vehicles Act, 1988 does not debar her. Since she becomes entitled to the compensation, she cannot be divested from it. These submissions were not advanced before the learned Judges in Anju Mukhi's case, 1998 ACJ 400 (MP), therefore, that case is clearly

distinguishable and decisions in Sobha Jain's case, 1983 ACJ 327 (Patna) and Kiran Lata's case, 1993 ACJ 130 (Rajasthan), are more pragmatic and give broader thrust to widow's right to compensation on death of her husband. It is important that 'dependent' and 'legal representative' are given practical, purposeful and pragmatic meaning to avoid damage to the entitlements of widow who remarries after the death of her husband in the accident. In this case, the widow marries after the award of compensation in her favour by the Claims Tribunal. The result, therefore, is that the plea raised by the two other claimants (parents) is not sustainable and is, therefore, rejected. Respondents are held responsible for payment of compensation jointly and severally.

16. Consequently, appeal is allowed. Compensation awarded by the Tribunal and enhanced in this appeal shall be paid to the claimants by the respondents within two months from the date of order along with interest at the rate of 10 per cent per annum from the date of application till payment as under:

(i) Pramila (widow of - 50 per cent Anil Pandey) (ii) Ram Pyari - 25 per cent (mother of deceased) (iii) Mahesh Prasad - 25 per cent (father of deceased).

Amount falling to the share of Pramila (appellant No. 1) be invested by the Tribunal in a nationalised bank nearest to the place of her residence for a period of ten years, extendable further from time to time. However, interest accruing to the amount shall be paid to her every month or six monthly by the Manager of the bank, as may be desired by her in her application to the Manager of the bank.

Costs on parties.

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