Jacob Joseph Vs. Devassy

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Court : Kerala

Decided On : Jan-28-2005

Reported in : 2005ACJ1962; 2005(2)KLT259

Judge : J.B. Koshy and; K.P. Balachandran, JJ.

Acts : Fatal Accidents Act; Motor Vehicles Act - Secton 95

Appeal No. : M.F.A. No. 425 of 2000

Appellant : Jacob Joseph

Respondent : Devassy

Advocate for Def. : P.R. Ramachandra Menon and; Jijo Paul, Advs.

Advocate for Pet/Ap. : C. Chandrasekharan, Adv.

Disposition : Appeal dismissed

Judgement :

J.B. Koshy, J.

1. Appellant is the claimant in O.P. (M.V.) No.809 of 1993 on the file of the Motor Accidents Claims Tribunal, Thrissur. The said claim petition was filed seeking compensation of Rs. 9.25,000/- for the death of an elephant owned by the claimant in a road accident occurred on 18.2.1993 at about 8.00 p.m. at Thrissur-

Kunnamkulam Public road. The Tribunal found that the accident occurred due to the negligent driving of the second respondent and the vehicle involved in the accident was owned by the first respondent and insured by the third respondent insurance company. However, no compensation was awarded as third respondent insurance company which insured the offending vehicle itself has insured the elephant involving in the same accident also and the insurance company has paid compensation for the death of the elephant in full satisfaction of the claim. Ext.B2 is the subrogation deed. Ext.B3 is the insurance policy by which the elephant was insured. The Tribunal found that since the claim was subrogated and third respondent insurance company has insured the vehicle also which was involved in the accident, no further compensation is payable. This is questioned by the appellant.

2. The learned counsel for the appellant relied on the decision of the Supreme Court in United India Insurance Co. Ltd. and Ors. v. Patricia Jean Mahajan and Ors., 2002 (3) KLT (SC) (SN) 73 = (2002) 6 SCC 281, wherein it was observed as follows at paragraph 36:

'36. We are in full agreement with the observations made in the case of Helen C. Rebello v. Maharashtra, SRTC, (1999) 1 SCC 90, that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the

insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs. Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr. Mahajan. If the proposition 'receipts from whatever source' is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, may be on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.'

The insurance amount in a group policy or life insurance policy or other benefits received have no definite correlation with the accidental death. The Apex Court held that for deducting amount from the compensation, there must be some correlation with the amount received and the accidental death. The Kerala High Court also in Geethakumari v. Rubber Board, 1994 (1) KLT 674, held that pension, gratuity, provident fund or gratuitous payment was paid at the death of the victim cannot be deducted from the compensation payable. In Helen C. Rebetto and Ors. v. Maharashtra State Road Transport Corporation and Anr. ((1999) 1 SCC 90), the Supreme Court also observed as follows: -

'33. Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only

on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the 'pecuniary advantage', liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee.

34. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution, How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family which such person knows under the law has to go to his heirs after his death either by succession or under a Will could be said to be the 'pecuniary gain' only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no correlation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any correlation with an amount earned by an individual. Principle of loss and gain has to be on the same plane within the same sphere, of course, subject, to the contract to the contrary or any provisions of law'.

The question, therefore, is to consider whether there is any correlation between the amount received by the appellant due to the accident as well as the motor accident.

3. Decision of a single Judge of the Delhi High Court in Dr. A.C. Mehra v. Behari Lal and Anr. (1998 ACJ 379) was also relied on by the appellant. In that case, a comprehensively insured car was damaged in an accident due to the negligence of the bus driver. Insurance company of the car paid charges to the repairs to the workshop. The Court held that the doctrine of subrogation does not apply automatically as the case is covered under the Motor Vehicles Act and no express agreement of transfer of rights has been established. It was held as follows at paragraph 9:

'9. Refuting the arguments of Mr. S.D. Salwan that once insurance company of the appellant paid to Saran Motors, the right of the appellant stood subrogated. Mr. Dhanda contended that the question of subrogation in this case did not arise. The present case is covered by the provisions of Motor Vehicles Act, hence the doctrine of subrogation does not apply automatically. It will come into operation only when there has been express agreement of transfer of rights. This has been so held by the King's Bench in the case of Nelson (James) & Sons Ltd. v. Nelson Line (Liverpool) Ltd. ((1906) 2 MB 217). Actions, therefore, to enforce such rights must be brought in the name of the assured as a rule, any defence which is valid against the assured as, for example, that he has released or compromised his right of action, is available to the defendant in such proceedings. Nothing has been placed on record in this case by the respondent to show that the appellant gave away his right of filing claim under the Act.'

The Delhi High Court also relied on the decision of the Supreme Court in Union of India v. Sri Sarada Mills Ltd. (AIR 1973 SC 281). In that case, the Supreme Court held that subrogation does not confer any independent right on underwriters to maintain in their own name and without reference to the persons assured. In that case, plaintiff mill instituted a suit for realising damages for the loss of cargo transported through Railways. The above cargo was insured. While paying the insurance, a deed of subrogation was executed by which the insurance company got all rights to sue against the railway administration in the name of the insurer. The insurance company has chosen to allow the mill to sue. The Apex Court held that the rights of the mill was not lost because of the subrogation given to the insurance company; but, held that after realising the amount, it has to be paid to

the insurance company which has compensated the mill as per the agreement between them. The Supreme Court held as follows:

'19. The respondent mill will give a valid discharge to the Railway Administration in respect of loss and damages. This decree will be a bar to the institution of any suit by the insurance company in respect of the subject matter of the suit. The respondent mill is answerable and accountable to the insurance company for the moneys recovered in the suit to the extent the insurance company paid the respondent mill'.

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22. In the present case the insurance company and the mill proceeded on the basis that the insurance company was only subrogated to the rights of the assured. The letter of subrogation contains intrinsic evidence that the respondent would give the insurance company facilities for enforcing rights. The insurance company has chosen to allow the mill to sue. The cause of action of the mill against the Railway Administration did not perish on giving the letter of subrogation.'

4. Now, we will come to the facts of this case also. The insurance company of Ext.B3 policy which insured the elephant is third respondent. Clause 9 of the policy reads as follows:

'9. If death of the animals hereby insured shall be due to the negligence carelessness pf wrong doing of any person the insured shall not claim or accept any compensation from such person or persons but shall at once give to the company all necessary information and assistance to enable the company to secure such compensation and it shall be absolutely the right of the company to sue in the name of the insured and recover compensation from the person or persons causing the death and any moneys or other compensation which shall be recovered shall belong to the company. The company will indemnify the insured against all costs and expenses so incurred with its written consent.'

Here, there is a clear written subrogation. The subrogation also clearly states that the company can claim compensation on behalf of the insured. In the Delhi High Court case relied on by the counsel, there was no written letter of subrogation. In Sri Sarada Mills' case (supra), the Supreme Court held that the mill can file on behalf of the insurance company which has paid the compensation. Then, the amount received has to be given back to the insurance company. Here, the elephant was insured by the same insurance company which insured the offending vehicle also. Therefore, even if a claim is filed, the amount received by it has to be given back to the very same insurance company. Since the insurance company is the same, there is no point in filing a claim by the claimant on behalf of the insurance company. In this connection, we also refer to the subrogation letter. In Ext.B2 deed, it was stated as follows:

'I, Jacob Joseph aged 40, son of Mr. Joseph, Kunnathunadu Taluk, Koovapady village, Ernakulam district, having received a sum of Rs. 2,17,500/- (Rupees Two lakhs Seventeen thousand and five hundred only) from National Insurance Co. Ltd., through its policy issuing office (hereinafter called the company) in respect of my elephant 'Prasad' (which died on 18-2-1993 due to a motor accident) insured with the company under their policy No. 57102/47929400001/E., Subrogate, assign, transfer and abandon to the company all my rights, title, claim and demand in respect of the said elephant and all rights of claim and remedies against any person or persons in respect thereof.

And I, being the absolute owner of the above said elephant, also authorise the company to use my name in any action or proceedings they may bring in relation to any of the matters hereby assigns and transferred to them and I undertake for myself to concur in any matters or proceedings which the Company may deem expected or necessary in any such action/or proceedings and to execute all documents which may be necessary and generally to assist therefore by all means in my power.'

This shows that there is a clear letter of subrogation and the appellant has subrogated its right, in respect of the said elephant and all rights and remedies against any person or persons in respect thereof. Therefore, the insured has given

the right of subrogation to the insurance company which insured the elephant and even though the insured can file claim on behalf of the insurance company here that has to be reimbursed to the insurance company. But, in this case, insurance company of both the vehicle and the elephant are the same, and therefore, no further claim can be raised by the claimant. Compensation received by the appellant has definite correlation with the accidental death of the elephant. While deciding a claim like this, terms of the policy, agreement with the parties, etc. cannot be ignored as insurance itself is a contract as held by the Apex Court in New India Insurance Co. Ltd. v. C.M. Jaya and Ors. (2002 (1) KLT 596 (SC) = AIR 2002 SC 651). Considering the policies of insurance, letter of subrogation and facts of the case, we agree with the reasoning of the Tribunal. The appeal is dismissed.