

**Lakshmanan Vs. Bhaskaran**

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**Court :** Kerala

**Decided On :** Sep-24-1992

**Reported in :** 2(1993)ACC290

**Judge :** Thulasidas, J.

**Appellant :** Lakshmanan

**Respondent :** Bhaskaran

**Judgement :**

**Thulasidas, J.**

1. By award dated 31.10.1988 in O.P. (M.V.) No. 384 of the 1987 of the Motor Accidents Claims Tribunal, Kozhikode, the Tribunal, the 1st respondent, granted a sum of Rs. 3,34,300/- with interest at 10% as compensation to the heirs of Vijayan who was killed in an accident. Out of the compensation, Rs. 50,000/- was directed to be paid to Mathu, the mother of the deceased. She died on 17.7.1990. She had executed a Will in favour of the petitioner bequeathing the entire amount awarded to her by the first respondent. On the strength of the Will he applied for a cheque for a sum of Rs. 63,750/- inclusive of principal and interest. But, the first respondent held that it has no jurisdiction to pronounce upon the validity or otherwise of the Will and accordingly rejected the petition by the impugned order stating that the petitioner Will be at liberty to apply for cheque, after he obtained probate of the W will from a competent Court. The order is under challenge in this

Original Petition.

2. Heard.

3. Petitioner claims to be the sole legatee under the Will executed by his mother to whom under the award, passed in O.P. (M.V.) No. 384 of 1987, an amount of Rs. 50,000/- was directed to be paid as compensation. He applied for cheque for the amount but the application was first returned asked him to produce a succession certificate. Thereafter, he made an application stating that succession certificate cannot be applied for, as the amount in deposit is neither a debt nor a security. He impleaded all the legal heirs of deceased Mathu and produced the original Will along with the petition. Indeed, normally a Will need be proved only when it is disputed by the legal heirs of the deceased. But such an occasion did not arise because even before the natural heirs could say anything the first respondent rejected the application by the impugned order.

4. under Section 213 of the Indian Succession Act, probate of a Will executed by a Hindu can be obtained only if it is of the class specified in Clauses (a) and (b) of Section 57, Clause (a) restricts its operation to the local limits of the ordinary civil jurisdiction of the High Courts of Madras and Bombay and Clause (b) limits its operation to a Will relating of immovable property. To the Will in question (a) and (b) of Section 57 of the Succession Act did not apply and therefore, the petitioner cannot claim to get it probated.

5. Claims Tribunals are constituted under Section 165 of the Motor Vehicles Act for the sole purpose of 'adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles or damages to any property of a third party so arising or both'. under Section 175, where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunals for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court. Under Rule 394 of the Kerala Motor Vehicles Rules the Tribunal shall for the purpose of enforcement of its award, have all the powers of a Civil

Court in the execution of a decree under the C.P.C. as if the award were a decree for payment of money passed by such Court.

6. The amount which the petitioner claimed was by way of compensation and his entitlement to it has to be decided by the Tribunal being a matter incidental to and connected with the exercise of jurisdiction under Section 165 of the Motor Vehicles Act, he sought to execute the award as legatee under the Will of his deceased mother which is permissible under Section 146 C.P.C. read with Rule 394. I am justified in taking this view by the decision in Rangaswami v. Rangammal : AIR1969 Mad271 which followed Ponniah Filiai v. T. Natarajan : AIR1968 Mad190 . In both these decisions relevant authorities have been considered. All the legal heirs were made parties to the application and effective adjudication of the petitioner's right was made possible, there was nothing that prohibited the 1st respondent from deciding the genuineness of the Will under which he had set up his right. Jurisdictional incompetence as stated by the first respondent was unwarranted by the scheme and the provisions of the Motor Vehicles Act and the Rules.

7. I am unable to sustain the impugned order and it is set aside. The first respondent will restore the application to file and pass appropriate orders in accordance with law and in the light of the above observations, expeditiously.

The Original Petition is disposed of as above.

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