# Kumaran Vs. Mohammed Khader

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**Court** : Kerala

**Decided On :** Jul-19-1994

**Reported in** : II(1994)ACC532; 1995ACJ173

**Judge** : K.P. Balanarayana Marar and; K.K. Usha, JJ.

**Appeal No.** : C.R.P. No. 1491 of 1989

**Appellant** : Kumaran

**Respondent** : Mohammed Khader

**Advocate for Def.** : S. Sankarasubban, Adv.

**Advocate for Pet/Ap.** : S. Venkitasubramania Ayyar and; V. Giri, Advs.

**Judgement** :

**K.P. Balanarayana Marar, J.**

1. The question that arises in this revision is whether the compensation awarded by the Motor Accidents Claims Tribunal to the legal representatives of a deceased is liable to be attached in a claim against the deceased person.

2. The revision arises from an order in execution. Decree holder is the revision petitioner. The suit was filed by him against one Mohammed Ismail Kasim. Pending suit he died in a motor accident and his legal representatives were

impleaded as defendant Nos. 2 to 7. A decree was granted against the defendants on 17.12.1986 directing the amount to be realised from the assets of the deceased in the hands of his legal representatives. The heirs of the deceased obtained an award from Motor Accidents Claims Tribunal, Quilon. The award was passed for an amount of Rs. 1,50,000/- in their favour. That amount was sought to be attached by the decree holder. An order of attachment was granted and the amount was attached. On the motion of the judgment debtors the executing court vacated that order finding that the amount is not liable to be attached in execution of the decree. That order is under challenge in this revision.

3. A learned single Judge of this Court, before whom the revision came up for hearing, felt that the question involved in the revision is an important one and it was adjourned for being heard by a Division Bench. That is how the matter is now before us.

4. Heard counsel on both sides.

5. The main question to be considered in this revision is whether the amount awarded by the Claims Tribunal represents an amount due to the estate of the deceased or whether it is a personal claim of the legal representatives of the deceased. The claim for compensation is one made under Section 110-A of the Motor Vehicles Act which enables the legal representatives of a person who died in a motor accident to file an application for compensation. After holding an enquiry into the claim the Tribunal has to determine the amount of compensation which appears to it to be just and pass an award specifying the person or persons to whom compensation shall be paid. Section 110-A of the Motor Vehicles Act only prescribes the procedure for determination of compensation. The substantive law for determination of compensation is found in Sections 1A and 2 of the Fatal Accidents Act, 1855. Section 1A enables the legal representatives of a person whose death was caused by wrongful act, neglect or default on the part of another to maintain an action and recover damages. In every such action the court may give such damages as it may think proportioned to the loss resulting from such death to the parties. After deducting all costs and expenses such amount has to be divided among the persons for whose benefit such action was brought in such

shares as the court by its judgment or decree directs. Section 2 of the Act enables the representative of the deceased to insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default over and above the claim made under Section 1A of the Act. When recovered such claim shall be deemed to be part of the assets of the estate of the deceased.

6. The scope and the rights of action under these two sections were considered by the Supreme Court in Gobald Motor Service Ltd. v. R.M.K. Veluswami 1958-65 ACJ 179 (SC). The Supreme Court held that the cause of action under Section 1 and that under Section 2 are different. While under Section 1 damages are recoverable for the benefit of the persons mentioned therein, under Section 2 compensation goes to the benefit of the estate. It is observed that whereas under Section 1 damages are payable in respect of loss sustained by the persons mentioned therein, under Section 2 damages can be claimed, inter alia, for loss of expectation of life. It is also observed that persons entitled to benefits under Section 1 may be different from those claiming under Section 2. The Supreme Court further observed that in awarding damages under both the heads there shall not be duplication of the same claim, that is, if any part of the compensation representing the loss to the estate goes into calculation of the personal loss under Section 1 that portion shall be excluded in giving compensation under Section 2 and vice versa. In C.K. Subramonia Iyer v. T. Kunhikuttan Nair 1970 ACJ 110 (SC), it was held that compulsory damages under Section 1A of the Fatal Accidents Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under Section 2 the measure of damages is the economic loss sustained by the estate.

7. The decree which is put in execution directs the amount to be realised from the estate of the deceased in the hands of defendant Nos. 2 to 7. The question arises whether the compensation awarded towards pecuniary loss sustained by them is a part of the estate. In the consideration of this aspect we have to see whether the compensation awarded falls under Section 1A or Section 2 of the Fatal Accidents Act or under both the sections. It is contended by learned Counsel for revision petitioner that the amount awarded by the Claims Tribunal goes to the estate of

the deceased to be shared by them. We are unable to agree with this contention. Except the amount which has been awarded by way of loss to the estate the compensation awarded represents the money equivalent of the loss sustained by the legal representatives. A Division Bench of this Court in K. Lekshmi v. Chairman, Kerala State Road Transport Corporation 1984 ACJ 79 (Kerala), had occasion to consider whether a succession certificate is necessary for payment of compensation to the dependants of a person who died in a motor accident. While holding that a succession certificate is not necessary this Court observed that the compensation is one secured to them as a statutory right under Section 1A of the Fatal Accidents Act. A succession certificate can be sought only where on the death of the person the right devolves on the applicant as a legal representative. This court further observed that a claim under Section 1A by the dependants of the deceased is made not as legal representatives but on their own account. With respect we agree with these observations. The claim made by defendant Nos. 2 to 7 is not on the basis of a right of the deceased which devolved on them. But the claim was made in their own right for the loss sustained by them. It that be so, it can be said that the compensation awarded by the Tribunal is due to defendant Nos. 2 to 7 in their own right and is not liable to be attached in execution of the decree obtained against them in their capacity as legal representatives of the deceased, first defendant.

8. The exemption from attachment applies only to the compensation awarded for the pecuniary loss sustained by defendant Nos. 2 to 7. Regarding the amounts awarded towards loss of the estate this principle is not applicable. In other words, whatever compensation awarded towards the loss of the estate of the deceased is liable to be proceeded against debts due by the deceased. Counsel for respondents would point out that an amount of Rs. 5,000/- was claimed by way of damages to the vehicle and this amount represents loss to the estate. A total amount of Rs. 1,50,000/- is seen awarded as compensation. The split up figures under each head do not find a place therein. It is, therefore, argued by the learned Counsel for the respondents that the amount claimed by way of damages to the vehicle cannot be separated from the compensation awarded. Anyway an amount of Rs. 5,000/- has been claimed under this head and compensation to the tune of Rs. 1,50,000/- has been awarded by the Tribunal. If that be so, the amount

claimed by way of damages to the vehicle is also included in the amount awarded by the Tribunal. This amount of Rs. 5,000/- can, therefore, be said to be an amount awarded towards loss to the estate. To that extent the decree holder can proceed against defendant Nos. 2 to 7.

For the aforesaid reasons we dismiss the revision with the observation that the decree holder can proceed against defendant Nos. 2 to 7 in respect of the amounts awarded by the Motor Accidents Claims Tribunal only to the extent of Rs. 5,000/- which was awarded towards loss to the estate. In other respects the order of the executing court is sustained.

Revision is disposed of as above.