

CASE ANALYSIS

Case: Montford Borthers Of St.Gabriel & Anr. v. United India Insurance & Ors.

Citation: (CIVIL APPEAL NOS. 3269-3270 OF 2007)

Delivered by: Justice Shiva Kirti Singh.

The Facts of the Case:

The Appellant No.1 is a charitable society registered under the Societies Registration Act, 1960. It runs various institutions as a constituent unit of Catholic Church. It is running various orphanages, industrial schools and other social service activities besides number of educational schools/institutions. Its members after joining the appellant society renounce the world and are known as Brothera. Such a Brothera, severs his all relations with the natural family and is bound by the constitution of the society. The accident was between a Jeep driven by the deceased and a Maruti Gypsy covered by insurance policy issued by the respondent Insurance Company. At the time of death the deceased was aged 34 years and was drawing monthly salary of Rs.4,190/-.The owner of the Gypsy vehicle discussed in his written statement that vehicle was duly insured and hence liability, if any, was upon the Insurance Company. The respondent-Insurance Company also filed a written statement and thereby raised various objections to the claim. But as is clear from the written statement under Annexure P.2 it never raised the issue that since the deceased was a Brothera and therefore without any family or heir, the appellant could not file claim petition for want of locus standi.

Issue Involved in the Case:

- 1) The Issue no.1 regarding maintainability of claim petition was not pressed by the respondents.

- 2) The Issue as to who is a legal representative or its agent is basically an issue of fact and may be decided one way or the other dependent upon the facts of a particular case.
- 3) The Tribunal questioned for itself as to what should be the criterion for assessing compensation in such case where the deceased was a Roman Catholic and joined the church services after denouncing his family, and as such having no actual dependants or earning?
- 4) The only Issue noted above requires looking into Section 166 of the Motor Vehicles Act, 1988, (hereinafter referred to as 'The Act in its Sub- section (1) of Section 166 is relevant for the purpose.

The Analysis of Law:

The Act does not define the term 'legal representative' was into dispute. Thus, to understand the same it is important to observe:

(LAW-I)

The Motor Vehicles Act Section 166:

"Application for compensation:-(1) An application for compensation arising out of an accident of the nature specified in sub- section (1) of section 165 may be made :

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit

of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be imp leaded as respondents to the application.”

The Tribunal has noted in its judgment and orders that clause (C) of Rule 2 of the Mizoram Motor Accident Claims Tribunal Rules, 1988, defines the term ‘legal representative’. as having the same meaning as assigned to it in clause (11) of Section 2 of the Code of Civil Procedure, 1908, which is as follows:

(LAW-II)

The Code of Civil Procedure 1908, Section 2 (11):

“ ‘legal representative’, means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or issued in a representative character the person on whom the estate devolves On the death of the party so suing or sued.”

Analysis by the Court:

The Court said that:

‘It is clear that in case of death of a person in a motor vehicle accident, right is available to a legal representative of the deceased or the agent of the legal representative to lodge a claim for compensation under the provisions of the Act. The issue as to who is a legal representative or its agent is basically an issue of fact and may be decided one way or the other dependent upon the facts of a particular case.’

But, as a legal proposition it is undeniable that a person calming to be a legal representative has the locus to maintain an application for compensation under Section 166 of the Act, either directly or through any agent, subject to result of a dispute raised by the other side on this issue.

Insurance Company Arguments:

The Learned counsel for the Insurance Company tried to persuade us that since the term 'legal representative' has not been defined under the Act, the provision of Section 1-A of the Fatal Accidents Act, 1855, should be taken as guiding principle and the claim should be confined only for the benefit of wife, husband, parent and child, if any, of the person whose death has been caused by the accident. In this context, he cited judgment of this Court in the case of *Gujarat State Road Transport Corporation, Ahmedabad vs. Raman Bhai Prabhatbhai & Anr*¹. In that case, covered by the Motor Vehicles Act of 1939, the claimant was a brother of a deceased killed in a motor vehicle accident. The Court rejected the contention of the appellant that since the term 'legal representative' is not defined under the Motor Vehicles Act, the right of filing the claim should be controlled by the provisions of Fatal Accident Act. It was specifically held that Motor Vehicles Act creates new and enlarged right for filing an application for compensation and such right cannot be hedged in by the limitations on an action under the Fatal Accidents Act. Paragraph 11 of the report reflects the correct philosophy which should guide the courts interpreting legal provisions of beneficial legislations providing for compensation to those who had suffered loss.

The Court's View:

The Court feels that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realization of compensation and that is provided by Sections 110-A to 110-F of the Act.

These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid.

The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may

¹AIR 1987 SC 1690

be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law.

The Court says it ought to remember that in an Indian family brothers, sisters and brothers, children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents.

And thus the court approves the decision in *Megjibhai Khimji Vira v. Chaturbhai Taljabhai*², and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased. From the aforesaid quoted extract it is evident that only if there is a justification in consonance with principles of justice, equity and good conscience, a dependant of the deceased may be denied right to claim compensation. Hence, the court found no merit in the submission advanced on behalf of the respondent-Insurance Company that the claim petition is not maintainable because of the provisions of the Fatal Accidents Act.

Arguments Advanced by the Appellants:

On behalf of the appellants it has been rightly contended that proceeding before the Motor Vehicle Claims Tribunal is a summary proceeding and unless there is evidence in support of such pleading that the claimant is not a legal representative and therefore the claim petition be dismissed as not maintainable, no such plea can be raised at a subsequent stage and that also through a writ petition. The objection filed on behalf of the Insurance Company, contained in annexure P.2, does not raise any such objection nor there is any evidence led on this issue. As noted earlier, the Tribunal did frame any issue regarding maintainability of the claim petition on law and fact as issue no.1 but the findings recorded by the Tribunal at page 41 of the paper book show that this issue together with issue nos. 2 and 3 were not pressed by the opposite parties during trial and were accordingly decided in favor of the claimants.

² AIR 1977 Guj.195

The Court's Analysis:

A perusal of the judgment and order of the Tribunal discloses that although issue no.1 was not pressed and hence decided in favor of the claimants/appellants, while considering the quantum of compensation for the claimants the Tribunal adopted a very cautious approach and framed a question for itself as to what should be the criterion for assessing compensation in such case where the deceased was a Roman Catholic and joined the church services after denouncing his family, and as such having no actual dependants or earning? For answering this issue the Tribunal relied not only upon judgments of American and English Courts but also upon Indian judgments for coming to the conclusion that even a religious order or organization may suffer considerable loss due to death of a voluntary worker.

The Tribunal also went on to decide who should be entitled for compensation as legal representative of the deceased and for that purpose it relied upon the Full Bench judgment of Patna High Court³, which held that the term `legal representative' is wide enough to include even `intermeddlers' with the estate of a deceased. The Tribunal also referred to some Indian judgments in which it was held that successors to the trusteeship and trust property are legal representatives within the meaning of Section 2(11) of the Code of Civil Procedure.

Conclusion: The Judgment

In the light of the aforesaid discussions, the court had no hesitation in holding that the High Court erred in law in setting aside the judgment of the learned Tribunal by ignoring the fact that the respondent-Insurance Company had not pressed issue no.1 nor it had pleaded and led evidence in respect to the said issue.

The Court in delivering explained that the appellants were the legal representatives of the deceased. Such an issue of facts could not be decided by the High Court for the first time in a writ petition which could only be entertained under Article 227 of the Constitution for limited purpose. Accordingly, orders of the High Court dated August 20, 2002 and December 10, 2003 are set aside and the judgment and order of the Tribunal dated July 14, 1994, is restored.

³AIR 1987 Pat. 239

The Court also directed dues of compensation including interest, as per judgment of the Tribunal, shall be deposited by the respondent-Insurance Company with the Tribunal within eight weeks from the date of this order. The Tribunal shall permit the claimants to withdraw the same in the light of its order. The appeals were hence allowed to the extent indicated above. Further there were no orders as to the costs.

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