

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WA.No. 1022 of 2015 () IN WP(C).4226/2013

AGAINST THE JUDGMENT IN WP(C) 4226/2013 of HIGH COURT OF KERALA
DATED 24-03-2015

APPELLANT:

T A ARCHANA AGED 29 YEARS
W/O. LATE KG RAVEENDRAN NAIR, MATTATHIL HOUSE
(KAVANAL), NEAR MARADI UP SCHOOL, MOOVATTUPUZHA PO

BY ADV. SRI.P.K.BABU

RESPONDENT(S):

1. TRAVANCORE DEVASWOM BOARD
THIRUVANANTHAPURAM 695001 REPRESENTED BY ITS SECRETARY
2. DEVASWOM COMMISSIONER
TRAVANCORE DEVASWOM BOARD THIRUVANANTHAPURAM 695001
3. DEPUTY DEVASWOM COMMISSIONER (ADMINISTRATION)
THIRUVANANTHAPURAM 695001
4. DEVASWOM BOARD EMPLOYEES CO-OPERATIVE SOCIETY LTD
E-759 PERUMBAVOOR 683542 REPRESENTED BY ITS SECRETARY
5. THE ASST.DEVASWOM COMMISSIONER
TRAVANCORE DEVASWOM BOARD, THRIKARIYOOR GROUP
THRIKKARIYOOR 686 692

R4 BY ADV. SRI.A.N.SANTHOSH

R4 BY ADV. SRI.JOSHY THANNICKAMATTAM

R4 BY SRI.P.V.BABY

R1 TO 3 & R5 BY SRI.A.N.RAJAN BABU, SC, TRAVANCORE DEVASWOM BOARD

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“CR”

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.**

Writ Appeal No.1022 of 2015

Dated this the 27th day of May, 2015

J U D G M E N T

Anil K. Narendran, J.

The appellant is the petitioner in WP(C) No.4226/2013. The said writ petition was filed seeking a writ of mandamus commanding the respondents not to recover her salary for the loan arrears of her late husband. She has also sought for a writ of certiorari to quash Ext.P2 communication dated 28.01.2013 of the 3rd respondent, by which the 5th respondent has been directed to take necessary steps to recover from her salary, in equal monthly installments, a sum of Rs.82,690/- outstanding in the loan availed by her late husband K.G.Raveendran Nair from the 4th respondent Employees Co-operative Society. The sureties to the aforesaid loan have also filed WP(C) No.7440/2013. The learned Single Judge by judgment dated 24.03.2015, disposed of both the writ petitions holding that the property devolved to the appellant from her late husband can be proceeded against; similarly, the attachable portion of the salary of the sureties can

also be proceeded against; and it is up to the award holder society to decide the course of action. The learned Single Judge held further that, the salary of the appellant is proceeded against since she has owned up the liability in Ext.R4(b) undertaking. The learned Single Judge observed that, the appellant obtained compassionate employment on the death of her husband; received a sizable amount as compensation in the motor accidents claim; she has also undertaken to wipe off the liability of her late husband after paying Rs.10,000/-, and therefore the 4th respondent society is justified in proceeding against the attachable portion of the salary of the widow also. Aggrieved by the judgment of the learned Single Judge, the appellant is before us in this appeal.

2. We heard arguments of the learned counsel for the appellant and also the learned Standing Counsel for the Travancore Devaswom Board.

3. The appellant is working as 'Kazhakam' in Oottupura Ganapathi Devaswom under Thrikkariyoor Group of the Travancore Devaswom Board. Her late husband K.G.Raveendran Nair was an employee of the Travancore Devaswom Board. On

01.10.2004, while working as 'Kazhakam' under Thrikkariyoor Group, he died-in-harness in a motor accident occurred at Coimbatore. On his death, the appellant got appointment as part-time 'Kazhakam' under Thrikkariyoor Group on compassionate ground, vide Ext.P1 order dated 12.06.2006 of the 2nd respondent. While continuing as such, the appellant received a copy of Ext.P2 communication dated 28.01.2013 of the 3rd respondent, by which the 5th respondent has been directed to take necessary steps to recover from her salary, in equal monthly installments, a sum of Rs.82,690/- outstanding in the loan availed by her late husband from the 4th respondent society. It has been stated in Ext.P2 that, the Secretary of the 4th respondent society has intimated the 3rd respondent that, K.G.Raveendran Nair had availed a loan for Rs.39,000/- from the society on 04.12.2003 and that the loan amount outstanding together with interest comes to Rs.82,690/-. On receipt of a copy of Ext.P2, the appellant submitted Ext.P3 representation before the 2nd respondent, contending that the amount outstanding in respect of the loan availed by her late husband cannot be legally recovered from her salary. Therefore, the 2nd respondent was

requested to cancel the recovery proposed in Ext.P2 from the salary payable to her. Due to the inaction on the part of the 2nd respondent in acting upon Ext.P3 representation, the appellant has approached this Court in WP(C) No.4226/2013.

4. The 4th respondent contended that, the late husband of the appellant had availed a loan for Rs.39,000/- from the society on 04.12.2003, after executing Ext.R4(a) bond dated 29.11.2003. He died in a motor accident on 01.10.2004 at Coimbatore and the appellant received around Rs.6,00,000/- towards compensation and the aforesaid amount is still with her. She also got appointment under dying-in-harness scheme and is receiving a monthly salary of Rs.12,000/-. Therefore, she has no difficulty to remit the amount due to the 4th respondent society. Further, on 03.10.2012, the appellant remitted a sum of Rs.10,000/- with the 4th respondent society, towards the total sum of Rs.60,320/- outstanding in the loan availed by her late husband and agreed to clear the balance amount, vide Ext.R4(b) undertaking dated 03.10.2007. After the death of K.G.Raveendran Nair, the 4th respondent society submitted Ext.R4(c) letter dated 11.10.2004 to the Secretary of the

Travancore Devaswom Board, in order to recover a sum of Rs.43,356/- due to it from his terminal benefits. It was followed by Ext.R4(d) letter dated 11.10.2004 and Ext.R4(e) letter dated 18.10.2007 addressed to the 5th respondent and Ext.R4(f) letter dated 17.12.2012 addressed to the 2nd respondent. The 4th respondent would contend that, since the appellant is employed under dying-in-harness scheme on the death of her husband and getting salary, she cannot escape from the liability of her late husband towards the 4th respondent society. Apart from that, the appellant received around Rs.6,00,000/- from the Motor Accidents Claims Tribunal, Muvattupuzha, towards compensation for the death of her husband. Further, she along with her daughter inherited the properties of the deceased. The 4th respondent has also filed an additional counter affidavit dated 19.03.2015, contending that, the appellant is drawing a monthly salary of Rs.15,751/- and after deducting Rs.1,600/- towards Provident Fund, Rs.490/- towards LIC and Rs.2,000/- towards loan recovery, she is getting more than Rs.13,500/- per month. Further, on 12.01.2014 she had submitted Ext.R4(g) application before the society to close the loan account of her late husband

under 'Aswas Scheme'. The said application was considered by the committee of the society and the appellant was directed vide Ext.R4(h) communication dated 06.03.2014 to remit the principal amount of Rs.39,000/- on or before 15.03.2014, but she failed to remit the said amount within the time limit stipulated. Therefore, the 4th respondent would contend that, the appellant is not entitled for any indulgence from this Court.

5. The first question that arises for consideration in the appeal is as to whether the 4th respondent society is legally entitled to proceed against the salary of the appellant, for the amount recoverable from her late husband, since she has owned up that liability in Ext.R4(b) undertaking obtained by the society in a plain paper.

6. As borne out from records, it is on the strength of Ext.R4(a) surety bond, the late husband of the appellant availed a loan for Rs.39,000/- from the 4th respondent society. Going by Ext.R4(a), the borrower has authorised the 5th respondent to deduct a sum of Rs.675/- from his monthly salary and pay it to the 4th respondent society in discharge of his liability towards the loan transaction. Further, the borrower and the sureties have also

undertaken that, in case of any default in payment of the monthly installments, they shall be jointly and severally liable for the entire loan amount outstanding, together with interest and other expenses, and that the 4th respondent society shall be entitled to recover the same by proceeding against their movable and immovable properties. In Ext.R4(a), the 5th respondent has also undertaken to deduct a sum of Rs.675/- from the monthly salary of the borrower and to pay the said amount to the 4th respondent society.

7. Section 37 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act') deals with deduction from salary to meet society's claim in certain cases. Going by Sub-section (1) of Section 37, notwithstanding anything contained in any law for the time being in force, a member of a society, may execute an agreement in favour of the society providing that his employer or the officer disbursing his salary or wages shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debts or other demand owing by

the member to the society. Sub-section (2) provides further that, on the execution of such an agreement the employer or the officer disbursing the salary or wages of any such member as is referred to in Sub-section (1) shall, if so required by the society by requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amounts so deducted to the society within seven days from the date of the deduction. Going by the proviso to Sub-section (2), inserted by Act 7 of 2010, with effect from 28.04.2010, this sub-section shall not apply if the employees, whose salary is to be deducted, are not informed at least thirty days in advance, by notice duly acknowledged, about the dues on loan or award amount.

8. Rule 52 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as 'the Rules') provides for deductions from salary or wages. Going by Sub-rule (1) of Rule 52, on the execution of an agreement under Sub-section (1) of Section 37, the society may send intimation by registered post/ local delivery of the execution of the agreement to the employer or the officer disbursing the salary or wages of the member who

has executed the agreement and furnish the said employer or officer with a copy of such agreement certified in the manner specified in Rule 32. The employer or the officer disbursing the salary or wages shall on receipt of such intimation from the society make a note of the agreement in the register maintained by him for the disbursement of salary or wages. Sub-section (2) provides that, in respect of every member who has executed the said agreement and in respect of whom intimation has been sent under Sub-rule (1), the society may send to the employer or the officer disbursing the salary or wages of the member, a requisition every month for the recovery from the salary or wages of such member of the amount payable by the member to the society for the month and for the remittance of such amount to the society. Such requisition shall be in Form No.9 and shall specify the total amount to be recovered from the salary or wages of the member for the month and shall be sent at least seven clear days prior to the last working day of the month. Sub-section (4) provides further that, any amount recovered by an employer or officer disbursing salary or wages from an employee by deduction from his salary or wages in pursuance of a

requisition received from any society or societies as the case may be, shall be remitted by such employer or officer as the case may be to the society or societies concerned within the period specified in Sub-section (2) of Section 37.

9. A bare reading of Ext.R4(a) bond makes it abundantly clear that, the deceased borrower has authorised the 5th respondent only to deduct a sum of Rs.675/- from his monthly salary and pay it to the 4th respondent society in discharge of his liability towards the loan transaction. Therefore, on the strength of Ext.R4(a), the 4th respondent is not legally entitled to recover any amount from the terminal benefits of the deceased borrower. Since the deduction contemplated under Section 36 of the Act, read with Rule 52 of the Rules, is from the salary/wages and not any recovery from the gratuity or other terminal benefits of the deceased borrower, respondents 1, 2 and 5 cannot be found fault with for not acting upon the request made by the 4th respondent society in Exts.R4(c) to R4(f) to effect recovery from the terminal benefits payable on the death of the borrower.

10. In **Sasikumar J. v. Branch Manager, Chittur Government Servants' Co-operative Society Ltd.,**

Kollangode and others (2014 (4) KHC 801) a learned Judge of this Court held that, Section 37 of the Kerala Co-operative Societies Act, 1969 states unequivocally that, notwithstanding any law in force, if there is an agreement between the borrower and the creditor Society/Bank with respect to deduction of salary for satisfaction of debt, then the employer or the Disbursing Officer of the borrower shall be obliged to deduct the salary and pay the amounts demanded by the creditor Society/Bank on default being committed.

11. In the case on hand, as evident from Ext.R4(a) bond the appellant is neither a co-borrower nor a surety in the loan availed by her late husband from the 4th respondent society. She has also not executed any agreement with the 4th respondent society, in terms of Sub-section (1) of Section 37 of the Act, providing that the 5th respondent, who is the officer disbursing her salary shall be competent to deduct from the salary payable to her any specified amount and to pay the amount so deducted to the 4th respondent society in satisfaction of any liability of her late husband in the loan availed from the said society.

12. In Ext.R4(b) letter obtained by the 4th respondent

society in a plain paper, the appellant had agreed to clear the balance amount outstanding in the loan availed by her late husband. Such a document can, by no stretch of imagination, be termed as an agreement in terms of Sub-section (1) of Section 37 of the Act, empowering or entitling the 4th respondent society to proceed against the attachable portion of her salary. In the absence of any such agreement, the 5th respondent has no authority to deduct any amount from the salary payable to the appellant on the request of the 4th respondent society. Therefore, the direction of the 3rd respondent as contained in Ext.P2 communication addressed to the 5th respondent cannot be sustained in law. When Section 37 of the Act can be resorted to by the 4th respondent society only if there is a specific agreement to that regard, the finding of the learned Single Judge that, the salary of the appellant can be proceeded against since she has owned up the liability in Ext.R4(b) undertaking cannot be sustained.

13. The second question that arises for consideration in this appeal is as to whether the attachable portion of the appellant's salary can be proceeded against by the 4th respondent

society, for realising the balance amount outstanding in the loan availed by her late husband, for the reason that on the death of her late husband she got employment on compassionate grounds.

14. The object of compassionate appointment has been, time and again, reiterated by the Apex Court 'as to give immediate financial help to the bereaved family which has lost its sole bread winner, to overcome sudden economic crisis'. Compassionate appointment is traceable only to the scheme framed by the employer or any statutory provisions (similar to Rule 51B of Chapter XIVA of the Kerala Education Rules, 1959) for such appointment and there is no right whatsoever outside such scheme or rules. Compassionate appointment is a privilege extended by the employer to the dependents of an employee who died-in-harness to tide over the sudden economic crisis. The right to compassionate appointment and the right to inherit property of the deceased employee are quite distinct. The right to compassionate appointment is not a right to property of the deceased employee, which can be the subject matter of an alienation or bequeath during his life time, or which can be

inherited along with any property left by the deceased subject to customary or statutory law of inheritance. Therefore, on getting appointment on compassionate grounds, the dependent of a deceased employee is not inheriting any property left by the deceased. In such circumstances, merely for the reason that the appellant has got employment on compassionate grounds on the death of her late husband, it cannot be contended that, the attachable portion of her salary can be proceeded against for realising the balance amount outstanding in the loan availed by her late husband from the 4th respondent society.

15. The third question that arises for consideration in this appeal is as to whether the attachable portion of the appellant's salary can be proceeded against by the 4th respondent society, for realising the balance amount outstanding in the loan availed by her late husband, for the reason that on the death of her husband in a motor accident she received the compensation awarded by the Motor Accidents Claims Tribunal.

16. Section 166 of the Motor Vehicles Act, 1988 deals with application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165, i.e., 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. As per Sub-section (1) of Section 166, an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made (i) by the person who has sustained the injury; or (ii) by the owner of the property; or (iii) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (iv) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Going by the proviso to Sub-rule (1), 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 impleaded as respondents to the application. As per Section 168 of the Act, the Claims Tribunal, after giving the parties an opportunity of being heard, hold an enquiry into the claims and, subject to the provisions of Section 162 may make an award determining the amount of

compensation which appears to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them as the case may be.

17. In **Kumaran v. Mohammed Khader (1994 (2) KLT 409)** a Division Bench of this Court held that, Section 110-A of the Motor Vehicles Act, 1939 (which corresponds to Section 166 of the Motor Vehicles Act, 1988) 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.

18. In **Gobald Motor Service v. Veluswami (AIR 1962 SC 1)**, the Apex Court considered the scope of Sections 1A and 2 of the Fatal Accidents Act, 1855 and held that, the cause of action under Section 1A and that under Section 2 are different. While under Section 1A damages are recoverable for the benefit of the persons mentioned therein, under Section 2 compensation goes to the benefit of the estate; whereas under Section 1A

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. Though in some cases parties that are entitled to compensation under both the sections may happen to be the same persons, they need not necessarily be so; persons entitled to benefit under Section 1A may be different from those claiming under Section 2. Prima facie as the two claims are to be based upon different causes of action, the claimants, whether the same or different, would be entitled to recover compensation separately under both the heads. The Apex Court held further that, the right of action under Sections 1A and 2 of the Act are quite distinct and independent. If a person taking benefit under both the sections is the same, he cannot be permitted to recover twice over for the same loss. 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 the calculation of the personal loss under Section 1A of the Act, that portion shall be excluded in giving compensation under Section 2 and vice versa. Later, in **C.K.Subramonia Iyer and others v. T.Kunhikuttan**

Nair (AIR 1970 SC 376), the Apex Court held that, compulsory damages under Section 1A of the Fatal Accidents Act, 1855 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. Still later, a Division Bench of this Court, in **Lekshmi v. Chairman, KSRTC (1983 KLT 842)** held that, a claim under Section 1A of the Fatal Accidents Act, namely a claim by the dependants, is not as legal representatives of the deceased, but on their own account. It is compensation for loss caused to them by the death of the deceased, secured to them as a statutory right under Section 1A of the Act.

19. Following the principle laid down in the aforesaid decisions, a Division Bench of this Court in **Kumaran's case (supra)** held that, in order to consider whether the compensation awarded by the Claims Tribunal towards pecuniary loss sustained by the legal heirs is a part of the estate of the deceased, we have to see whether the compensation awarded to the legal heirs falls under Section 1A or Section 2 of the Fatal Accidents Act or under both the sections. Repelling the contention

raised by the learned counsel for the revision petitioner that, the amount awarded by the Claims Tribunal goes to the estate of the deceased to be shared by them, the Division Bench held that, 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. Later, in **Omana P.K. and others v. Francis Edwin and others (2011 (4) KLT 952)** a learned Judge of this Court had the occasion to consider the question whether the amount awarded by the Claims Tribunal by way of 'compensation for loss of dependency and estate' forms part of 'loss of estate' or 'loss to the estate' of the deceased. After noticing the judgment of a Division Bench of the High Court of Andhra Pradesh in **Chairman, APSRTC, Hyderabad v. Smt. Shafiya Khatoon and Others (AIR 1985 AP 83)** that, "the loss of benefit to the estate of the deceased is the loss arising to the estate under the heads of mental and physical pain, loss of expectation of life and loss of amenities, and that the said amounts are payable to the legal heirs under the provisions of the Legal Representatives Suits Act, 1855 read with Section 306 of the Indian Succession

Act, 1925", the learned Judge of this Court held that, the capitalized value of the income spent on the dependents, subject to relevant deductions, is the pecuniary loss sustained by the members of his family through his death. The capitalized value of his income, subject to relevant deductions, would be the loss caused to the estate by his death. In other words, what amount the dependents would have got less deductions if any that could be made under law is the loss to the estate of the deceased. That goes to the legal heirs of the deceased. On the other hand, loss of estate includes compensation for pain and suffering, loss of enjoyment of amenities, etc. of the deceased. That amount goes to the legal heirs by virtue of Section 1A of the Fatal Accidents Act. Thus the position is clear that, what could be attached from the amount of compensation is the loss of estate and not the loss to the estate of the deceased.

20. In the case on hand, it is not in dispute that, the appellant received the compensation amount awarded by the Motor Accidents Claims Tribunal, on the death of her husband in a motor accident. In the light of the principle enunciated in the decisions referred to supra, out of the compensation awarded by

the Claims Tribunal the amount of compensation by way of 'loss to the estate' of the deceased represents the money equivalent of the loss sustained by the appellant as a legal representative of the deceased, which cannot be proceeded against for realising any amount due from the deceased. On the other hand, the amount of compensation, if any, received by way of 'loss of estate', under the heads pain and suffering, loss of enjoyment of amenities, etc. of the deceased, which goes to the appellant as the legal representative of the deceased by virtue of Section 1A of the Fatal Accidents Act, could be proceeded against for realising any amount due from the deceased. In the case on hand, there is no material to indicate that the appellant had received any compensation by way of 'loss of estate'. Moreover, even if the appellant had received any compensation by way of 'loss of estate' on the death of her husband, that will not entitle the 4th respondent society to proceed against the attachable portion of her salary, since recourse to such a procedure can be permitted only if there is a specific agreement executed by the appellant in terms of Section 37 of the Kerala Co-operative Societies Act, read with Rule 52 of the Kerala Co-operative

Societies Rules. Therefore, merely for the reason that, on the death of her husband, the appellant received certain amount of compensation in the motor accident claim, the attachable portion of her salary cannot be proceeded against for realising the balance amount outstanding in the loan availed by her late husband from the 4th respondent society. In such circumstances, Ext.P2 communication of the 3rd respondent directing the 5th respondent to proceed against the salary of the appellant cannot be sustained.

21. Therefore, we are unable to agree with the finding of the learned Single Judge that, since the appellant obtained compassionate employment on the death of her husband; received a sizable amount as compensation in the motor accident claim; and undertaken in Ext.R4(b) to wipe off the liability of her late husband after paying Rs.10,000/-, the 4th respondent society is justified in proceeding against the attachable portion of her salary.

22. In the result, this writ appeal is disposed of setting aside the aforesaid finding in the judgment of the learned Single Judge dated 24.03.2015 in WP(C) No.4226/2013. We set aside

Ext.P2 communication dated 28.01.2013 of the 3rd respondent, by which the 5th respondent has been directed to take necessary steps to effect recovery from the appellant's salary, the amount outstanding in the loan availed by her late husband from the 4th respondent society and hold that, the salary of the appellant cannot be proceeded against for realising the balance amount outstanding in the loan availed by her late husband from the 4th respondent society. WP(C) No.4226/2013 is allowed to that extent.

23. But, it is made clear that, the 4th respondent society will be free to proceed against any property devolved on the appellant on the death of her husband, for realising the balance amount outstanding in the loan availed by him.

No order as to costs.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE.

Sd/-

ANIL K. NARENDRAN, JUDGE.