

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 49 OF 2018**

P. Rajeshwari & 2 Ors.,	...	Appellants
Versus		
Managing Director, Kadamba Transport Corporation, Panaji & Anr.,	...	Respondents

Shri Ryan Menezes, Advocate under Legal Aid Scheme for the Appellants.

Ms. Rajas Kantak, Advocate for the Respondent Nos. 1 and 2.

CORAM:- C.V. BHADANG, J.

DATE:- 28th MARCH 2018

ORAL ORDER:

The challenge in this appeal, at the instance of the appellants/claimants, is to the judgment and award dated 08.04.2015, passed by the Motor Accident Claims Tribunal at Margao (Tribunal, for short) in Claim Petition No. 74/2013. By the impugned award, the Tribunal has dismissed the petition on the ground that the appellants have failed to establish that they are the legal representatives of the deceased Venkata Ramaya.

2. The brief facts are that, on 03.02.2013, now deceased, Venkata Ramaya was riding a motor cycle from Tilak Maidan to old bus stand. At about 13:50 hours, when he reached opposite Tilak Maidan road, a Kadamba bus bearing

No. GA-03-X-0073, gave a dash to the motor cycle, resulting into death of Venkata Ramaya.

At the time of the accident, the deceased was employed as a Loader/Operator with Daniel Engineering Works and Ship Repairs and was earning Rs.17,173/- per month. The appellant no. 1, claims to be widow, while appellant nos. 2 and 3 claims to be minor sons of Venkata Ramaya. They filed the aforesaid petition, claiming compensation of Rs.15 lakhs from the respondents.

3. The petition was resisted on behalf of the respondents on various grounds. The appellant no. 1 examined herself as AW-1. The appellants produced certain documents including the FIR, the spot panchanama along with the sketch, the salary certificate of the deceased, the death certificate of the deceased, memorandum of autopsy and a copy of the driving licence of the deceased. The appellants also produced the birth certificate of the appellant nos. 2 and 3.

4. The Tribunal after considering the two birth certificates came to the conclusion that the appellants have failed to establish any relationship with the deceased and in that view of the matter, the claim petition came to be dismissed.

5. I have heard Shri Menezes, the learned Counsel for the appellants and Ms. Kantak, the learned Counsel for the respondent nos. 1 and 2.

6. It is submitted by Shri Menezes, the learned Counsel for the appellants that the appellant no. 1 has stated on oath, during the course of her evidence, that she was the widow of the deceased and the appellant nos. 2 and 3 are the children, born out of the said wedlock. It is submitted that nothing significant has come on record in the cross examination and therefore, the Tribunal ought to have acted on the basis of the oral evidence of AW-1. It is submitted that the Marriage Registration is not compulsory, at least, it was not compulsory at the time, when the parties were married and thus, the non production of the marriage certificate, would not be decisive. The learned Counsel pointed out that there are cases where there are errors in birth certificates and the Tribunal was not justified in placing reliance on the contents of the birth certificate, in order to non suit the appellants.

7. Ms. Kantak, the learned Counsel for the respondent nos. 1 and 2 has supported the impugned award. It is submitted that the Tribunal on appreciation of the oral and

documentary evidence on record, has rightly come to the conclusion that the appellants have failed to establish any relationship with the deceased.

8. I have carefully considered the rival circumstances and the submissions made. The appellant no. 1 claims to be the wife of the deceased and the appellant nos. 2 and 3 are said to be the children born out of the said wedlock. The appellant no. 1 has not produced any marriage certificate to show that she was married with the deceased. The appellant no. 1 has also not produced any other documents, such as, an Election ID or an Aadhaar Card to show that the deceased was her husband. It would therefore be necessary to look into the two birth certificates, which have been produced by the appellants themselves.

9. It is true that the name of the father of the appellant nos. 2 and 3 is stated to be P. Venkat Ramaya, however, the said birth certificate shows that the name of the grandfather of the claimant nos. 2 and 3 to be P. Penchalliah and that of the grandmother as P. Ravanamma. In other words, the deceased Venkata Ramaya is shown to be the son of P. Penchalliah and P. Ravanamma. However, the death certificate (Exhibit-23) shows

the name of the mother of the deceased as R. Kamala and his father is stated to be R. Kondaya. The memorandum of autopsy shows that the deceased was identified by his father R. Kondaya. Thus, there is clear discrepancy in the name of the parents of the deceased and consequently, the fact whether, the deceased was the one, who was the father of the appellant nos. 2 and 3 and the husband of the appellant no. 1.

10. It has also come on record that the dead body of Venkata Ramaya was handed over to his father R. Kondaya. The appellants also did not produce any documents, may be in the form of service record of the deceased or any other record like extract of the Bank Account to show that Venkata Ramaya was the husband of the appellant no. 1. It is also not the case made out that the appellant no. 1 was not having any Election ID card or was not having any other document to show her relationship with the deceased. Thus, there is no clear evidence to show that the appellants are the legal representatives of the deceased. In such circumstances, the oral evidence of AW-1 cannot be accepted, when the documents produced by the appellants are pitted against such oral evidence.

11. I have carefully gone through the impugned judgment and award and I do not find that it suffers from any infirmity.

The appeal is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

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