

authority for the proposition that under the Industrial Disputes Act, the services of a workman during the probationary period could be terminated without a cause. He could not cite any authority but wanted to rely on *Salem Distt. Textile Workers' Union v. State of Madras* (1), a reading of which clearly goes to show that it goes against the management as it was held that services of a probationer could not be terminated before the expiry of the probationary period. Even if the workman was serving under the extended period of probation, which started from 13th July, 1971, his services could not be terminated on the 10th day without giving him an opportunity to show cause and after due enquiry.

(7) For the reasons recorded above, there is no merit in this writ petition which is dismissed with costs.

N. K. S.

Before Harbans Lal, J.

BABU RAM and others,—Appellants.

versus

PUNJAB STATE ELECTRICITY BOARD ETC.,—Respondents.

First Appeal From Order No. 51 of 1972.

December 17, 1979.

Motor Vehicles Act (IV of 1939)—Sections 110-A and 110-B—Fatal Accidents Act (XIII of 1855)—Section 1-A—Death in a motor accident—Claim under section 110-A for compensation by brothers and sisters of the deceased—Such claimants—Whether have a locus standi to make a claim—Procedure and determination of persons entitled to compensation—Whether to be regulated under the Motor Vehicles Act—Interpretation of statutes—Special Act to override the general one.

Held, that a close perusal of section 110-B of the Motor Vehicles Act 1939 makes it evident that the tribunal in this provision has been given the power to make an award not only determining the amount

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of compensation to which the claimants are entitled, but also to specify "the person or persons to whom compensation shall be paid". Under section 110-A (1) (c), a claim petition can be filed by the person injured or all or any of the legal representatives of the deceased, as the case may be. If both these provisions are read together, no doubt is left that under the Act, which deals with the accidents from vehicles, damages can be claimed by all the legal representatives of the deceased. As the claims regarding damages or compensation in connection with the fatal accidents are based on law of torts as it has developed in course of time in England and also in India, one of the basic conditions to be fulfilled by the claimants is that they must prove that they were dependent on the deceased and the quantum of compensation to be determined is to be assessed in proportion to the amount of dependency. The fatal Accidents Act was brought on the statute book on March 27, 1855 when the motor vehicles had not even been invented and had not even come into existence. Obviously, this Act deals with the fatal accidents in general and confers the right on certain legal representatives to claim damages for the wrongful act, neglect or the default of those who were responsible for causing the pre-mature death. Motor Vehicles Act specifically deals with the cases of damages or compensation arising out of the fatal accidents by the motor vehicles. According to the accepted principles of interpretation, in case of conflict between two statutes, the special law like the Motor Vehicles Act will have the overriding effect and precedence over the general statute like the Indian Fatal Accidents Act. Thus, the brothers and sisters of the deceased are also legal representatives for the purpose of filing the claim petition under section 110-A of the Act and also can claim damages in case of fatal accidents under section 110-B of the Act. However, the *locus standi* of these legal representatives to file the claim petitions by itself will not be sufficient to entitle them to claim damages or compensation. In order to get award of compensation in their favour, they must prove the equally important condition precedent that they were dependent on the deceased for their maintenance and the amount of compensation has to be determined and assessed on the basis of the incident of dependency in monetary terms. (Paras 5 and 6).

Rajinder Kaur and others vs. Union of India 1975 A.C.J. 272.

Dewan Hari Chand and others v. Municipal Corporation of Delhi and another, (1972) 74 P.L.R. (D) 177,

P. B. Kader and others vs. Thatchamma and others, A.I.R. 1970 Kerala 241,

Ram Partap vs. General Manager Punjab Roadways A.I.R. 1962 Punjab 540. DISSENTED FROM.

First Appeal from the order of Shri J. S. Chatha, P.C.S. Motor Accident Claims Tribunal, Patiala dated 28th October, 1971, dismissing the claim petition of the appellants.

D. S. Bali, Advocate, for the appellant.

N. K. Sodhi & L.M. Suri, Advocate, for respondent No. 1.

Y. P. Gandhi, for V. P. Gandhi, Advocate, for respondent No. 2.

Munishwar Puri Advocate, for respondent No. 5 (added respondent).

JUDGMENT

Harbans Lal, J.—

(1) This appeal is directed against the judgment of the Motor Accidents Claims Tribunal, Patiala, dated October 28, 1971 whereby the claim petition of the appellants for compensation under section 110-A of the Motor Vehicles Act, (hereinafter called the Act), was dismissed.

(2) On May 26, 1967, at about 11.30 P.M., a car driven by Hari Ram (now deceased) going from Nabha towards Malerkotla met with an accident with truck No. PNT-6566, belonging to the Punjab State Electricity Board and driven by Harnek Singh (hereinafter called the truck) as a result of which, Hari Ram, driver of the car died and Waryam Singh and Piara Singh, two occupants of the car, sustained a number of injuries. A claim petition for compensation on account of the death of Hari Ram was filed by Ram Sarup and Babu Ram and Sarupi, brothers and sister of the deceased, respectively, as his legal representatives. The claimants, in their claim petition claimed Rs. 1,000 on account of medical expenses and Rs. 45,000 as damages on account of the pre-mature end of Hari Ram. The two injured also filed claim petitions claiming compensation for the injuries sustained by them. The tribunal dismissed the claim of the appellants holding that brothers and sister had no locus standi to file the claim petition, that the accident was not as a result of the rash and negligent driving by the driver of the truck and further that it was not proved that the appellants were in any manner dependent on the deceased. So far as the claim petitions of the two injured are concerned, Piara Singh, injured, was awarded Rs. 250 and Waryam Singh, injured, Rs. 500. While the judgment of the

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tribunal has been challenged in the present appeal by the two brothers of Hari Ram deceased, his sister and Waryam Singh, injured, no appeal has been filed by Piara Singh, injured.

(3) In the claim petitions under appeal, the driver and the owner of the truck as well as the insurer were impleaded as parties. The claim petition was contested both on behalf of the owner as well as the insurer. According to their written statements, it was Hari Ram, deceased, who was responsible for the fatal accident. He was going on the wrong side of the road in a drunken condition while the driver of the truck was driving the truck on the correct side of the road. As the deceased took a sudden turn of the car to his right, the car struck against the truck. It was also urged that the brothers and sisters had no *locus standi* to file the claim petition, nor were they dependent upon the deceased. In view of the pleadings of the parties, the following issues were framed :

1. Have the applicants in C.A. No. 128/CT/67 any *locus standi* to bring this claim ?
2. Was the accident due to any negligent act on the part of the driver of the truck of the Electricity Board or was that due to the negligence of the deceased driver of the car or that of both and with what effect ?
3. What should be the quantum of compensation due if and from whom ?
4. Are any of the insurance company not liable to pay any compensation ?
5. Relief.

(4) On issue No. 1, the tribunal held that the applicants being the brothers and sister of the deceased had no *locus standi* to claim damages and to file the petition under section 110-A of the Act, as under section 1-A of the Fatal Accidents Act only the wife, husband, parents and children of the deceased were entitled to claim damages in case of fatal accidents. This has been strenuously assailed by the learned counsel for the appellants. The learned counsel has placed strong reliance on a Division Bench judgment of the

Karnataka High Court in the *General Manager, Karnataka State Road Transport Corporation, Bangalore v. Peerappa Parasappa Sangolli and others* (1). On behalf of the respondents, reliance has been placed in *Mrs. Rajinder Kaur and others v. Union of India* (2) *Dewan Hari Chand and others v. Municipal Corporation of Delhi and another* (3), *P. B. Kader and others v. Thatchamma and others* (4) as well as *Ram Partap v. General Manager, Punjab Roadways Ambala* (5).

(5) I have perused all these authorities closely. The view that only those legal representatives who are mentioned specifically in section 1-A of the Fatal Accidents Act are entitled to file claim petition and claim compensation in spite of the provisions of section 110-A of the Act in which all the legal representatives have been given the right to file claim petitions is based on the reasoning that the provisions in the Act laid down only for the constitution of the claims tribunal before whom the claim petition can be filed and the procedure for deciding the same and for the purpose of determining the *locus standi* of the claimants, reference must be made to the specific provision in the Fatal Accidents Act. In the decisions referred to above which have propounded this view, while specific reference is made to section 110-A, proper notice does not appear to have been taken of section 110-B of the Act which is reproduced below:

“On receipt of an application for compensation made under section 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it 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 for owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.”

- (1) A.I.R. 1979, Karnataka 154.
- (2) 1975 A.C.J. 272.
- (3) (1972) 74 P.L.R. (D) 177.
- (4) A.I.R. 1970, Kerala, 241.
- (5) A.I.R. 1962 Pb. 540.

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Its close perusal makes it evident that the tribunal in this provision has been given the power to make an award not only determining the amount of compensation to which the claimant or the claimants, as the case may be, is/are entitled, but also to specify "the person or persons to whom compensation shall be paid." Under section 110-A(1)(c) a claim petition can be filed by the person injured or all or any of the legal representatives of the deceased, as the case may be. If both these provisions are read together, no doubt is left that under the Act, which deals with the accidents from vehicles, damages can be claimed by all the legal representatives of the deceased. As the claims regarding damages or compensation in connection with the fatal accidents are based on law of torts as it has developed in course of time in England and also in India, one on the basic conditions to be fulfilled by the claimants is that they must prove that they were dependent on the deceased and the quantum of compensation to be determined is to be assessed in proportion to the amount of dependency.

(6) The Indian Fatal Accidents Act was brought on the statute book on March 27, 1855, when the motor vehicles had not even been invented and had not even come into existence. Obviously, this Act deals with the fatal accidents in general and confers the right on certain legal representatives to claim damages for the wrongful act, neglect or the default of those who were responsible for causing the premature death. The act specifically deals with the cases of damages or compensation arising out of the fatal accidents by motor vehicles. According to the accepted principles of interpretation, in case of conflict between two statutes, the special law like the Motor Vehicles Act will have the overriding effect and precedence over general statutes like the Indian Fatal Accidents Act. This view was held by a Division Bench of the Karnataka High Court in *Peerappa Parasappa Sangolli's case* (supra) and it was held that the brothers and sisters of the deceased are also entitled to compensation under the principle of loss of dependency. I have given my thoughtful consideration to this decision and the decisions of the other High Courts, referred to above, in which a contrary view has been expressed. I am inclined to agree with the decision of the Karnataka High Court. Thus, I hold that the brothers and sister of the deceased are also legal representatives for the purpose of filing the claim petition under section 110-A of the Act and also

can claim damages in case of fatal accidents under section 110-B of the Act. However, this may be made clear that the *locus standi* of these legal representatives to file the claim petitions by itself will not be sufficient to entitle them to claim damages or compensation. In order to get award of compensation in their favour, they must prove the equally important condition precedent that they were dependent on the deceased for their maintenance and the amount of compensation has to be determined and assessed on the basis of the incident of dependency in monetary terms.

(7) Thus while holding, in the present case, that the brothers and sister of the deceased were entitled to file the claim petition, it is further required to be seen as to whether they have succeeded in establishing that they were dependent on Hari Ram, deceased, for their maintenance.

(8) According to the statement of Sultan Singh, A.W. 5, who is member Panchayat of the village to which Hari Ram, deceased, belonged, the deceased and the two appellants, Babu Ram and Ram Sarup, were real brothers and all of them were unmarried. Babu Ram appellant, was aged 40 years and was elder to Hari Ram, deceased, whereas Ram Sarup, appellant, aged 30 years, was younger to the deceased. He made a general statement that Hari Ram, deceased, was supporting his two brothers. No question was put to him either in examination-in-chief or in cross-examination as to the income of all the three members or the source of their earnings. According to Ram Sarup, appellant, A.W. 13, Hari Ram, deceased, was earning Rs. 125 per month as a driver and contributed Rs. 110 per month out of the same to maintain the family of the two brothers. He further stated that Hari Ram, deceased used to live with them on his visit to the village. From this, it was evident that Hari Ram, deceased, did not live jointly with his brothers. In cross-examination, it was further admitted that Hari Ram, deceased, was employed as a driver at Nabha and that both he and his other brother Babu Ram were earning Rs. 4 a day, each as labourers. According to the deposition of Joginder Singh, A.W. 9, Babu Ram, appellant, out of the three brothers, was a mental patient and did not do any work in the village and was supported by Hari Ram, deceased. It was his case in the cross-examination that both Babu Ram and Ram Sarup, appellants, live in the same ancestral house in the village. He even went to the extent of saying that Ram Sarup

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appellant, was married and his source of income was labour. If the evidence of all these witnesses is closely perused, no doubt is left that Hari Ram, deceased, was not living in the village where his two brothers, the appellants, were living and whereas his income was Rs. 125 per month, the income of each of the two brothers, the appellants, was Rs. 4 per day or Rs. 120 per mensem. In view of this evidence it is not possible to hold that either of the appellants was in any way dependent on Hari Ram, deceased, for their maintenance. Whereas the two brothers, the appellants, lived jointly in the village in the ancestral house, the deceased lived separately outside the village whose income was equally meagre as that of his two brothers, the appellants. Out of the monthly income of Rs. 125 while living at a place like Nabha, there can be no basis for the conclusion that Hari Ram, deceased, was likely to part with any part of the income for the maintenance of his two brothers the income of each of whom was also equal and who were living in the village where the standard of living could be expected to be cheaper than the one in the town. According to the evidence Sarupi their sister was married. Thus she was in no manner dependent on the deceased.

(9) Thus, it is held on issues Nos. 1 and 3 that though the appellants had the *locus standi* to file the claim petition, yet they are not entitled to any compensation for the premature death of their brother Hari Ram as they are not proved to be dependents on him for their maintenance.

(10) As regards issue No. 2, the tribunal has held that there is no satisfactory evidence to come to the conclusion that the fatal accident was due to negligent and rash driving by the driver of the truck. According to the learned counsel for the appellants, the statements of Waryam Singh, A.W. 12 and Piara Singh, A.W. 14, who were indisputably occupants in the car along with Hari Ram, its driver, at the time of the accident and sustained injuries as a result of the accident, categorically prove that at the time of the accident, Hari Ram, deceased, was driving the car on the left side of the road and it was due to the rash driving of the truck that the accident took place. Undoubtedly, their statements corroborate the version of the claimants. In rebuttal, only Harnek Singh, driver of the truck, R.W. 2, has appeared in the witness box. Obviously, he was an interested person. Another fact also cannot be lost

sight of that he was tried under sections 279 and 304-A, Indian Penal Code, regarding this accident, in a criminal Court and was convicted on the basis of his confessional statement. When confronted with the same, he tried to wriggle out of it by saying that he had made the statement in the criminal Court under the pressure of the Police and out of fear that otherwise he may be convicted to a longer imprisonment. The learned counsel for the respondents, has relied upon the *post mortem* report and the report of the Chemical Examiner relating to Hari Ram, according to which alcohol had been found in the dead body. On this basis, the learned counsel emphasised that the driver of the car was driving the car under intoxication and was as such not in proper control of the vehicle. However, there is no satisfactory material to warrant the conclusion that Hari Ram, deceased, had taken excessive amount of alcohol due to which he could not be expected to control the car while driving, as a normal person. The learned counsel has also contended that even if the version of Waryam Singh and Piara Singh, A.Ws, is taken at their face value, the accident had taken place when the car and the truck were moving in opposite direction. After the accident, when the photographs were taken, both the vehicles were found to be parked in their proper sides on the *kutchra* portions of the road. According to the learned counsel, this accident could be easily averted if the drivers of both the vehicles had taken proper care to avert the collision. Both the vehicles were damaged on their right sides. This contention does not appear to be without substance. It appears to be more plausible that the drivers of both the vehicles did not drive their vehicles with proper care and attention and both were negligent and did not take necessary precaution to avert the collision. From the facts and circumstances of the case it is reasonable to hold that while the accident had taken place due to the negligence of the driver of the truck, the negligence of the driver of the car also played a vital part. To my mind, the negligence of Hari Ram, driver of the car cannot, be held to be less than fifty per cent.

(11) No argument was addressed regarding the case of Waryam Singh, appellants.

(12) In view of the above discussion, the net result is that there is no merit in this appeal which is dismissed with no order as to costs.

N.K.S.