

Before : J. V. Gupta, J.

NEW INDIA ASSURANCE CO. LTD.,—*Petitioner.*

versus

KASHMIRI LAL AND OTHERS,—*Respondents.*

Civil Revision No. 351 of 1989

July 19, 1989.

Motor Vehicles Act (IV of 1939)—S. 110 A—Hindu Succession Act (XXX of 1956)—S. 15—Death of injured during the pendency of claim petition—Husband impleaded as party who also died during the pendency of claim application—Application by mother of deceased to be impleaded as party—Legality of such application.

Held, that after the death of the husband who had been brought on record as legal representative of his deceased wife who had filed a claim for compensation for the injuries received in a motor vehicle accident the mother of the wife on the death of the husband could not be said to be her heir or legal representative as such to be brought on the record. The order of the Tribunal impleading the mother as legal representative is set aside.

(Para 3)

Petition under Article 227 of the Constitution of India praying that the order of Tribunal dated 4th October, 1988. Annexure P-1 may be set aside and the revision allowed with costs throughout.

L. M. Suri, Sr. Advocate with Randev Arora, Advocate, for the *Petitioner.*

P. K. Malik, Advocate, for the *Respondents.*

JUDGMENT

J. V. Gupta, J.

One Luxmi was injured on June 1, 1986. She filed her claim application before the Motor Accidents Claims Tribunal on September 11, 1986. During the pendency of the said proceedings, she died on December 11, 1986. On her death, her husband Tej Pal, moved an application for bringing him on record as her legal representative, which was allowed. Unfortunately, the husband Tej Pal also died on

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March 21, 1988. On his death, the mother of Laxmi, Omwati moved the application for bringing her on the record as the legal representative of her daughter Luxmi. That application was resisted by the insurance co. The Tribunal allowed the said application on the ground that she had spent a sum of Rs. 10,000 on the treatment of her daughter and, therefore, she will be deemed to be a legal representative as defined under sub-section (11) of section 2 of the Code of Civil Procedure. According to the learned Tribunal Omwati will be entitled to the compensation as any person who meddles with the case of the deceased is a legal representative.

(2) The learned counsel for the petitioner insurance company submitted that the mother of the deceased Luxmi could not be held to be her legal representative in any manner. On the death of Luxmi, her husband Tej Pal, was impleaded as her legal representative though according to the learned counsel he could also not be impleaded as such as it was an injury case and the claim in such cases comes to an end along with the death of the injured person. At the most, the heirs of Tej Pal could be impleaded, but under no circumstances, Omwati, the mother of the deceased Luxmi, could make any application for being impleaded as a legal representative of the deceased. According to the learned counsel, she was neither her heir under the Hindu Succession Act, nor otherwise could be said to be a legal representative as such particularly on the death of Tej Pal. In support of the contention, the learned counsel relied upon *Calcutta Insurance Ltd. v. Bhupinder Singh* (1), and *C. P. Kandaswamy v. Mariapa Stores* (2).

(3) After hearing the learned counsel, I find force in the contention raised on behalf of the petitioner. After the death of Tej Pal, the husband of the deceased Luxmi injured, Omwati, the mother of the deceased Luxmi, could not be said to be her heir or legal representative as such to be brought on the record. The approach of the learned Tribunal in this behalf was wholly wrong and illegal.

(4) Consequently, the revision petition succeeds and is allowed. The impugned order is set aside. Since further proceedings were stayed at the time of the motion hearing, the parties are directed to appear before the Tribunal on August 4, 1989.

P.C.G.

(1) 1970 Accidents Claim Journal 344.

(2) 1974 Accidents Claims Journal 362.