(2011) 02 P&H CK 0439

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No''s. 2478 and 2479 of 2009

Rajinder Kaur	APPELLANT
Vs	
Mohinder Sharma and Others	RESPONDENT

Date of Decision: Feb. 3, 2011

Acts Referred:

- Evidence Act, 1872 - Section 112
- Motor Vehicles Act, 1939 - Section 110D

Citation: (2011) 162 PLR 616 : (2011) 5 RCR(Civil) 663

Hon'ble Judges: K. Kantian, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

K. Kantian, J.

The appeals have been filed at the instance of a person by name Rajinder Kaur, who claims herself to be the wife of deceased, Joga Singh. An application had been filed by her before the Motor Accident Claims Tribunal in MACT case No. 122 of 2003 claiming compensation for death of her husband in a motor accident. In respect of the very same accident, there had been yet another claim for compensation at the instance of three persons who were the father, sister and brother of the deceased Joga Singh. Both the cases were disposed of together and the Tribunal held that the Rajinder Kaur, who was the claimant in MACT case No. 122 of 2003 had not established the marriage with the deceased Joga Singh and proceeded to award compensation only in favour of the father, brother and sister.

2. There had been an appeal filed by the father, brother and sister seeking for enhancement of claim for compensation in FAO No. 3275 of 2009 and Rajinder Kaur filed two appeals in FAO No. 2478 and 2479 of 2009 against the joint award passed by the Tribunal, one dismissing her petition and the other allowing the petition filed by the father, brother and sister. It appears that the case filed by the father, brother

and sister had been taken up earlier by this Court by Hon''ble Mr. Justice H.S. Bhalia and the case came to decided on 12.10.2009. At the time when the appeal had been taken up and disposed of, the father had died and the appeal had been prosecuted only at the instance of the brother and sister. It is not very clear from the order as to whether the learned Judge was apprised to the fact of pendency of other two cases filed by the wife. This is merely to record the fact that the order does not spell out the pendency of the two other cases and he proceeded to dispose of the case making an enhancement of claim of compensation by another Rs. 2,50,000/-.

3. The appeals filed by Rajinder Kaur assail the awards passed by the Tribunal pointing out to certain features which according to the learned Counsel appearing on behalf of the Appellant has not been properly considered. The deceased was a person working as a Technical Officer in Central Government Administration in CSIO, Chandigarh. The contention of the Appellant was that she had been married to the deceased at Kitchlu Nagar Gurudwara, Ludhiana on 10.05.1999 and they had been residing together as husband and wife in House No. 292/2, Sector 45-A, Chandigarh. She had filed in support of her claim to her status as a wife that in the voter list, which had been released on 23.03.2002, she had been described as the wife of Joga Singh. She had also filed in support of her claim to marriage a voter identity card Ex.P1, where she was described as the wife of Joga Singh, a marriage card, which was exhibited as Ex.P3. There had also been some photographs filed and the person, who had taken the photographs of the marriage was one Surinder Pal, and he was also examined in the case as PW4. He had spoken to the fact that he had attended the wedding and he had taken the photographs of the ceremony of the marriage.

4. As against all these documents, the objection mounted by the parent, brother and sister was that the marriage could not have been true at all for none of them attended the wedding. According to them no such wedding ever took place. To each one of the aspects of evidence which the Appellant had tendered, there had been good enough reasons which the Tribunal found to reject them. On the contention that her name was described as the wife of the deceased, it was found that the voter list itself had been released only subsequent to his death and therefore, no credibility could be attached to it. This line of reasoning was attacked vehemently by the counsel appearing for the Appellant contending that the enumeration of the voter list had been taken even earlier to the death and therefore, the evidentiary value of what was found in the voting identity card could not have been discounted. While I will agree with such a contention, I would still test it to know who the informant was, to give it a high credible value. If the information had been elicited from the deceased and he was the person who had disclosed that the Appellant was his wife then it would obtain a high credible value. A person describing herself as the wife of some person before the particular official may not itself prove the aspect of marriage. I am not, however, prepared to reject it outright but I am prepared to see it as a corroborative piece of evidence if all other things are available to prove

the marriage. The second document which had been filed and on which reliance was placed was the marriage card. The Tribunal found that marriage card could be produced at any time, could be created at any time and therefore, did not place reliance on the document. I will not find any defect in reasoning nor can I find that the Tribunal was unjustified in rejecting the card. This also must be taken as a corroborative piece of evidence and not a proof of marriage in itself. Learned Counsel contended that PW-4 Surender Pal had taken photographs of the marriage and his testimony proved the incident of marriage. He also pointed out to the fact that the Appellant''s own father had also been examined to say that he also attended the marriage. Amongst the photographs there are also some photographs where the brother and sister of the deceased were said to have been present. However, the presence of these persons in the photographs was denied by the witnesses when the photographs were confronted to them.

5. If the incident of marriage must be supported by the evidence of the father, mother or a friend, I would see it in the context of how the marriage is sought to be denied and the aspects of evidence which are given by the Respondents to deny the same. They had at least nine reasons to say as to why the marriage could not have taken place. One, it was an admitted fact that parents of the deceased had not come. It was not the evidence of the Petitioner that they had not been invited but it was sought to be contended that the father of the deceased was too ill to attend the marriage. In my view, the absence of the near relative of the deceased was a material fact. Two, the second aspect was that when the incident of marriage was itself in question the claimant ought to have produced documents to show that on the relevant date when their manlage had takes place, she must have taken leave, for after all, she was a Government servant and therefore, if she was shown to be absent from office on that day and if she had applied for leave giving the incident of marriage as a reason, it would have obtained credibility. It is an admitted fact that such detail was not produced. Three, the Appellant had taken LIC policy before the marriage and even after the marriage, if there had been as close of relationship for her as a husband, there had been no change in the nomination. Nominating her husband was taken by the Tribunal as one of the factor to discount the value of evidence on the Appellant side. Four, none of the neighbours of the house where the deceased was supposed to have lived along with the Appellant as husband and wife was examined in this case. Normally, the treatment of the society of a man and woman as husband and wife is given reasonable weight. After all, institution of marriage itself survives only in the manner in which the society views a couple. I will not, therefore, treat this to be a minor factor but I would have expected some evidence from the Appellant as to why none of the neighbours to the Appellant could be examined in this case. Five, the person, who had conducted the marriage namely the priest was not examined nor was any reason given as to why he could not be examined. Six, the Appellant herself admitted that she did not know where the bhog ceremony of the deceased took place especially when it was contended on

behalf of the Respondents that the bhog ceremony was held at Hoshiarpur and she was not present. Seven, the manner of institution of the cases itself was rather curious. The death had taken place on 14.10.2003 and immediately within a week after the accident, the case had been filed. The Tribunal found this to be rather a curious situation for no person would have thought of filing a case even within a week and even before the bhog ceremony was complete. Eight, the manner of institution of the case also excited the suspicion of the Tribunal for it said that the petition had been presented with the father of the deceased as one of the claimants. The father''s signature itself was not secured in the claim petition and he had not verified the petition. The Appellant was not prepared to state that she had the consent of the father of the deceased to file the case. In a situation like this if the father was also required to join the petition and he was not prepared to join the case, the procedure must have been only to show the person as a Respondent and not to show the person as a co-Petitioner and with no signature of such a person. Nine, the official who was working along with the deceased had also brought in the records to show that the deceased had mentioned the details of family only of persons consisting of his brother, sister and father and he had not mentioned the Appellant as the wife in the official record. It must be seen similarly the Appellant herself had not shown the, deceased as husband in any of the official records.

6. If the case must be seen only from the perspective of the documents filed by the Appellant then the inference might have been possible that the Appellant had established her marriage. Forensics of judicial appreciation consists of sifting of evidence tendered by parties. In this case, in proof of the contention of the Appellant that she had been married to the deceased, the photographs showing the marriage ceremony were filed in Court, the person who claimed that he had attended the wedding PW4 and the father of the Appellant were also examined, and the voter identity card described her as the wife were all to be taken as establishing the marriage then I would take them on the other scale the improbabilities of such a contention which have been enumerated at least through 9 points referred to above. The scale tilts in favour of contention pointing out to the improbability of the marriage.

7. If an Appellate Court should set aside a decision, I would look for a reasoning which is unworthy of acceptance. Merely because another view is possible may not be sufficient to set aside an award or a judgment. The point must be, if an affirmation were to be done then it should be on a point that the reasoning itself cannot be doubted. If the judgment must be set aside, it can be set aside by a finding that the particular view that has been taken could not have been taken at all. I cannot find that the view taken by the Tribunal is erroneous in that sense. If I should take a different view only because yet another view was possible then I would rather go along with the reasoning already adopted by the Tribunal and not find a reason to set it aside. A Division Bench of Kerala High Court in Mathew Thankeran v. V.G. Maharan AIR 1988 Ker. 128 held, while referring to the powers of

High Court u/s 110D of the Motor Vehicles Act of 1939 (equivalent provisions to Section 173 under 1989 Act) would not normally reverse a finding of a Tribunal which is arrived at on appreciation of evidence unless there is total misreading or perverse appreciation. The predicament in this case has been that it was just as well possible for a Tribunal to have come to a different conclusion and upheld the contention of the person claiming to be the wife that she had indeed been married to the deceased. This the Tribunal did not do for several reasons, which I have delineated above. If I affirm the view of the Tribunal, it is because it is more exigent for the sake of consistency than a wholesale conviction that such a view might also be wrong.

8. I was also thinking whether it would be appropriate to reject a contention of a wife who was prepared to stake her all to state that she was the wife of a person when it was not proved. Normally it would be very difficult for a woman to say that she was a wife even if she was not one. If she was making that during the life time of the person, then I would give a lot of importance to the same. I will not merely discredit the evidence of a person, who says that she was wife when she was not one. If such an affirmation comes for the first time only after the life time of a person then the motive was not to be wholly discarded. After all, it is possible for a person to secure a benefit by such a statement, then even untruth could prevail over a person''s version. In this case, if she had been seen going as man and wife or society had considered them as husband and wife or there were many documents which showed that they acted as husband and wife, then I would have immediately accepted the version of the wife herself as established. In this case, I do not find such a positive evidence as it might require in the situation where the nearest relatives from the husband''s side namely the father, brother and sister and also the office colleagues were not prepared to affirm that he had been married.

9. Another view is also possible that the deceased had a relationship with the Appellant and if there had been a marriage, he wanted to keep it as a secret. It is most likely that the Appellant herself wanted to keep the fact of marriage as a secret. Secret marriages are normally possible in situations where a person who is getting married against the wishes of elders or against socially accepted forms of relationship. A dependent son or a dependent daughter to conceal marriage from his or her parents are normal happenings. A person who was, however, on a high income and social status and was literally supporting the family, it would have been possible for him to veer the family round to accept his own decision. It makes it difficult for me to believe that there was any reason for the Appellant to conceal the marriage. It is also brought out in evidence that he was declaring himself as a Sanyasi in his office. It is also likely therefore that he had lived a life of bachelor in the best part of his youth and he was embarrassed or reluctant to disclose his marital status. If parties must decide to conceal such identity and the issue must come up before a Court for consideration, there is a great difficulty for a Court to accept that the marriage was true on the touchstone of what could otherwise have

definitely come to the knowledge of other people was deliberately concealed for some important or weighty reasons. I am unable to take an extreme view that there was a good reason for both the Appellant and the deceased to keep the issue of their own marriage as a secret. If any attempt had been made by the Appellant to give any reason as to why such a concealment was thought of by them, and if that explanation was found credible then it should have been possible for accepting the contention. In this case no such attempt was also made and therefore, it is difficult for me to take a view that they had been married and they were husband and wife.

10. The Evidence Act itself is an instrument to give a guidance as to when and how a Court can accept certain evidence as possible. The provision found in the Evidence Act relating to such presumption obtains through Section 112. If a child fed been born to a married woman during coverture then there is a presumption that a child is born only to that woman through the particular man with whom the woman was living. This is intended as a measure of public policy to prevent illegitimacy far a child. As far as the relationship of a man and a woman as husband and wife, it is the social aprobation or how the society viewed a particular couple is always important. In this case if one will have no member of the public affirming that they were living as husband and wife then I am afraid even the provisions of the Evidence Act cannot help the Appellant to contend that the deceased was her husband. To rivet the whole case on the evidence of PW4 who was a friend and who had taken some photographs or to place the whole weight of evidence on her own version and her father''s version against the evidence of the father, brother and sister of the deceased as well as the evidence of the colleagues and what was found in the official records seems a lopsided approach, I find it difficult to take such a view.

11. Under such circumstances, I will affirm the decision taken by the Tribunal and dismiss both the appeals. It shall not be necessary for me to examine the issue of quantum since the matter has concluded in an appeal which the parents had filed and the Court had taken the view already making an enhancement of compensation in FAO No. 3275 of 2009. I would have examined the issue of quantum if the Appellant''s case merited acceptance. In view of the fact that I am rejecting the appeals filed by the Appellant, I am not examining the issue of quantum.

12. The appeals are dismissed as above.