

(1994) 04 KL CK 0017

High Court Of Kerala

Case No: M.F.A. No. 453 of 1993

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mother Superior, S.H. Convent
and Others

RESPONDENT

Date of Decision: April 7, 1994

Acts Referred:

- Constitution of India, 1950 - Article 168, 169, 170, 37
- Succession Act, 1925 - Section 2, 29, 41, 42, 43

Citation: (1994) 2 ACC 462 : (1994) ACJ 673 : (1994) 3 ILR (Ker) 677

Hon'ble Judges: K. Narayana Kurup, J; K. John Mathew, J

Bench: Division Bench

Advocate: P. Sukumaran Nair and Thottathil B. Radhakrishnan, for the Appellant; Baby Isaac, for the Respondent

Final Decision: Dismissed

Judgement

K. John Mathew, J.

Whether the Mother Superior of a Holy Order of Catholic nuns is the legal representative of a deceased nun of that congregation? This question arises in this appeal filed against an award passed u/s 110-B of the Motor Vehicles Act, 1939. The 3rd respondent in O.P. (MV) No. 421 of 1988 before the M.A.C.T., Thodupuzha, viz., the Oriental Insurance Co. Ltd., is the appellant. The claim was filed before the M.A.C.T. by the Mother Superior, Sacred Heart Convent, Kanayankavayal Peruvanthanam, Idukki (hereinafter referred to as "the petitioner"), for compensation for the death of Rev. Sister Claramma, who was a member of that Holy Order, in a motor traffic accident. The accident occurred on 3.6.1988 when a jeep bearing No. KLI 3276 owned by the 1st respondent before the Tribunal, driven by the 2nd respondent in a rash and negligent manner hit the deceased while she was walking along the side of the road. She sustained grievous injuries. Although she was taken to the Medical College Hospital, Kottayam and treated there, she

succumbed to her injuries on 5.6.1988. The deceased was aged 48 at the time of her death and was employed as L.P.S. Assistant in the Corporate Management drawing a monthly emolument of Rs. 1,669/-. The petitioner claimed a total compensation of Rs. 1,88,395/- under different heads.

2. Respondent Nos. 1 and 2 did not file any written statement. In the written statement filed by the 3rd respondent (appellant) it was contended that the petitioner is not a legal representative of the deceased and, therefore, not entitled to claim compensation. The allegation of negligence of the 2nd respondent was denied and it was contended that the deceased died as a result of an inevitable accident. The petitioner produced Exhs. A-1 to A-4 and examined PWs 1 and 2. The respondent produced Exhs. B-1 to B-4. After considering the evidence the learned Tribunal awarded a compensation of Rs. 93,400/- with interest and proportionate costs.

3. The only point urged at the time of arguments is whether the petitioner is a legal representative of the deceased as envisaged in Section 110-A of the Motor Vehicles Act. u/s 110-A of the Motor Vehicles Act where death has resulted from the accident, an application for compensation may be made by all or any of the legal representatives of the deceased. Rule 2(c) of Kerala Motor Accidents Claims Tribunal Rules, 1977, defines "legal representative" as follows:

2(c) "Legal representative" means a person who in law is entitled to inherit the estate of the deceased if he had left any estate at the time of his death, and also includes any legal heir of the deceased and the executor or administrator of the estate of the deceased.

Definition of the words "legal representative" in the CPC is slightly different, which is as follows:

2(11) "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

4. Therefore, it has to be examined whether the petitioner "is entitled to inherit the estate of the deceased or alternatively whether she represents the estate of a deceased."

5. Learned counsel for 3rd respondent-appellant relying on Section 29(2) of the Indian Succession Act contended that the deceased being an Indian Christian, the provisions of the Indian Succession Act alone have to be examined in order to find out as to who will inherit her assets. It was further contended that the petitioner will not come within any of the categories of heirs mentioned in Sections 41 - 48 of the Indian Succession Act and, therefore, the petition itself was not maintainable.

6. The legal effect of a person becoming a nun and joining the Holy Order was considered by a Bench of this court in the case of *Mother Superior, Adoration Convent, Kanjiramattom v. D.E.O., Kottayam* 1977 KLT 303 . This court followed the following dictum of the Supreme Court in [Sital Das Vs. Sant Ram and Others](#), and held as follows:

It is well known that entrance into a religious order generally operates as a civil death. The man who becomes an ascetic severs his connection with the members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter. The other disciples of his Guru are regarded as his brothers, while the co-disciples of his Gum are looked upon as uncles and in this way a spiritual family is established on the analogy of a natural family.

(5) This being the general consequence of becoming a monk or nun and joining the Holy Order it has to be taken that with the taking of the perpetual vow the person concerned ceases to have any connection with the members of the natural family. So far as the natural family is concerned the woman is taken as dead and, therefore, her parents and other members specified in rule 79, Part III, K.S.R. are not taken as blood relations thereafter. Consequently, even though such category of persons are alive, the legal effect of a person becoming a nun is that she cannot thereafter be considered as having a father or mother or other relatives mentioned in Rule 79.

7. The deceased joined the Holy Order of the Sacred Heart Congregation after renouncing her natural family. As soon as she professed the perpetual vow she ceased to be a member of her natural family and became a member of the Holy Order. She had embraced a life of poverty, chastity and obedience. The convent became her family and the Mother Superior became the head of the family as well as her legal representative. All her income by way of her salary and other benefits will devolve on the convent, of which the Mother Superior is the Administrator. Therefore, the Mother Superior being the head of the convent is entitled to claim compensation on account of the death of the deceased.

8. In the additional counter-affidavit filed by the petitioner (1st respondent in the appeal) it is stated that the Holy Order Sacred Heart Congregation is a community leading a canonically approved religious life. It functions according to the Constitution and a Directory and Rules approved by the Holy See or the General Chapter or competent bodies decided by Canon Law. Articles 168, 169 and 170 of the Constitution of the Congregation are extracted in the affidavit. Article 37 of the Constitution of the Sacred Heart Congregation is as follows:

(37) Whatever a religious receives as gifts, donations or acquires through her labour belongs to the community. We must be obedient to the lawful superiors in the use of material goods, we do not become free from our obligations to observe evangelical poverty, simply on the ground of having secured a permission. Superiors are to meet the needs of the Sisters.

For the above reasons we hold that the petitioner is the legal representative of the deceased and was entitled to maintain the claim before the Tribunal.

9. Therefore, even though the deceased continued to be an Indian Christian as defined u/s 2(d) of the Indian Succession Act, because of her civil death by becoming a member of the Holy Order the natural heirs mentioned in Sections 41 - 48 of the Indian Succession Act will not be her legal heirs. If she had made a will it was to take effect at once as though she were naturally dead. So also if one of her kinsmen dies leaving properties which according to ordinary rules of inheritance would descend to her, she will be overlooked as though she were no longer alive. Entering religious orders resulted in the eyes of the Church in death to the world. From the time of her entrance into the Holy Order she could not acquire anything and she acted only as a means of receiving for the benefit of the Holy Order. By becoming a member of the Holy Order she becomes a member of the family consisting of the Mother Superior and other members of that Holy Order. Therefore, the contention of the learned counsel for the appellant that in view of Section 29(2) of the Indian Succession Act, Sections 41 - 48 of the said Act should apply in this case also, cannot be accepted.

10. It may be observed that none of the natural heirs of the deceased nun have come forward claiming compensation. Insofar as the appellant has admitted the policy, there are no valid grounds to deny to the petitioner the compensation payable on account of the death of the deceased. The learned Tribunal has rightly assessed the compensation after taking into account the monthly salary of the deceased, her age at the time of death and other relevant factors. The quantum of compensation is not challenged in this appeal.

11. Accordingly, the appeal is dismissed with costs. The appellant is directed to pay the compensation amount to the petitioner (1st respondent in the appeal) by drawing a cheque for the award amount in the name of the petitioner and producing it before the M.A.C.T., Thodupuzha, on or before 31.5.1994 for handing it over to the petitioner.