

absence of any valid licence in their favour. Again it is more than clear that the day they were dispossessed from the suit land neither any brick-kiln was being worked nor were they deriving any income from the same. Mr. M. S. Jain, learned Senior Advocate appearing for the appellants, however, sought to contend that since the letter marked 'A' intimating the refusal to renew the appellants' licences for running the brick-kilns was issued on account of the impending acquisition, it can safely be taken that the appellants had to stop their business of running the brick-kilns on account of the initiation of these acquisition proceedings and thus on that account they are entitled to be compensated for their loss of income. Firstly, I find that letter marked 'A' does not form part of the evidence as nobody has legally proved the same. That is why it has not been exhibited by the trial Court. No argument thus can be raised on the basis of this letter. Secondly, the fact remains that the alleged loss of earnings, as it being claimed by the appellants, is not on account of the taking of possession of the suit land by the Collector. If the appellants felt that the authorities concerned had no right or jurisdiction to refuse to renew their licences for the reason that the land in question had been notified under section 4 of the Act, then they had to assail that order or action of the authorities or in the alternative had to claim damages in a proper forum. They certainly are not entitled to any damages under the Act.

(5) For the reasons recorded above these appeals fail and are dismissed bunt with no order as to costs.

H. S. B.

Before S. S. Sodhi, J.

KAUSHALYA DEVI AND ANOTHER,—*Petitioners.*

versus

MOHAN LAL AND OTHERS,—*Respondents.*

First Appeal from Order No. 442 of 1981

April 2, 1984

Motor Vehicles Act (IV of 1939)—Section 110-A—Sub-section (1) proviso—Claim application filed by all legal representatives except

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one—Such representatives surrendering the rights in favour of the other representatives—Claim petition—Whether bad for non-joinder of a necessary party—Tribunal—Whether bound to give a chance to the claimant to implead the omitted representative.

Held, that a reading of the proviso to sub-section (1) of section 110-A of the Motor Vehicles Act, 1939 would show that it is incumbent that where the application for compensation has not been made by all the legal representatives of the deceased, the application made must be on behalf of or for the benefit of all the legal representatives of the deceased. It is equally an imperative requirement that all the legal representatives of the deceased must be impleaded as parties whether as co-petitioners or respondents as the proviso aforesaid has been introduced obviously for the purpose of avoiding multifarious claims in respect of the same accident. If all the legal representatives are not made parties the petition cannot proceed. It follows, therefore, that where all the legal representatives of the deceased have not been impleaded as parties to the claim an opportunity must be afforded to the claimants to implead the legal representatives, not so impleaded and until and unless this is done, proceeding in the claim application should not be allowed to continue.

(Paras 5 & 6)

First Appeal from order of the Court of Shri Raj Kumar Gupta, Motor Accidents Claims Tribunal, Karnal, dated 28th May, 1981, dismissing the petition and directing the parties to bear their own costs in the circumstances of the case.

R. M. Suri, Advocate. For the Appellant.

Harbhagwan Singh, A.G., Haryana, with P. S. Duhan, D.A.G., Haryana, for respondents 2 to 4.

JUDGMENT

S. S. Sodhi, J.

(1) What falls for consideration in this appeal is the proviso to sub-section (1) of section 110-A of the Motor Vehicles Act, 1939.

(2) Desh Kumar was killed in an accident with a bus. This happened at Samalkha on October 18, 1980. He died leaving behind his mother Shrimati Kaushalya Devi, his brother Jai Bhagwan, his sister Prem Lata as also his widow Shashi Bala.

(3) A claim for compensation was put in by the mother, brother and sister of the deceased. The widow was not, however, impleaded as a party, despite a specific objection having been raised by the respondent to her non-joinder. The claimants instead sought to meet this objection by placing on record the affidavit of the widow—Shashi Bala, Exhibit P1 wherein it was stated that she had gone to her parents' house and had given up her claim to compensation on account of the death of her deceased husband in favour of her mother-in-law, Shrimati Kaushalya Devi.

(4) The Tribunal held that the affidavit Exhibit P1 did not satisfy the requirements of law and accordingly dismissed the petition as being bad for non-joinder of the widow Shashi Bala as a party to this petition.

(5) In dealing with the matter it would be pertinent to advert to the judgment of the High Court of Madras in *Ranganathan v. K. Gangabai & Ors.* (1). In this case the father had put in a claim for compensation on account of the death of his son in a motor accident. An objection was raised that with the mother of the deceased being alive, the father was not entitled to prefer such a claim. The Tribunal up-held this objection holding that the father could not maintain the petition for compensation without impleading the mother either as a co-petitioner or respondent. In this context, in considering the provisions of section 110-A of the Motor Vehicles Act, it was observed—“That section says that where death has resulted from the accident, the claim petition can be filed by all or any of the legal representatives of the deceased. But the said section contains a proviso, which says that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. This proviso to section 110-A has been introduced obviously for the purpose of avoiding multifarious claims in respect of the same accident. If one of the many legal representatives can file a claim petition without reference to the others then there is likelihood of many claim petitions being filed in respect of the same accident. It is with a view to avoid such a situation and also to ensure that one legal representative does not get the compensation and run away with it without the knowledge

(1) 1982 A.C.J. 341.

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of the other legal representatives the proviso has been introduced". The case was accordingly remanded to the Tribunal to enable the father to bring on record all the Legal Representatives of the deceased as respondents and to prosecute the claim petition in a representative capacity.

(6) It is, thus, incumbent that where the application for compensation has not been made by all the legal representatives of the deceased, the application made must be on behalf of or for the benefit of all the legal representatives of the deceased. It is equally an imperative requirement that all the legal representatives of the deceased must be impleaded as parties whether as co-petitioners or respondents. If these conditions are not complied with, the petition cannot proceed. It follows, therefore, that where all the legal representatives of the deceased have not been impleaded as parties, to the claim, an opportunity must be afforded to the claimants to implead the legal representatives, not so impleaded and until and unless this is done, proceeding in the claim application should not be allowed to continue.

(7) The Award of the Tribunal is hereby set aside and the case is remanded to the Tribunal to afford to the claimants an opportunity to implead the widow—Shashi Bala, as a respondent and to thereafter decide the claim afresh in accordance with law.

(8) This appeal is accordingly accepted and the parties are directed to appear before the Tribunal on May 1, 1984. There will, however, be no order as to costs.

H.S.B .

Before S. S. Sandhwalia, C.J., and M. M. Punchhi, J.

SOHAN LAL,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 1403 of 1980.

April 23, 1981.

Punjab Town Improvement Act (4 of 1922)—Sections 58, 59, 60, 62, 63 and 65—Land Acquisition Act (I of 1984)—Section 18—Land