
(2006) 06 AP CK 0022
In the Andhra Pradesh High Court
Case No : CMA No. 170 of 2006

Arthamudi Ramu and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 1, Order 22 Rule 3
Industrial Disputes Act, 1947 — Section 2A
Railway Claims Tribunal Act, 1987 — Section 23
Succession Act, 1925 — Section 306

Citation : (2008) ACJ 1659 : (2006) 5 ALD 243

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A.K. Kishore Reddy, for the Appellant; T. Siva Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This appeal is filed u/s 23 of the Railway Claims Tribunal Act, assailing the order, dated 17-10-2005, in O.A.A. No. 229 of 1999 passed by the Railway Claims Tribunal, Secunderabad Bench. It raises an important question of law viz., whether the proceedings instituted before the Tribunal by an individual, claiming damages for the injuries received by him in an untoward incident or accident, would survive his death during the pendency of the proceedings.

2. The deceased-first appellant submitted a claim before the Tribunal, stating that he was travelling from Rajahmundry to Nidadavolu on 22-3-1999, in Train No. 8561, Link Express, and when the Train was about to stop at Nidadavolu Station, the passengers, who stood behind, pushed him, resulting in his fall between the moving train and platform No. 2. It was pleaded that as a result of the fall, his left leg was run over and was later on, amputated. A sum of Rs. 4,00,000/- was claimed as compensation.

3. The respondents resisted the claim and stated that no untoward incident, as such, has taken place at Nidadavolu Station on 22-3-1999. It was contended that the first appellant was not a bona fide passenger and even if he has fallen from the train, it is only on account of his negligence and the injuries are self inflicted ones.

4. During the pendency of the claim petition, the first appellant died on 20.11.1997. Thereafter, the wife and minor daughter of the deceased came on record, as legal representatives. Thereafter, the Tribunal framed the relevant issues. When the claim petition came up for hearing, the Tribunal applied the principle contained in the maxim "actio personalis cum moritur persona" and dismissed the claim petition. Reliance was placed upon the judgment of the Supreme Court in *M. Veerappa Vs. Evelyn Sequeira and Others*, .

5. Sri Kishore Reddy, learned Counsel for the appellants submits that the application of maxim "actio personalis cum moritur persona" is not universal, but would depend upon the facts and circumstances of the case. He contends that only such claims or reliefs as can be availed by the deceased claimant personally, would abate and not those, which can be quantified in terms of damages. He places reliance upon the judgment of the Supreme Court in *Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery and others*, , and a judgment of this Court in *United India Insurance Company Ltd. Vs. E. Laxma Reddy (died) per LRs. and Another*, .

6. Learned Standing Counsel for the respondent, on the other hand, submits that the Tribunal applied the correct principle of law, as laid down by the Supreme Court, and that no exception can be taken to the order under appeal. He contends that the claim before the Tribunal was purely personal to the claimant, and that the same does not survive the death of the claimant.

7. The claim that was initially presented by the deceased-first appellant and pursued thereafter by appellants 2 and 3, was rejected by the Tribunal, only on the ground that the proceedings abated, on account of the death of the original claimant. In that view of the matter, the Tribunal did not address itself to the merits of the claim.

8. Two provisions govern the situation that emerges on account of the death of a party to proceedings. Section 306 of the Indian Succession Act, 1925 (for short "the Act") provides for continuation of the proceedings by or against an individual even after the death, subject to certain conditions. Similarly, Order XXII Rules 1 and 3 of C.P.C. provides for the consequences of the death of a party to proceedings and the steps to be taken, in that context. The relevant provisions reads as under:

Succession Act:

Section 306 : Demands and rights of action of or against deceased survive to and against executor or administrator : All demands whatsoever and all rights to

prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party the relief sought could not be enjoyed or if granted it would be nugatory.

Order XXII of C.P.C.

1. No abatement by party's death, if right to sue survives.--The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.--(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a part and shall proceed with the suit.

2. Where within the time limited by law no application is made under Sub-rule (1), the suit shall abate so far as the deceased is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

9. In a way, it can be said that while Section 306 of the Act is substantive in nature, Order XXII C.P.C. is procedural.

10. Section 306 of the Act has been the subject-matter of interpretation in a number of judgments, rendered by various High Courts and the Supreme Court. Very wide differences of opinion prevailed among various High Courts in this regard. In *M. Veerappa's case* (supra), the Supreme Court discussed the views expressed by the various High Courts on this aspect. It was pointed out that the question as to whether the proceedings would survive the death of a claimant would depend upon whether the subject-matter of the proceedings is based on Torts or Contracts. It was held that if it is the former, the proceedings would abate and if it is the latter, they would survive. The relevant portion reads as under:

If the entire suit claim is founded on torts the suit would undoubtedly abate. If the action is founded partly on torts and partly on contract then such part of the claim as relates to torts would stand abated and the other part would survive. If the suit claim is founded entirely on contract then the suit has to proceed to trial in its entirety and be adjudicated upon.

If this were to have been the last word on the subject, and the line of distinction between causes of action based on torts and contracts is clear and firm, there would not have been the necessity, to undertake any further discussion. In the recent past, the Supreme Court itself undertook the examination of the scope

and ambit of Section 306 of the Act, vis-a-vis the statutory benefits conferred under different categories of persons.

11. In Rameshwar Manjhi's case (supra), the dispute was, as to whether the claim of an employee, which was pending before the authorities, under the relevant statutes, during his lifetime, would abate on his death. Here again, there was difference of opinion among various High Courts. The Supreme Court had gone to the root of the issue, and in particular, the connotation of the maxim of "Actio personalis moritur cum persona", and held:

Para-13: It is thus obvious that the applicability of the maxim "actio personalis moritur cum persona" depends upon the "relief claimed" and the facts of each case. By and large the industrial disputes u/s 2A of the Act relate to the termination of services of the concerned workman. In the event of the death of the workman during pendency of the proceedings, the relief of reinstatement, obviously, cannot be granted. But the final determination of the issues involved in the reference may be relevant for regulating the conditions of service of the other workmen in the industry. Primary object of the Act is to bring industrial peace. The Tribunals and Labour Courts under the Act are the instruments for achieving the same objective. It is, therefore, in conformity with the scheme of the Act that the proceedings in such cases should continue at the instance of the legal heirs/representatives of the deceased workman. Even otherwise there may be a claim for back wages or for monetary relief in any other form. The death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman..

12. The Supreme Court approved the views expressed by the Kerala High Court in Gwalior Rayons Vs. Labour Court and Others, and the Gujarat High Court in Bank of Baroda Vs. Workmen, . A perusal of the said judgments and examination of some developments in English Law, in the recent past, discloses that the maxim does not operate with the same vigor, as it used to, few decades ago.

13. It is true that the nature of claims under the Industrial Disputes Act or other related legislations differ from pure civil claims. However, the object underlying the Industrial Disputes Act, is similar to the one under the legislations providing for compensation to the victims in Railway and Motor Accidents. In the ultimate analysis, both are social security measures.

14. Instances are not lacking, where a cause, which may appear to be the one under tort, may, have the elements of an express or implied contract. For instance, the Railway Claims Tribunal Act, not only provides for the procedure for adjudication of claims, but also stipulates the amount, to be awarded in the event of death or bodily injury to the passengers, who became the victims, in an untoward incident. In a way, it can be said that, whenever a passenger purchases a ticket and boards the train, there comes into operation an implied contract, to the effect that in the event of a passenger receiving an injury, in an

untoward incident, the Railways are under obligation to pay certain amount of compensation, depending on the nature of injury. Almost the same, can be said about the matters arising under the Motor Vehicles Act, having regard to the fact that the Schedule-II of that enactment had standardized or at least, injected an element of objectivity, in the matter of award of compensation.

15. Though the injury may have resulted on account of the negligence, or lack of care, on the part of Railways, and may have given rise to a claim under tort, the operation of provisions of law, or an implied contract, would virtually alter the nature of cause of action. The fact that the discretion of the Tribunal, dealing with the claim, is circumscribed by the limits, prescribed under the Act and the Rules made thereunder, is sufficient to indicate that, it is not an action in tort, pure and simple. These factors would play their own role, in attracting the ratio of the judgment of the Supreme Court in Rameshwar Manjhi's case (supra), than the one in M. Veerappa's case (supra).

16. A perusal of Section 306 of the Act indicates that continuance of the proceedings subsequent to the death of a claimant, is almost a matter of course, except for the two situations provided therein. The two exceptions carved out in the section are:

(a) where the cause of action arises out of defamation, assault, as defined under I.P.C., or other personal injuries, not causing the death of the party; and

(b) where, the relief could not have been enjoyed by any one except the deceased claimant, or, would become nugatory, even if granted.

17. The causes of action, contemplated u/s 306 of the Act may include the right to institute or continue the proceedings in a Criminal Court or a Civil Court. It hardly leaves any doubt that the causes of action in the first exception relate to the wrongs defined under the I.P.C. The Legislature was clear in its mind on this aspect. Therefore while dealing with the question, as to whether a particular civil cause of action abates, consequent on the death of the suitor; the parameters contained in the first exception hardly become relevant. One has, invariably to examine the matter, with reference to the second exception.

18. Viewed from this angle, it becomes evident that while deciding the question, as to whether a civil cause, initiated by an individual, abates upon his death, the only question that would become relevant is, as to whether the relief sought cannot be enjoyed by the survivor, or, if granted, such a relief would become nugatory. For example, if the suit is filed by a plaintiff to enforce the contract for his being engaged as a Painter or Singer, such a relief if granted, cannot be enjoyed by his successor, if the plaintiff died during the pendency of the proceedings. Further, even if it is granted, it would become nugatory. Same thing can be said in respect of the cases and causes, where the enforceability of the relief is attributable to the individual and personal skills of the plaintiff. Conversely, where the case does not involve any such question, the cause of action survives the death of the plaintiff.

19. Sir John Salmond, one of the celebrated Jurists, has this to say, about the inheritance of rights of an individual, consequent upon his death:

The fourth and last mode of acquisition that we need consider is inheritance. In respect of the death of their owners, all rights are divisible into two classes; being either inheritable or uninheritable. A right is inheritable if it survives its owner; uninheritable if it dies with him. This division is to a large extent, though far from complete, coincident with that between proprietary and personal rights. The latter are in almost all cases so intimately connected with the personality of him in whom they are vested, that they are incapable of separate and continued existence. They are not merely divested by death (as are rights of every sort), but are wholly extinguished. In exceptional cases, however, this is not so. Some personal rights are inheritable, just as property is, an instance being the status of hereditary nobility and the political and other privileges accessory thereto.

20. The distinction between personal and proprietary rights is not that easy to maintain. In the context of inheritance and survivorship, it can broadly be said that the rights, the enforceability of which, squarely depends upon the exhibition of the personal skills, special attributes, etc., of the concerned individual, may be categorized, as personal rights, and the rest as proprietary rights. For instance, the right of a plaintiff to insist that he must be engaged for singing or painting, by the defendant, is a personal right pure and simple, and the same cannot survive the death of plaintiff. Even personal rights, at a stage, may either metamorphosies into, or give rise to, proprietary rights, such as, where the claim is for payment of remuneration, for the singing or painting, already done. It would become a proprietary right and would survive the death of the plaintiff.

21. Stage of the proceedings has its own role to play in this regard. If a suit involving enforceability of personal right was decreed and the plaintiff dies during the pendency of the appeal, preferred by the defendant, the appeal does not abate and the legal representatives can be brought on record. On the other hand, if such a suit is dismissed and during the pendency of the appeal the plaintiff/appellant died, the appeal abates without there being any scope for the legal representatives to be brought on record. (See *G. Ganesan v. C. Polycarp Pancharathnam II* (1996) ACC 170 Madras).

The rights which a dead man thus leaves behind him vest in his representative. They pass to some person whom the dead man, or the law on his behalf, has appointed to represent him in the world of the living. This representative bears the person of the deceased, and therefore has vested in him all the inheritable rights, and has imposed upon him all the inheritable liabilities of the deceased. Inheritance is in some sort a legal and fictitious continuation of the personality of the dead man, for the representative is in some sort identified by the law with him whom he represents. The rights which the dead man can no longer own or exercise in propria persona, and the obligations which he can no longer in propria persona. fulfil, he owns, exercises, and fulfils in the person of a living substitute. To this extent, and in this fashion, it may be said that the legal personality of a

man survives his natural personality, until, his obligations being duly performed, and his property duly disposed of, his representation among the living is no longer called for.

(See Salmond on Jurisprudence Twelfth Edition by P.J. Fitzgerald, page 442-43).

22. The property, whether movable or immovable, which a person entitled to recover during his lifetime, therefore, becomes inheritable, so that it can be disposed of in accordance with the relevant Law of Succession or by operation of the testament, as the case may be. The test appears to be the one, as to whether the right or claim of a deceased person is capable of being converted into property.

23. Recently, in *United India Insurance Co. Ltd. v. E. Laxma Reddy (died) per LRs.* (supra), this Court took the view that the death of a claimant under the Motor Vehicles Act does not result in abatement of the claim, as under:

The liability of the owner of the vehicle and the insurer, to pay compensation for the injuries of a passenger, does not come to an end, in case, the claimant dies before the claim is settled. Their liability subsists and the legal representatives of the claimant would step into the shoes of the claimant. The liability would not be towards legal representatives, on account of the accident itself. The entitlement of the legal representatives would be confined to be amount, which the deceased claimant could have recovered, had he been alive.

Almost similar situation obtains in the instant case.

24. For the foregoing reasons, the appeal is allowed and the order under appeal is set aside. The matter is remanded to the Tribunal for consideration on merits, without taking any objection to the claim of the appellants herein as legal representatives of the deceased claimant. There shall be no order as to costs.