
(1968) 07 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous A. No. 22 of 1986

Chuharmal Issardas and others

APPELLANT

Vs

Haji Wali Mohammed and others

RESPONDENT

Date of Decision : 24-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (1968) MPLJ 780

Hon'ble Judges : K.L. Pandey, J;A.P. Sen, J

Bench : Division Bench

Advocate : P.S. Khirwadkar and K.L. Issrani, for the Appellant; K.B. Sinha and B.G. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

K.L. Pandey, J.

This is an appeal against an order dated 30th November 1965 whereby the Motor Accidents Claims Tribunal, Bhopal, dismissed an application for compensation in respect of the death of one Ranwaldas as a result of an accident which ensued when the Respondent 2 was driving a motor vehicle owned by the Respondent 1 and insured by the Respondent 3.

The Tribunal held that the application made by Chuharmal (father) alone and not also by Smt. Sadoribai (mother) was incompetent, that on the death of Smt. Sadoribai, her legal representatives had no right to continue the application and that, in any event, the application made by them for being brought on record was out of time and stale.

Having heard the counsel, we have formed the opinion that this appeal must be allowed. Although the name of Smt. Sadoribai does not appear in the cause title, the reason perhaps is that Chuharmal himself made the application for her also and this is indicated by paragraph 5 of his application which reads:

That the applicant is an authorised agent of Smt. Sadoribai w/o the applicant who is the legal representative of the deceased Banwaldas. The power of attorney is filed herewith. The applicant is also the father of the deceased Ranwaldas.

In our opinion, Chuhamal made the application for himself as well as the mother of the victim, Smt. Sadoribai, and the Tribunal's view that it was not made for her also is erroneous.

Admittedly, the provisions relating to abatement contained in Order 22 of the CPC have no application to these proceedings. That being so, the legal representatives of Smt. Sadoribai can be brought on record at any time during the pendency of the proceedings. Indeed, claims made in such cases are always in a representative character and no question of abatement on account of failure to bring the legal representatives on record within the prescribed time can arise. For principle, we may refer to State of Rajasthan Vs. Mst. Parwati Devi . In that case, a widow filed a suit for compensation for the death of her husband caused by injuries sustained in a motor accident. The suit was decreed. The Defendant filed an appeal. During the pendency of the appeal, the widow, who was the only Respondent, died. The Appellant did not implead the legal representatives in time. It was contended that the appeal had abated. The Division Bench observed:"The cases to which we have referred above unmistakably yield the conclusion that in a representative suit brought, for example, under Order 1, Rule 8 of the CPC after complying with the requirements of that provision, the death of any one, or more of the parties to such a suit pending the suit or the appeal, cannot result in the abatement of the suit or the appeal. The principle, which seems to us to have been uniformly accepted in these decisions, is that a suit like this is not brought by or against a person in his personal capacity but is brought by or against him as a representative of a class of persons and even if the representative or representatives who has or have so brought the suit, or against whom a suit is so brought, happen to die, then the other person or persons whom the deceased represented would still be interested in the litigation in the very nature of things and cannot but be held constructively to be parties to the suit, and in this type of case the question of abatement cannot properly arise. We should further like to point out that the principle which applies to suits brought under Order 1, Rule 8 of the CPC with the sanction of the Court should be held equally applicable to a suit like the present which has to be brought by a party in a representative capacity according to substantive law. Both classes of suits are equally representative and must fall to be governed by a like principle. In accordance with the legal position, which we have discussed above, suppose the present suit had been brought by not Parwati Devi alone but by her and another, in which case it should have been perfectly proper if on Parwati Devi having died during the pendency of the appeal it were allowed to continue against the surviving Respondent. As it has, however, transpired in the case before us, the suit was brought by her alone and, therefore, in order that the appeal may properly be continued, it appears to us to be necessary that some, or

all those whom she represented, should be allowed to be brought on the record, for obviously the appeal cannot continue in the absence of any Respondent having been brought on the record. As the present suit was brought by Parwati Devi for the benefit of herself and her two sons Shyam Sunder and Madanlal and her daughter Lali and her father-in-law Chatur Bhuj and her mother-in-law Pyari Bai, we consider it safer to order that all those for whose benefit the de-cased brought the present suit be allowed to be substituted in her place though, as we have made it abundantly clear, no question of abatement can possibly arise in a case like the present".

The case before us is stronger because the father (Chuharmal) continued to represent his sons and daughter for the benefit of all of whom the application was made and to bring them on record was, therefore, a mere formality.

The result is that the appeal succeeds and is allowed. The order passed by the Tribunal is set aside and the case is remitted to it for deciding it on merits according to law after allowing the legal representatives of Smt. Sadoribai to be brought on record. Costs here shall be costs in the cause. Hearing fee Rs. 100.