
(2008) 07 MAD CK 0110
In the Madras High Court
Case No : C.M.A. No. 953 of 2008

Divisional Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

S.V. Mani and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3(1)
Motor Vehicles Act, 1939 — Section 110A
Motor Vehicles Act, 1988 — Section 173
Succession Act, 1925 — Section 212(2), 306
Workmens Compensation Act, 1923 — Section 3

Citation : (2010) ACJ 1540

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : Bijoy Karthikeyan, for the Appellant; M. Gnanagurunathan, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—The question posed before this Court is whether the legal representatives/dependants are entitled to the compensation awarded for pain and suffering, experienced by the deceased and the injuries sustained by him in the accident?

2. Facts leading to the appeal are as follows:

In a road accident which occurred on 29.6.1999, one Vadamalai sustained multiple injuries. He claimed compensation of Rs. 2,00,000 under various heads. During the pendency of the claim petition, he died. Consequently, the legal representatives/respondents were brought on record. The respondents-claimants failed to examine a doctor nor produced any documentary evidence to prove that the death was due to the injuries sustained in the accident. On evaluation of pleadings and evidence, the Tribunal found that there was no nexus between the injuries and the cause of death. However, taking into consideration the period of

hospitalisation and the nature of injuries sustained by the deceased, viz., fractures of tibia and fibula and in the left toe, the Tribunal, awarded Rs. 30,000 for injuries, Rs. 30,000 for pain and suffering, Rs. 3,000 for medical expenses, Rs. 1,000 for transportation; altogether awarded a sum of Rs. 64,000 with interest at the rate of 7.5 per cent per annum.

3. Assailing the award, learned Counsel for the appellant insurance company submitted that the Tribunal having found that the death was not due to the injuries sustained in the accident and considering the fact that the injured died, after more than one year, from the date of accident, the Tribunal has grossly erred in awarding compensation to respondents-claimants, for the injuries and pain and suffering experienced by the deceased.

4. Relying upon the legal principle of *actio personalis moritur cum persona*, the learned Counsel for the appellant submitted that the pain and suffering dies along with the deceased and there cannot be any award. He further submitted that the legal heirs/dependants of the deceased are not entitled to compensation for injuries, unless the respondents-claimants prove that the death was on account of the injuries sustained in the accident. In this context, he relied on decisions in *M. Veerappa Vs. Evelyn Sequeira and Others*, and *Uttam Kumar (Deceased) Vs. Madhav and Another*, .

5. Per contra, Mr. M. Gnanagurunathan, learned Counsel for respondents-claimants submitted that the deceased sustained three fractures, that he was treated as inpatient for nearly 3 months in the hospital, during which time, the respondents-claimants incurred considerable medical expenditure. He further submitted that the legal representatives/dependants are entitled to loss of earnings during the period of treatment and, therefore, prayed that the award be sustained.

6. Heard the learned Counsel appearing for the parties and perused the materials available on record.

7. *Actio personalis moritur cum persona* is held applicable in cases where suit for damages and defamation, assault or other personal injuries sustained by the plaintiff, which had resulted in a decree in favour of the plaintiff because in such a case, the cause of action merges with the decree and the decretal debt forms part of the plaintiff's estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff which his legal representatives are entitled to uphold.

8. Some of the case-laws decided by various High Courts on this issue are hereunder:

(i) The plain meaning of the maxim *actio personalis moritur cum persona* is that "a personal action dies with the parties to the cause of action". The above said maxim is an invention of English lawyers. In *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, , the Supreme Court observed as hereunder:

The maxim *actio personalis moritur cum persona* means a personal action dies with the person and has a limited application. It operates in a limited class of actions *ex delicto* such as actions for damages, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages *ex delicto*, and does not fall within the enumerated classes. Nor is such that the relief claimed being personal could not be enjoyed after the death or granting it would be nugatory.

(ii) However, the maxim *actio personalis moritur cum persona* relates only to the personal injury, pain and suffering experienced by the deceased on account of injuries and it cannot be extended to the loss to estate of the deceased. Reference can be had to the decision of this Court in *Thailammai v. A.V. Mallayya Pillai* 1981 ACJ 185 (Madras), wherein this Court held that the cause of action in respect of damages to the estate of the deceased survives and it is passed over to the legal representatives/dependants.

(iii) Explaining the maxim *actio personalis moritur cum persona* and its applicability to the motor accident cases with reference to Section 306 of the Indian Succession Act, Gujarat High Court in *Jenabai and Others Vs. Gujarat State Road Trans. Corpn. and Others*, , at paras 10, 16 and 18, held as follows:

(10) Tort, frequently, involves a non-pecuniary loss. Even pecuniary loss of the deceased, being personal to him has no proper entitlement to a place in the assessment of the damages which goes to his estate. But for the pecuniary loss suffered by the deceased on account of such injuries, an action would lie or action would survive for the benefit of the estate of the deceased. The claim, on account of loss to the estate of the deceased would, undoubtedly, survive and would pass over to his heirs or legal representatives. Section 306 of Indian Succession Act does not exclude right to recover claim on the basis of proprietary right. In a case of personal injuries arising out of vehicular accident, it may include the pecuniary loss as well. This pecuniary loss or any loss which is referable to the loss to estate would be a proprietary or right pertaining to property. Therefore, the right to maintain the action or to continue the action for recovery of pecuniary and proprietary loss which are referable or attributable to the loss to the estate, cannot be said to have been taken away by the provisions of Section 306 of the Indian Succession Act. If the provisions of Section 306 of the Indian Succession Act are extended to all causes of action; including those affecting proprietary or property, i.e., to the estate, it would be to stultify to a great extent the provisions of Section 212(2). If it is stretched to that, it would be nugatory, which empowers a Hindu, Mohammadan, Buddhist, Jain, Indian Christian, Sikh or Parsi for applying for letters of administration in case of intestacy. Such a construction of Section 306 of the Indian Succession Act would raise a direct conflict with the provisions of Order 22, Rule 3(1) of the Civil Procedure Code. Moreover, the liability to pay compensation is created immediately on the occurrence of the accident to the person suffering the injury

and must amount to a debt payable to him and pass over to the heirs of the workman on his death and does not abate. Thus, provisions of Section 306 of the Indian Succession Act have no application to such cases. Therefore, the maxim *actio personalis moritur cum persona* on which Section 306 of the Indian Succession Act is based, cannot have a blanket applicability in all actions even in a case of personal injury wherein the damages flew from the head or under the head of loss to the estate. It may be mentioned that in England, the said maxim has been criticized as harsh, unconscionable and unjust. The rightful claim falling in the realm of pecuniary or proprietary or loss to the deceased's estate would survive, which is not personal to the deceased. It may also be mentioned that the words "personal injury" occurring in Section 306 mean bodily or physical injury as opposed to the injury to the proprietary right. Therefore, a cause of action in respect of injury to the property or loss referable to the deceased's estate flowing from the personal injury would not fall within the exception, but would undoubtedly, survive. But, if interpreted otherwise, as held by Tribunal, would mean unjust enrichment and benefit to the wrongdoer's estate and unjustifiable injury to the estate of the deceased. Unfortunately, the Tribunal has failed to address itself to such a vital and important aspect while considering and examining the provisions of Section 306 of the Indian Succession Act.

(16) It is very clear from para 7 of the impugned judgment that deceased had claimed Rs. 2,200 for medical expenses and Rs. 575 for miscellaneous expenses, etc. The claim under such heads would undoubtedly fall within the field of loss to the estate. If such amount would not have been spent by the deceased it was to go to the hands of the appellants or legal representatives of the deceased. Likewise, loss of past income awardable to the deceased on account of wrong done to him, subject to reasonable expenses which would have been incurred by the deceased for himself would also be a loss to the estate. It can safely be concluded that had the deceased not sustained the injuries, there would not have been loss of income and consequently there would not have been any detrimental effect on the estate of the deceased. If the unfortunate accident had not occurred the income expenses falling within the head of loss to the estate would have augmented the estate and same would have gone in the hands of the heirs and legal representatives of the deceased. The loss of past income for the period from the date of accident till the inability on the part of the deceased to earn on account of the injuries, subject to reasonable expenses for himself, would also form a part of estate of the deceased. No doubt, the loss of income occurring after the death of the deceased would, not be a loss to the estate. The action for amount of claim which is not attributable to the loss to estate of the deceased could not survive to the appellants. In other words, the heirs and legal representatives of the deceased would not be entitled to and eligible to claim the amount of claim which is not referable to or not attributable to the loss to the estate. Unfortunately, the Tribunal applied the doctrine of *actio personalis moritur cum persona* along with the provisions of Section 306 of the Indian Succession Act in respect of the entire claim without taking into account the separate claim

under the head of loss to the estate of the deceased, Abdul Karim Musa. This proposition of law, unfortunately, could not be brought to the notice of the Tribunal. With the result, the approach of the Tribunal insofar as it related to the dismissal of the claim in respect of loss to the estate of the deceased cannot be sustained.

(18) Incidentally, it may also be mentioned that could liability to compensate under the Workmen's Compensation Act, 1923, in case of an employment injury to the workman abate or die on account of demise of the workman unconnected with the employment? Suppose, in a given case, the workman files an application for compensation u/s 3 of Workmen's Compensation Act, 1923, and during the pendency of the proceedings he dies otherwise than as a result of the employment injuries. Would that right be lost in view of the provisions of Section 306 of the Indian Succession Act? If the interpretation made by the Tribunal in the present case is accepted then liability to compensate the workman under Workmen's Compensation Act, 1923, would abate. Of course, the language in Section 306 of the Indian Succession Act, no doubt, appears to be general. But it is not always that a general import must necessarily receive a general and wide meaning divorced from the material facts of the case. The expression "other personal injuries not causing death of the party" is preceded by the words, "defamation, assault" as defined in the Penal Code. The words "other personal injuries..." must, therefore, receive colour from the earlier words and ought to be construed with the words preceding. It is also settled proposition of law that a benevolent legislation is required to be construed liberally so as to advance the underlying object and purpose of the provision. It is also well settled that if interpretation of a welfare legislation or any provision of the statute is capable of two constructions, that construction should be preferred which furthers the policy of the Act or provision concerned and which is more beneficiary for the class in whose interest the law has been made.

(iv) In *V. Mepheron Vs. Shiv Charan Singh*, , Delhi High Court, while testing the correctness of the award passed by Motor Accidents Claims Tribunal, considered as to whether personal damages awarded to the claimant-injured are inheritable or not. In the said case, the death was not due to the accident. The main contention was that the claim for enhancement for general damages after the death of the objector does not survive. Answering the issue, the court at para 3, observed as follows:

(3) So far as the contention of Mr. Tarun Johri that the claim for damages which was on account of suffering and pain suffered by the deceased, to my mind, it would abate on the death of the injured. But so far as other claims under other heads are concerned those would not come to an end on the death of the objector. The right to sue would survive even on the death of the objector. As a matter of fact claims on account of special diet, medicine, conveyance, etc., are such which related to the loss of property, therefore, right to sue would not abate on the death of the objector. It would survive to his legal heirs as held by the

High Court of Punjab and Haryana in the case of Joti Ram v. Chaman Lal 1984 ACJ 645 (P&H).

(v) In *Kartar Kour and Others Vs. Dayal Singh and Others*, , one of the issues raised before the Division Bench of Madhya Pradesh High Court was about the continuance of the appeal by the legal representatives of the injured-claimant (sons of the deceased) based on the doctrine *actio personalis moritur cum persona*, i.e., a personal claim dies with the person (claimant). Answering the issue, at para 14, the Division Bench held as follows:

(14) In view of the above, we are of the view that where the injured-claimant dies as a result of the injuries during the pendency of his claim for compensation, the legal representatives would be entitled to pursue the claim as in case of death caused in an accident by the use of motor vehicle. Where the injured dies his natural death and not because of the injuries suffered in motor accident, the legal representatives would be entitled to pursue the claim to the extent as recognized by Section 306 of the Indian Succession Act, that is, the claim on account of loss to the estate of the deceased. Where in a case, the compensation has been awarded to the injured and an appeal is preferred and during the pendency of appeal, claimant-injured dies, his legal representatives can continue the appeal for enhancement of compensation.

(vi) A similar issue came up for consideration before the Division Bench of Karnataka High Court in *Sridevi (deceased) through LRs. Vs. Mastak Ahamad and Others*, . In the above reported judgment, a minor aged about four years, sustained injuries. On the claim made by her father, Rs. 72,000 was awarded. Aggrieved by the inadequacy of compensation, an appeal was preferred by the injured through her father and during pendency of the appeal, she died. Legal representatives were brought on record. It was submitted that the compensation for medical expenses, pain and suffering, loss of amenities and general damages was on the lower side. Following the decision in *V. Mepheron Vs. Shiv Charan Singh*, , the Division Bench held that the appeal is abated insofar as the claim for damages for pain and suffering is concerned and on the question of expenses on medicines, special diet, conveyance etc., as the expenses relate to loss to estate, they would not abate.

(vii) Similar view was taken by Himachal Pradesh High Court in *Ram Ashari and Others Vs. Himachal Road Trans. Corpn. and Another*, . At paras 6 to 8 of the judgment, it is held as follows:

(6) It is well settled law that an action in tort for claim of compensation on account of injuries suffered by an injured is a right personal to the injured. This right cannot be continued by the legal heirs or legal representatives. It is no doubt true that legal heirs or the legal representatives can continue the proceedings insofar as they relate to the loss to the estate such as medical expenses, the amount spent on treatment, etc. However, the claim with regard to pain and suffering, future loss of income and such related matters is an action

which is personal to the injured alone and cannot be continued after his death unless it is proved that death is the result of injuries suffered in the accident.

(7) A Division Bench of this Court in *Narinder Kaur and Others Vs. State of Himachal Pradesh and Others*, , held as follows:

(8) We have heard the learned Counsel for the parties and gone through the records. The principle of *actio personalis moritur cum persona* relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tortfeasor. In its applicability, the principle stands considerably modified by the provisions of Section 306 of the Indian Succession Act, which clearly lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his death survive except causes of action for defamation, assault and other personal injuries not causing death of the party, etc., which come to an end with the death of the injured. The loss to the estate is thus not covered by the exceptions contained in Section 306 of the Indian Succession Act. While taking this view, we are fortified by the decisions of the Hon'ble Supreme Court in *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair* 1986 ACJ 440 (SC) and *M. Veerappa Vs. Evelyn Sequeira and Others*, . The claimants are the legal representatives of the original claimant were, as such, entitled to be substituted in his place with a view to continue the proceedings in the case and to have a decision on the claim in respect of the loss caused to the estate of the deceased.

(8) Keeping in view the settled position of law and the fact that in the present case there is no claim for loss to the estate and the entire claim is based on the personal claim of the deceased Karam Chand, the appeal cannot be continued and prosecuted by the legal representatives.

(viii) A Full Bench of Kamataka High Court in *Uttam Kumar (Deceased) Vs. Madhav and Another*, , had an occasion to consider an appeal filed by the legal representatives of the deceased for enhancement of the compensation. Short facts of the reported case are as follows:

In an accident that occurred on 7.1.1995, Uttam Kumar sustained injuries. He was admitted in the hospital for his treatment and he incurred expenses. He claimed compensation. Tribunal awarded Rs. 36,250 with costs and interest. Not satisfied with the compensation, he preferred an appeal for enhancement. Pending disposal of the appeal, he died and his aged parents were brought on record. The Division Bench of Kamataka High Court found that the cause of action will not survive and L.Rs. of the deceased claimant will not be entitled to the compensation. However, the Division Bench observed that in view of the amended provisions of the Motor Vehicles Act, 1988 and the decision in *Kannamma Vs. Deputy General Manager*, , referred this matter to a larger Bench. The Full Bench examined the issue with reference to the provisions of the Motor Vehicles Act and Indian Succession Act, 1925 and answered as follows:

(i) A claim petition presented u/s 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc., (loss to the estate) cannot, on such person's death occurring not as a result or consequence of bodily injuries sustained from a motor accident, be prosecuted by his/her legal representatives; but

(ii) A claim petition presented u/s 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc. (loss to the estate) can, on such person's death occurring as a result or consequence of bodily injuries sustained in the motor accident, be prosecuted by his/her legal representatives only insofar as the claim for compensation in that claim petition relates to loss to estate of the deceased person due to bodily injuries sustained in the motor accident.

9. In the present appeal, the Tribunal, on assessment of oral and documentary evidence has categorically found that the respondents-claimants have failed to prove that deceased died on account of injuries and that there was no nexus. Admittedly, the death has occurred after one year and three months after the accident and that there is no proximity.

10. It is now well settled that if a person injured in a motor accident files a claim petition for compensation and later on dies during the pendency of the claim petition, not on account of the injuries caused to him in the accident, but due to some other reasons, not related with the personal injuries, the cause of action to claim compensation in respect of injuries caused to him does not survive. Section 306 of the Indian Succession Act does not recognise transfer of cause of action in favour of the legal representatives/dependants of deceased. An action for bodily injury does not survive on the death of the injured person. The action for personal injury and the claim for compensation would survive and pass over to the legal representatives/dependants if the injury had caused the death. Pain and suffering experienced by the deceased would abate on the death of the deceased. There cannot be any separate award for the injuries to be paid to the legal representatives/dependants. The other claims such as special diet, medicine, conveyance etc., relate to loss of property and, therefore, the legal representatives/dependants are entitled to prosecute the appeal and the same would not abate on the death of the deceased.

11. Though it has been contended by the respondents-claimants that deceased was treated as inpatient for three months, but there is no sufficient proof. However, having regard to the fact that he sustained fractures and other injuries, it could be reasonably presumed that he would have incurred some expenditures even if he was hospitalised in a government hospital. A sum of Rs. 6,000 could be awarded for medical and other miscellaneous expenses.

12. As rightly contended by the learned Counsel for appellant, legal

representatives/dependants are not entitled to the award of Rs. 60,000 granted under the head of injuries and pain and suffering and they are entitled to reasonable compensation for special diet and transportation.

13. In the result, respondents-claimants are entitled to compensation of Rs. 10,000 with interest at 7.5 per cent per annum from the date of claim under the following heads:

Medical expenses Rs. 6,000 Special diet Rs. 3,000 Transportation Rs. 1,000

14. It is represented by learned Counsel for the appellant insurance company that they have deposited the statutory amount as per Section 173 of the Motor Vehicles Act. The Tribunal is directed to refund the balance amount with proportionate accrued interest to the appellant insurance company within a period of three weeks from the date of receipt of a copy of this order. The civil miscellaneous appeal is partly allowed. Consequently, connected M.P., is closed. No costs.