
(1985) 03 RAJ CK 0005
In the Rajasthan High Court

Ganpati Lal and Others

APPELLANT

Vs

Hhri Singh and Others

RESPONDENT

Date of Decision : 19-03-1985

Acts Referred:

Succession Act, 1925 — Section 306

Citation : (1986) 1 ACC 312

Hon'ble Judges : Shyam Sunder Byas, J

Bench : Single Bench

Judgement

S.S. Vyas, J.—This appeal u/s 110-D of the Motor Vehicles Act, 1939 (for brevity "the Act" hereinafter) is directed against an award of the Claims Tribunal, Udaipur dated March 5, 1975, by which the appellants were denied the right to prosecute and proceed with the application for claim.

2. Recapitulated briefly, the relevant facts are as under.

3. Khemraj, who passed away during the trial, presented an application u/s 110-A of the Act before the Claims Tribunal on September 9, 1972 against the respondents claiming a sum of Rs. 70,000/- as compensation. The case set-up by him was that at about 6.15 P.M. on March 20, 1972, he was going from his residence to his shop in the city of Udaipur. When he happened to be near the road-crossing of Bapu Bazar, bus RJL 4759 came from behind and knocked him down. As a result, he fell down and the bus passed over his feet. It resulted in the complete crushing of his both feet. He received multiple injuries. Respondent Hari Singh was driving the bus at that time. The bus belonged to M/s Laxmi Narain Mohan Lal. It was alleged that the accident had taken place due to the rash and negligent driving of the bus by its driver. The applicant was 68 years of age at that time and was earning nearly Rs. 700/- per month by running a stationery mart. Due to the injuries sustained by him in this accident, he incurred disability which resulted in reducing his earning capacity. The estimate of loss of income was reckoned at Rs. 300/- per month. In the normal course he was expected to remain alive upto the age of eighty years. The break up of the

compensation was (a) Rs. 43,200/- as the loss of income, at the rate of Rs. 300/- per month for twelve years. (b) Rs. 6,800/- which he had to incur in his treatment and (c) Rs. 20,000/- on account of mental and physical pain and agony. The claim was opposed by the driver and the owner of the bus as well as the insurance company with which the vehicle was insured. The accident was admitted by the driver and the owner of the bus, but it was denied that it took place with due to the rash and negligent driving of the bus by its driver. It was submitted that the application struck with the rear portion of the bus and thereby sustained injured. The quantum of compensation was also challenged. The insurance company, in its statement of defence, joined the other non-applicants on all the grounds. Necessary issue were raised on March 2, 1974. On April 16, 1974, the applicant Khemraj passed away and the appellants presented an application to be brought on record and to be substituted in his place. They were consequently substituted in place of the deceased applicant Khemraj. However, an objection was taken by the driver and the owner of the bus that the application for claim could not proceed further and the legal representatives were not entitled to prosecute it on the ground that the cause of action did not survive after the death of Khem Raj. It was a case of compensation respect of personal injuries and as such the cause of action disappeared on his death and did not pass on to his legal representatives. The objection found favour with the Tribunal. The application for claim was consequently dismissed. Aggrieved against the said award of dismissal, the legal representatives of the deceased Khemraj have come up in appeal.

4. Before proceeding further, it may be mentioned that the application for compensation was dismissed by the Tribunal by applying the provisions of Section 306 of the Indian Succession Act and the doctrine of "*Actio Personalis Mortui Cum Persona*."

5. The respondent No. 1 and despite service of notice on them, did not put appearance. As such, the appeal was heard in their absence.

6. I have heard Mr. D.S. Shishodia, learned Counsel appearing for the appellants and have gone through the case file carefully.

7. It was straneously contended by Mr. Shishodia that the whole approach of the Tribunal was erroneous and unsustainable in law. In developing this argument he raised two points: viz.,

1. The cause of action accrued as soon as the injured sustained injuries. Hence the maxim "*Actio Personalis Mortui Cum Persona*" cannot be pressed into service and the provisions of Section 306 of the Indian Succession Act are not applicable and

2. The cause of action, atleast in respect of loss to the estate of the loss to the estate of the injured, survived and passed over to the appellant. As such the claim in respect of compensation arising out of the loss to the estate of the injured should have been tried and decided.

8. It would be proper to take-up these contentions at seriatim.

9. Taking the first contention, it was argued by Mr. Shishodia that the cause of action to claim compensation accrued as soon as the injured sustained injury. As such, the maxim "Actio Personalis Mortui Cum Persona" does not come into play and for the same reason, the provisions into of Section 306 of the Indian Succession Act should not be pressed into service. Reliance in support of the contention was placed on Santeline Fernandes (through Margarida Gomes) Vs. Mackinnon Mackenzie and Co., of the Indian Succession Act reads as under :

306--Demands and rights of action or against deceased survive to and against executor or administrators.

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 death 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 causes where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

Illustration (i) attached to this Section reads as under:

(i) A collision takes place on a railway in consequence of some neglect or default of an official, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

10. A plain reading of Section 306 and the illustration (i) attached to it make"s it amply clear that no action can be maintained by or against the legal representatives of a deceased person in respect of the actions arising to (a) defamation, (b) assault and (c) other personal injuries not causing death. In other words, if the injured victim docs not on account of the bodily injuries caused to him but for some extraneous grounds not related with the personal injuries caused to him, the cause of action to claim compensation in respect of the injuries caused to him does not survive and does not pass over to his legal representatives. Section 306, thus, recognise, though partly, the doctrine that a personal claim dies with the Persona Actio Personalis Mortui Cum Persona. An action for a personal (bodily) injury does not survive on the death of the injured and hence does not pass over to his legal representatives to file an application for compensation and if filed by the injured himself in his life time, does not authorise the legal representatives to prosecute and proceed with the same. The action for personal injury will survive if the injury causes death, but will not survive otherwise. Therefore, where a person claims compensation on account of injuries caused to himself, the right to prosecute the action is a personal right and comes to an end with his death. The claim does not survive on his death and does not pass over to his legal representatives. In C.P. Kandaswamy and Others Vs. Mariappa Stores and Others, Division Bench of the Madras High Court

subscribed this view while construing the provisions of Section 306 of the Indian Succession Act. It was held that a plain reading of Section 306 of the Indian Succession Act would undoubtedly go to show that the cause of action regarding the injury sustained by the victim does not survive on his death. In *Santoline Fernandes and Ors. v. Messrs MacKinnon and Co.* (Supra) relied upon by Mr. Shishodia, the matter was entirely different. That case related to compensation under the Workmen's Compensation Act, 1923. The learned Judge of the Bombay High Court took the view that the liability to pay compensation under the Workmen's Compensation Act is operated immediately upon the occurrence of an accident. As such, the liability amounts to a debt payable by the employer to the workmen. The application for compensation does not, therefore, abate if the applicant dies during the pendency of the application. That is not the case here in my hand. There are certain observations made by the learned Judge, in which he accepted the applicability of the maxim "*Actio Personalis Mortui Cum Persona*" in cases arising out of the torts. In para 9 of the judgment he accepted the view that the application of the maxim "*Actio Personalis Mortui Cum Persona*" is limited to actions in which remedy is sought for a tort or for something which involves, at any rate, the motion of wrong doing. Thus, the doctrine embodied in the maxim "*Actio Personalis Mortui Cum Persona*" was held applicable to a case relating to personal injuries. The authority, thus, renders no assistance to Mr. Shishodia. On the contrary, it subscribes the view which I am taking.

11. An action for personal injury not causing the death of the injured party does not survive and does not pass over to his legal representatives. The first contention of Mr. Shishodia has no substance and fails.

12. Coming to the second contention, it was argued by Mr. Shishodia that the cause of action, atleast in respect of the loss to the estate of the injured, survives and passes over to his legal representatives if the injured dies during the pendency of the proceeding. It was argued that the doctrine *Actio Personalis Mortui Cum Persona* was wrongly applied by the Tribunal in respect of the loss to the estate of the injured Khemraj. In support of the contention, Mr. Shishodia cited three authorities, viz., *Kongara Narayanamma and Others Vs. Uppala China Simhachalam and Others* *Thailammal and Others Vs. A.V. Mallayya Pillai and Others*, and *Joti Ram and Others Vs. Chaman Lal and Others*, I have examined the contention and I am of the view that the contention is not without force.

13. The maxim "*Actio Personalis Mortui 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 this way, this maxim stands considerably abrogated or modified by the provisions of Section 306 of the Indian Succession Act. Section 306 clearly lays down that all demands whatsoever and all rights to prosecute or defend in an action or special proceeding existing in favour of or against a person at the time of his death survive except causes of action for defamation etc., which come to an end with the death of the injured. The loss to

the estate is, thus, not covered by the exception contained in Section 306 of the Indian Succession Act. A few authorities on the point may be noticed. In *Kongara Narana and Ors. v. Uppala China Simbachalam and Ors.* (Supra) it was observed:

21-A. In making a claim, a claimant could claim loss to his property of whatever description caused by the accident. There is no warrant for holding that the cause of action in respect of that loss would not survive to the legal representatives.

In *Thailanmai and Ors. v. A.V. Mallayya Filial and Ors.* (Supra), it was held that the cause of action in respect of damages to the estate of the deceased survives and passes over to his legal representatives. In *Joti Ram and Ors. v. Chaman Lal and Ors.* (Supra), a Division Bench of the Punjab and Haryana High Court took the view that the right to sue survives to the legal representatives of the deceased-injured in respect of claim on account of the loss to the estate. On a careful consideration, I find myself in complete agreement with the views expressed in the above two cases. I am, therefore, of the opinion that if the claim under the Act also relates to the estate of the deceased, the action survives on the death of the claimant and passess over to his legal representatives.

14. In the instant cases, the break-up of the compensation, as disclosed in the application, is (a) Rs. 6,800/- as the amount incurred by the deceased for the treatment of his injuries caused in the accident, (b) loss of income at the rate of Rs. 300/- per month for twelve years and (c) Rs. 20,000/- on account of mental and physical pain, agony and suffering. The amount spent in the treatment of the injuries sustained by the deceased is a loss to the estate. If this amount would not have been spent by him, it was to come in the hands of the claimants. Likewise, the loss of income at the rate of Rs. 300/-per month is also a loss to the estate of the deceased so far he remained alive. Had he not sustained the injuries, the loss of income would not have occurred. If it had not occurred, the claimants would have received it on the death of the injured. The loss of income for the period from the accident to the death of the injured amounts to a loss to the estate. The loss of income occurring after the death of the deceased is not a loss to the estate. The compensation for the loss of income for the period subsequent to the death of the victim cannot, therefore, be claimed. So also the amount of Rs. 20,000/- claimed on account of mental and physical pain, agony and suffering is not a loss to the estate and the action dies on his death. It does not survive and pass over to his legal representatives.

15. The tribunal applied the doctrine of "Actio Personalis Mortui Cum Persona" in respect of the entire claim without taking into consideration the loss to the estate of the deceased Khemraj. The approach of the Tribunal, so far it relates to the dismissal of the claim in respect of the loss to the estate of the deceased, cannot, therefore, be maintained the award March 5, 1975 of the Tribunal dismissing the application for compensation, is set-aside. The case is sent back to the Tribunal with directions to continue further proceedings in the case and

decide the claim in respect of the loss of the estate of the deceased Khemraj relating to medical expenses and the loss of income for the period from the accident to the day of the death of Khemraj, as indicated in the judgment. No order as to costs of this appeal.