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**(2009) 01 RAJ CK 0102**

**In the Rajasthan High Court**

Govind Ram through LRs. APPELLANT

Vs

Shri Chunna Ram and Others RESPONDENT

**Date of Decision :** 29-01-2009

**Acts Referred:**

**Citation :** (2009) 01 RAJ CK 0102

**Hon'ble Judges :** Dinesh Maheshwari, J

**Bench :** Single Bench

## Judgement

Dinesh Maheshwari, J.—By way of this writ petition, challenge is given to the order dt. 17.05.2006 as passed by the Additional District Judge, Nagaur in Claim Case No. 43/2003 rejecting an application by the legal representatives of the deceased claimant seeking amendment of the claim application in order to claim compensation for death of the victim, the original claimant.

2. The relevant background aspects are that on 16.11.2002, the claimant Govind Ram sustained injuries including that on his vertebral column due to a vehicular accident involving the vehicle bearing registration No. RJ-21 C-1371 he was travelling in and a tractor bearing registration No. RJ-13 R-2463 on Phalodi-Nagaur road; and sought compensation against the persons related with the aforesaid tractor involved in the accident. It appears that during the pendency of the claim application, the claimant Govind Ram expired on 24.10.2003; and the present petitioners were substituted as claimants in his place. The petitioners moved an application seeking amendment of the claim application for the purpose of their claiming compensation on account of death of the victim Govind Ram on the allegation that he died due to the injuries sustained in the said accident. The application was put to contention by the respondent insurer essentially on the submissions that the death of the original claimant could only give rise to a new cause of action and it was required of his dependents to file a separate claim application and amendment could not be permitted in this claim application.

3. By the impugned order dt. 17.05.2006, the learned Judge dealing with the

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claim application has proceeded to reject the aforesaid application for amendment essentially on the consideration that the petitioners have been substituted as legal representatives of the original claimant and cause of action for their claiming compensation on account of the death of the victim has independently arisen only on the date of death and they could have filed a separate claim application, if death had been the result of the accident in question. The learned Judge said,-

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4. Questioning the order aforesaid, learned Counsel for the petitioners has strenuously contended that the observations as made in the impugned order are illegal and erroneous; and in order to avoid multiplicity of the proceedings, the amendment prayed for ought to have been permitted. According to the learned Counsel, when the accident victim filed the application seeking compensation for the injuries sustained by him in the accident and thereafter died due to such injuries and his legal representatives were brought on record, the amendment ought to have been allowed so as to enable the present claimants to seek compensation on account of the loss suffered by them. Learned Counsel for the petitioner has referred to and relied on the decision in the case of Kartar Kaur and Ors. v. Dayal Singh and Ors. 2000 (1) TAC 472. Per contra, it has been submitted by the learned Counsel appearing for the respondent insurer that the question as to whether the original claimant died due to the injuries sustained in the accident remains very much a matter of dispute and in view of such a dispute, the amendment could not have been allowed. According to the learned Counsel, the present claim application could be prosecuted by the petitioners only for the purpose of recovering compensation towards loss, if any, of estate of the injured-victim but not beyond.

5. Having given a thoughtful consideration to the rival submissions and having examined the record, this Court is unable to countenance the approach of the learned Additional District Judge, Nagaur in rejecting the application for

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amendment as moved by the dependents of the accident victim.

6. The learned Judge has proceeded as if it were a civil suit where the legal representatives were substituted only for the purpose of representing the estate of the deceased claimant and nothing else. The learned Judge has failed to consider the peculiar circumstances of the case that the victim filed the claim application pointing out the injuries sustained by him in the accident and that included an injury on his vertebral column. During pendency of the claim application, the victim expired and the present petitioners were substituted as claimants in his place. The capacity of the petitioners for the purpose of claim for compensation could not have been considered as being merely that of the persons representing the estate of the deceased plaintiff having no entitlement to assert any right of their own. In the event of demise of the injured victim-claimant during the pendency of the claim application, when his legal representatives and dependents wanted to assert that the death of the original claimant occurred for such injuries sustained in this vehicular accident only, in the opinion of this Court, nothing was of prohibition for which they were not to be permitted to take such pleadings in the pending claim application itself. On the contrary, having regard to the overall circumstances, interest of justice required that such amendment was allowed and the petitioners were permitted to prove their case that the victim died due to the very same injuries as sustained in the accident in question. Of course, in that regard, the right of the non-applicants to put the matter to dispute in accordance with law cannot be questioned but the claimant-petitioners cannot be deprived of taking such pleadings.

7. It may be pointed out that similar kind of fact situation had been in the case of Habibnur Khan and Others Vs. Govind Singh and Another, where the accident victim suffered injuries on his vertebra and filed claim application after pointing out his suffering from paraplegia but he died after 11 months of the accident and during the pendency of the claim application. The dependents of the said claimant Habibnur Khan were substituted as claimants and sought amendment of the claim application seeking compensation for the loss occasioned by his death. The amendment sought for was allowed by the Tribunal but after trial, the Tribunal found that the claimants had failed to establish if the victim died because of the injuries sustained in the accident and awarded only a sum of Rs. 50,000/- towards injuries. After considering the material on record, this Court came to the conclusion that the victim died only because of the injuries sustained in the accident and with such findings, the substituted claimants were held entitled to compensation for the loss occasioned to them due to such death and were awarded compensation accordingly.

8. The approach of the Tribunal in the present case suggesting that the petitioners may file a separate claim application instead of allowing amendment herein only with abstract reference to the so-called change of cause of action does not appear in accord with the scheme of the relevant provisions of the

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Motor Vehicles Act, 1988 requiring award of just compensation to the sufferers of the result of a vehicular accident. The impugned order refusing the prayer for amendment, if allowed to stand would only lead to failure of justice and deserves to be set aside.

9. Accordingly, this writ petition is allowed; the impugned order dt. 17.05.2006 is set aside; the amendment application as filed by the petitioners is allowed; and the petitioners are permitted to file amended claim application within 15 days from today before the Tribunal concerned. In the circumstances of the case, there shall be no orders as to costs of this writ petition.

10. It need be and is clarified that this Court has not pronounced on the merits of the case sought to be pleaded by way of such amendment that shall, of course, be subject to the consideration of the Tribunal in accordance with law.

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