

(2016) 03 TP CK 0040
In the Tripura High Court
Case No : MAC App. No. 80 of 2003

Hari Mohan Das and Others APPELLANT
Vs
Shri Panchadeep Travels and Others RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Succession Act, 1925 — Section 306

Citation : (2016) 03 TP CK 0040

Hon'ble Judges : Deepak Gupta, C.J.

Bench : Single Bench

Advocate : S.K. Dutta, Advocate, for the Appellant; B. Debbarma, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J.

1. This appeal by the claimants is directed against the award, dated 29.7.2003, delivered by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in Case No. TS(MAC)587 of 2001 whereby the learned Tribunal awarded compensation of Rs. 8,58,648/- in favour of the claimants.

2. The unfortunate facts of this case are that the claimant Hari Mohan Das who was at the relevant time employed as a Revenue Inspector with the Government of Tripura was on election duty. During the course of his duty he was travelling in a vehicle No. TRS-922(Bus) which was hired by the Election Department. The driver of the Bus was driving the vehicle rashly and negligently and due to the rash and negligent driving the vehicle went off the road and met with the accident. As a result the claimant received serious injuries on his head, spinal cord and other parts of the body.

3. The claimant from the scene of the accident was shifted to the G.B.P Hospital, Agartala where he remained admitted from 26.4.2000 to 14.5.2000. Thereafter

the injured was referred to the S.S.K.M Hospital, Calcutta. However, he could not get proper treatment there and he was admitted in a private nursing home at Calcutta and then was shifted to the Christian Medical College, Vellore and remained under treatment at Vellore from 25.5.2000 to 21.10.2000. Despite such long treatment he could not recover and got permanently disabled. He was, thereafter, taken back to home in a disabled condition and was then taken to the Silchar Medical College and Hospital where he remained under treatment from 18.12.2000 to 27.12.2000 but there was no progress. He remained bedridden. He could not sit or stand. He was aged about 46-47 years at the time of the accident. His salary was stated to be Rs. 8,823/- at the time of accident and it was claimed that he had spent Rs. 3,00,000/- for treatment. He would require another Rs. 2,00,000/- for future treatment and thereafter claim for compensation was filed. The learned Tribunal held all the issues in favour of the claimants and awarded a sum of Rs. 8,58,648/- as compensation.

4. The injured claimant did not submit any medical bill in Court but stated that he had filed the original medical bills before the Health Department for claiming compensation of his medical reimbursement but according to him, the reimbursement had not been made. However, no evidence was led from the department to show that no reimbursement had been made. The claimant was awarded Rs. 6,48,648/- for actual loss of income. The learned Tribunal granted Rs. 25,000/- as lumpsum payment for being disabled for the rest of his life and another sum of Rs. 1,00,000/- for pain and suffering. He was also awarded Rs. 50,000/- for loss of amenities of life and another sum of Rs. 25,000/- for loss of expectation of life. He was also awarded another sum of Rs. 10,000/- for hardship, discomfort, disappointment and frustration etc. thereby awarded total amount of Rs. 8,58,648/-. Being dissatisfied with this compensation the claimants filed the present appeal.

5. The appeal was filed on 16.9.2003 and the injured claimant, appellant No. 1 Hari Mohan Das, expired on 05.02.2004. It is urged that the claimant died as a result of the injuries received in the accident and in this behalf the claimants have also filed an application for leading additional evidence along with the certificate of one Dr. K.S. Chakraborty which reads as follows:

"I Dr. K.S. Chakraborty of Dewanpasa certify that Sri Harimohan Das, 42 years, S/o Late Jatrabur Das of Vill: Dewanbasha P.O: Haplongcherra, North Tripura have been suffering from spastic Tetraplegia since April, 2000 and was under the treatment of CMC Hospital, Vellore. He had taken the medicines of Vellore under my supervision till death i.e. 05.02.2004.

Dr. K.S. Chakraborty, M.B.B.S, Reg. No. AMC-7194, Dharmanagar, Tripura (N)."

In view of this certificate and in view of the fact that the claimant was throughout under treatment and was virtually confined to bed, I am of the considered view that his death is directly relatable to the injuries sustained in the accident.

6. This brings us to another question. How the compensation has to be awarded and assessed in such a case? The injured had a personal right to claim compensation on account of the injuries suffered by him, on 26.4.2000 and w.e.f. 26.4.2000 till his death on 05.02.2004 the injured alone would be entitled to the compensation. Thereafter, the claimants can claim compensation and the right of the claimants to claim the compensation will have to be based on the situation as it stood on 05.02.2004. I, therefore, propose to divide the compensation under two separate heads. The first is the personal claim of the dependants. However, the personal claim of the dependents has already been decided by the learned Tribunal. The question is, can the claimants get any amount over and above that awarded by the learned Tribunal?

7. The principle of *actio personalis moritur cum persona* is a principle applicable to personal injury cases. The literal meaning of this Latin phrase is that an action for personal injuries dies with the person injured. It is contended on behalf of the respondents that the legal representatives cannot be permitted to continue this action on behalf of the deceased and are not entitled to any compensation. On the other hand, on behalf of the legal representatives it is contended that they are entitled to claim the full compensation payable to the injured who is now dead. No doubt, as per this principle, an action for injuries whether physical or otherwise does not survive if the person injured dies. However, Section 306 of the Indian Succession Act saves the right even in such cases to a limited extent. Section 306 of the said Act reads as follows:

"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 proceedings 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 granting it would be nugatory."

8. A bare perusal of the aforesaid provision shows that all demands and rights whatsoever existing in favour or against a person at the time of his death survive to his executors, administrators and heirs. However, an exception has been carved out, that actions for defamation, assault as defined in I.P.C. or other personal injuries not causing death of a party do not survive. Loss to the estate suffered by his legal heirs is not covered under the exception to this action and therefore any loss to the estate can be recovered by the legal heirs. Section 306 has modified the principle of "*actio personalis moritur cum persona*" to this limited extent and the legal heirs/representatives of injured can continue an action initiated by an injured person in respect to the loss to the estate.

9. A Division Bench of the High Court of Himachal Pradesh in *Narinder Kaur and others v. State of H.P. and others*, [1991 ACJ 767], held as follows:

"8. We have heard the learned counsel for the parties and gone through the records. The principle of action 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 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 Supreme Court in Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair, , 1986 ACJ 440 (SC) and M. Veerapa v. Evelyn Sequeira, , AIR 1988 SC 506. The claimants as 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."

10. As Judge of the High Court of Himachal Pradesh I have taken the same view in Ram Ashari and others v. H.R.T.C. and another, [, IV (2005) ACC 379], wherein it was held as follows:

"6. It is well settled law that an action in torts for claim of compensation for damages 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 the legal heirs or the legal representatives can continue the proceedings in so far as they relate to the loss to the estate such as medical expenses, amount spent on treatment etc. However, the claim with regard to the 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 the death is the result of the injuries suffered in the accident."

11. A Full Bench of the Madhya Pradesh High Court in Bhagwati Bai and another v. Bablu and others, [, 2007 ACJ 682], has taken an identical view in the matter. The Full Bench after considering the entire law on the subject held as follows:

"15. In the result, we are of the considered opinion that a claim for personal injury filed under Section 166 of the Motor Vehicle Act, 1988 would abate on the death of the claimant and would not survive to his legal representatives except as regards the claim for pecuniary loss to the estate of the claimant...."

It is, therefore, obvious that the legal representatives of the deceased can continue the action but only in respect of pecuniary loss to the estate of the claimant.

12. Legal representatives have a right to be substituted insofar as the amount for which decree or award has been passed, but they cannot claim enhancement for

amount of non-pecuniary losses, such as pain and suffering etc. Therefore, the claimants can only claim compensation with regard to the loss to the estate.

13. An action for injuries does not survive. Though, in this case since I have held that the injured claimant died as a result of injuries the rest of the claimants will have a right to claim compensation for the death of the injured. However, while assessing the compensation on account of death the amount paid to the injured claimant for his injuries cannot be ignored. As far as the present case is concerned, the right to get compensation for pain and suffering, compensation for future discomfort and loss of amenities of life, compensation for future earnings are all losses which were personal to the injured and they cannot be inherited by the legal heirs of the injured. However, what can be inherited by the legal heirs of the injured is the right to recover the amounts which may have been spent on the treatment or the actual loss of income which may have taken place prior to the death of the deceased because that is loss to the estate which can be inherited by the legal heirs.

14. The learned Tribunal has awarded Rs. 1,00,000/- for pain and suffering, Rs. 50,000/- for loss of amenities of life, Rs. 25,000/- for loss of expectation of life, Rs. 10,000/- for hardship, discomfort, disappointment and frustration etc. i.e. a total amount of Rs. 1,85,000/-. In my opinion this portion of the award is on the lower side but the right to claim compensation under these heads of pain and suffering etc. were losses which were personal to the deceased and no increase can be made over and above this amount of Rs. 1,85,000/- granted under the heads.

15. The learned Tribunal only granted an amount of Rs. 25,000/- to the claimant for attendant charges and other incidental cost. This in my opinion is very much on the lower side. The evidence on record shows that the claimant remained in hospital for 19 days at Agartala in the year 2000. Since the accident is of the year 2000 I assess the cost of one attendant at Rs. 150/- per day and the cost of two attendants comes to Rs. 300/- per day and therefore, the attendant charges at Agartala for 19 days itself works out to Rs. 5,700/-. At Calcutta the claimant could not get admission in S.S.K.M Hospital and he was advised to go to another hospital. He then went to Vellore and remained admitted from 25.5.2000 till 21.10.2000 i.e. for 150 days. At Vellore the arrangement should have been made for the boarding and lodging of the attendants also. The accident took place in the year 2000 and keeping in view the money value in the year 2000 I assess the cost of one attendant at Vellore outside Agartala at Rs. 150/- per day + Rs. 200/- for boarding and lodging i.e. Rs. 350/- per attendant and the cost of two attendants for 150 days works out to Rs. 1,05,000/-. There is also material on record to show that the injured claimant was admitted from 18.12.2000 to 27.12.2000 at Silchar Medical College and Hospital i.e. for a period of 10 days and here cost of one attendant is awarded @ Rs. 350/- per day i.e. Rs. 3,500/-.

16. The claimant did not appear in the witness box and his wife who has also joined as a claimant has filed her affidavit. She has stated in her affidavit that

she had submitted the documents to the department for getting reimbursement of the amount. It was also claimed by her that no reimbursement has been granted. However, neither any photocopies of the documents were filed before the Motor Accident Claims Tribunal nor these documents were summoned from the Health Department to prove them before Court. This appeal has been pending for almost for 12 years and no attempt has been made in these 12 years for summoning those records from them. It may or may not be true that she has got medical reimbursement. If she has a right to medical reimbursement she can claim it from the department but without any documents on record it cannot be assessed what is the exact amount for the claimant has spent.

17. Having said so, the claimant must have spent a huge amount of money during this period. He remained under treatment for almost 4 years till his death. He was bed ridden all the time. Even after his discharge from hospital he would have required at least a part time attendant to look after him so that he could meet his day to day needs. The accident took place 26.4.2000 and he died on 05.2.2004 i.e. after three years and ten months approximately. I have already awarded attendant charges for about six months and for the remaining three years and four months I award attendant charges @ Rs. 3,000/- per month which works out to Rs. 1,20,000/-. In addition thereto I am quite sure a huge amount must have been spent on the treatment and various medicines may have been purchased and for which reimbursement may not have been provided for and by way of conjecture and guesswork I award Rs. 1,00,000/- as cost of treatment over and above the amount if any received from the department. These are the amounts which the claimant would have got under the head of loss of medical expenses etc.

18. Coming to the loss of income. In the case in hand the department has produced the Last Pay Certificate (LPC) of the claimant (since deceased). The Service Book of the deceased was also produced before the Court which shows that the claimant was about 47 years old and not 43 years old as claimed at the time when he sustained injuries. The injured claimant has been awarded Rs. 6,48,648/- as loss of his income. The claimants who are the legal heirs can only be awarded something over and above which they may be entitled but this amount of Rs. 6,48,648/- will have to be taken into consideration while assessing the compensation.

19. I now proceed to assess the loss of income of the deceased from the date of the accident till date of death. The accident took place on 26.4.2000. He was alive for about 46 months after the accident. As per the document produced by the department itself the last pay of the deceased was Rs. 9,166/- including all allowances. In the certificate dated 12.12.2002 it was stated that Sri Harimohan Das was retained in service till 30.4.2012. The injured claimant was granted invalid pension w.e.f. 27.10.2001. This means that till 27.10.2001 he must have been paid his entire salary. After 27.10.2001 he was paid invalid pension. The claimants have not come to Court stating what is the invalid pension. The

learned Tribunal held that the invalid pension must be at least half of the last pay drawn and I agree with that and therefore, the loss after 27.10.2001 comes to Rs. 4,583/- per month and since the claimant died on 05.02.2004 this loss is occasioned for 27 months and 15 days and therefore, the actual loss of income works out to Rs. 1,26,000.32 paise say Rs. 1,26,000/-. After the claimant died the question of total loss of income will come. No doubt the claimant was 47 years when he suffered injuries but by that time he had died. He had already attained the age of 50 years and therefore, nothing further can be added for future prospects.

20. The claim petition was filed by the widow and the children but all the children are majors. Therefore, according to me, only the widow would be entitled to the rest of the claim. One third of the income is Rs. 9,166/- and after deduction it comes to Rs. 6,113.72 paise i.e. Rs. 73,364.64 paise and applying the multiplier of "11" the compensation on this account works out to Rs. 8,07,011.04 paise say Rs. 8,07,011/-. On this amount the widow is also entitled to Rs. 50,000/- as loss of consortium and Rs. 20,000/- for funeral expenses. Therefore, the total compensation works out to Rs. (1,85,000 + 5,700 + 1,05,000 + 3,500 + 1,20,000 + 1,00,000 + 1,26,000 + 8,07,011 + 50,000 + 20,000) = Rs. 15,22,211/- (Rupees fifteen lakhs twenty two thousand two hundred and eleven).

21. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs. 8,58,648/- to Rs. 15,22,211/- i.e. by Rs. 6,63,563/- This enhanced amount shall bear interest @ 9% per annum from the date of death of the deceased since the basic award is on a claim on account of the death of the deceased. The insurance company has not challenged the award and, therefore, it is directed to deposit the entire awarded amount of compensation along with interest in the Registry of this Court within 4(four) months after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

22. The appeal is disposed of. Send down the LCR, if any, forthwith.