
(1995) 09 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 5786 of 1992

Harihar Mohanty and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 25-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 166
Succession Act, 1925 — Section 306

Citation : (1996) 2 ACC 438 : (1996) ACJ 779 : (1996) 81 CLT 74

Hon'ble Judges : P.C. Naik, J; D.P. Mohapatra, J

Bench : Division Bench

Advocate : R.N. Mohanty, for the Appellant; M. Sinha, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—In this application filed under Articles 226 and 227 of the Constitution of India, the petitioners seek a declaration that the provision in Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988, is ultra vires the Constitution of India and for quashing of the order dated 19.5.1992 passed by the Second Motor Accidents Claims Tribunal, Cuttack, in M.V. Misc. Case No. 162 of 1989 (Annexure 2). In the said order the Tribunal declined to grant the petitioner's prayer to be substituted in the case, instead accepted the petition as a fresh claim petition subject to limitation. The operative portion of the order reads:

It is alleged that the cause of death of the deceased has a direct link with the injuries sustained in the accident. Hence the fresh claim petition is accepted subject to limitation which will be decided on merit after hearing the other side and the petitioners are directed to take return of the petition and file the same before the 1st M.A.C.T., Cuttack, for registration of the case as per the procedure being followed at present.

2. The factual backdrop of the case necessary to appreciate the contentions of

the petitioners may be stated thus: One Kanhu Charan Mohanty filed a petition claiming compensation for the injuries sustained by him in the automobile accident which took place on 19.11.1988 involving the vehicle bearing registration No. OJC 7901 (Matador van). The injured initially claimed Rs. 5,50,000/- as compensation from the owner of the vehicle (opposite party No. 4) and the insurer New India Assurance Co. Ltd. (opposite party No. 3) on different counts like medical expenses, pain and suffering, loss of future prospects of income, etc. The application was registered as M.V. Misc. Case No. 162 of 1989. During pendency of the case, the injured applicant died on 12.1.1992, as alleged by the petitioners, due to injuries sustained in the accident. Thereafter, on 10.2.1992 the petitioners in the present case, who are the parents of the deceased, filed an application for being substituted in place of the claimant alleging, inter alia, that late Kanhu Charan Mohanty, who was seriously injured in the accident on 19.11.1988, was completely paralysed and was confined to bed, that he was under constant treatment from the date of accident till the date of his death on 12.1.1992; and that death of the deceased was due to the injuries sustained in the accident. The petitioners claimed that as parents of the deceased, they are his legal representatives. It was further stated in the application that the applicants had spent a substantial amount to the tune of Rs. 80,000/- for treatment of their son (deceased). The application was disposed of by the Tribunal by order dated 19.5.1992. The said order is assailed in the present writ application.

3. The main thrust of the submissions of Mr. R.N. Mohanty, learned Counsel for the petitioners, was that the Tribunal erred in law in rejecting the petitioners' prayer for substitution. His further submission was that the order of Claims Tribunal accepting the petitioners' application as a fresh claim petition subject to limitation is an exercise in futility since the said petition having been filed more than one year after the accident is bound to be dismissed on the ground of limitation as provided u/s 16(1)(3) of the Motor Vehicles Act, 1988 (for short, "the Act"). Mr. Mohanty urged that in the peculiar facts and circumstances of the case, the Tribunal ought to have held that right to continue the proceeding instituted on the application filed by the deceased injured vested in the petitioners (his parents) after his death.

4. Mr. M. Sinha appearing for opposite party No. 3. the insurance company, supported the order passed by the Tribunal.

5. On perusal of the impugned order and on consideration of the submissions made, the moot question which arises for determination in this case is whether on the death of the injured applicant during pendency of the case before the Tribunal, his legal representatives are entitled to be substituted in his place as claimants and continue the proceeding. As appears from the discussions in the impugned order, the Tribunal has negatived the plea for substitution on the ground that claim of compensation for injuries being a personal right, the right to sue does not survive after death of the petitioner. He relied on the decision of

this court in the case of Mandari Rewa and Others Vs. Jagabandhu Ghadei and Another, The Tribunal has taken note of the difficulty in driving the petitioners to institute a fresh claim case as more than twelve months have already elapsed after the accident and that in view of the provisions of Sub-section (3) of Section 166 of the Act, it has no jurisdiction to condone the delay in filing the case. The resultant position, therefore, is that the petitioners, who are legal representatives and dependants of the deceased, are deprived of the benefit of the special forum created under the Motor Vehicles Act. This position was considered by the Andhra Pradesh High Court in the case of Kongara Narayanamma and Others Vs. Uppala China Simhachalam and Others in which considering the applicability of the maxim *actio personalis moritur cum persona*, it was held:

When a person sues for compensation in respect of the injuries sustained by him u/s 110-A(1)(a) of the Act, the compensation may be claimed in respect of not only the physical injury but also the mental suffering including any expenses he might have incurred for treatment, etc. He may also claim damages towards loss to the property consequent upon the accident. If the compensation awardable in respect of some of the items can be said to have resulted in loss to the property of the injured person, there is nothing in law or Section 110-A(1) of the Motor Vehicles Act which prohibits a claim for compensation being made in that behalf. In such cases, I am of the opinion that maxim *actio personalis moritur cum persona* cannot be invoked, if the accident instead of resulting in an injury resulted in the death of a person. Under the law the legal representatives can claim compensation for loss to the estate of the deceased. If an action is initiated by an injured person for compensation in respect of items which involve loss to his property why should it not survive to the legal representatives when he dies during the pendency of an action? (Emphasis supplied)

The court noticed the unsatisfactory state of the law in applying the maxim *actio personalis moritur cum persona* to all cases of claim of personal injuries and observed:

The maxim *actio personalis moritur cum persona* is part of the common law of England. Though it is no part of the law of this country, the Law of Torts as administered in India had applied the principle. It is of significance that the maxim had been criticised even in England as an "unjust maxim", obscure in its origin, inaccurate in its expression and uncertain in its application and that it often causes grave injustice. Some of the courts in India are of the view that the maxim should not be applied as a part of the Indian law except where statutorily engrafted and that the courts in India should follow the principles of justice, equity and good conscience having regard to the particular circumstances of the case. While an action could be maintained against a person who caused an injury and not death, no action could be maintained against the person who caused the death after the death of the injured person. The representatives of a deceased could not sue for the suffering and pecuniary loss caused to the deceased before

he died when the death had occurred by reason of an injury. Such a situation was really anomalous, because while no action could be maintained against a person who caused the death of another person, an action could be maintained against that person if he had merely caused an injury and not death. This unsatisfactory state of the law was sought to be overcome in England by Law Reforms Act and Fatal Accidents Act of 1846. The latter Act is familiarly known as Lord Campbell's Act. India also followed suit and enacted the Legal Representatives Suits Act (XII of 1855) and the Indian Fatal Accidents Act (XIII of 1855). Under Act XII of 1855, the cause of action in respect of loss to the estate of a person whose death had been caused by a tortious act was made to survive and be available to the executors, administrators or representatives of the deceased.

Under Section 1-A of the Indian Fatal Accidents Act (XIII of 1855), a new right was created in favour of certain dependants mentioned therein. u/s 1A of the Act, the executor, administrator or representative might recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act and which sum when recovered should be deemed to be a part of the assets of the estate of the deceased.

(Emphasis supplied)

6. The present case stands on a better footing inasmuch as the parents who are the legal representatives of the deceased injured have the right to claim compensation for death of their son due to injuries caused in the automobile accident. This right will be seriously affected if they are debarred from continuing the claim case instituted by the deceased and are forced to institute a fresh claim case for compensation which, on the fact of it, is barred by limitation u/s 16(1) (3) of the Act. Such an interpretation, which defeats the intent and purpose of enacting the special Act and creating the special forum cannot be accepted. The said section, as we read it, shows anxiety of the legislature to provide easier, cheaper and speedier remedy to persons who have sustained loss or injury by reason of rash and negligent driving of motor vehicles. On a fair reading of Section 166, it is clear that the petitioners in the present case could not have either intervened in the case instituted by the injured or filed an independent application for compensation before the death of the injured. In other words, their cause of action for, and right to file the petition, claiming compensation arose on the death of the injured which took place on 12.1.1992. The application for substitution was filed within a month from that date. Therefore, whether the petition is treated as an application for substitution or as an independent petition claiming compensation, the question of limitation should not stand as a bar against entertaining the application. I feel this interpretation will be in accord with the intent and purpose of the Act which is a piece of beneficial legislation enacted to provide easier, cheaper and speedier remedy to persons who have sustained injuries in the motor vehicle accidents and in case of death, the legal representatives of the deceased. To hold otherwise will perpetrate injustice to

persons like the petitioners who will be deprived of the benefit of the Act and thereby suffer discrimination. In my considered view, in the peculiar facts and circumstances of the case, the Tribunal should have allowed the petitioners' prayer to be substituted as legal representatives in place of the deceased injured. The decision in the case of Mandari Rewa and Others Vs. Jagabandhu Ghadei and Another, holding inter alia, that the claim of compensation being a personal one the right to sue does not survive after the death of the petitioner cannot be taken as laying down a general proposition of law applicable in all the situations. It is also distinguishable from the present case. In that case, the learned Judge did not interfere with the order passed by the Tribunal treating the application for substitution as a fresh application for compensation and registering the same as a separate proceeding for which there was no objection and legal impediment.

7. From the analysis and discussions in the foregoing paras, the resultant position that emerges is that in the facts and circumstances of the case the prayer of the petitioners to be impleaded as parties in place of the deceased Kanhu Charan Mohanty should be allowed and they should be permitted to continue the proceeding. In view of the findings and conclusions arrived at, it is not necessary to consider the question of constitutional validity of Section 16(1) (3) of the Act. Further, the said provision is no longer in the statute having been deleted by Act No. 54 of 1994.

8. Accordingly, order dated 19.5.1992 of the Second Motor Accidents Claims Tribunal, Cuttack, in M.V. Misc. Case No. 162 of 1989 (Annexure 2) is set aside and quashed; the petitioners' application for substitution is allowed and the Tribunal is directed to implead the petitioners in place of the deceased applicant and dispose of the case in accordance with law.

9. The writ petition is disposed of on the aforesaid terms. No costs.

P.C. Naik, J.

10. I have had the advantage of reading the judgment of my learned brother Mohapatra, J. and I agree with the conclusion reached by him. I would, however, like to give my reasons for coming to the same conclusion.

11. Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988, having been omitted by Act 54 of 1994 with effect from 14.11.1994, any decision on the question of its validity now will be purely academic. It is for this reason that no opinion is being expressed on it.

12. The impugned order disclosed that the plea for substitution was negatived on the strength of the maxim *actio personalis moritur cum persona*-that after the death of the claimant the cause of action did not survive. But, this conclusion would be valid only if it is proved that the death was not on account of the injuries suffered in the accident. The learned Tribunal seems to have pre-judged the issue that is yet to be tried for, the substituted claimants will be required to establish, in order to succeed, that death was a consequence of the injuries

suffered in the accident.

The learned Tribunal also overlooked the fact that the maxim *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. This follows from Section 306 of the Indian Succession Act, 1925, which provides that 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 decease, survive to and against 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. Thus, the said maxim stands considerably abrogated or modified by the provisions of Section 306 of the Indian Succession Act, 1925. The learned Tribunal was, therefore, not justified in rejecting the application for substitution.

13. In this petition, we are not called upon to, nor would we like to, discuss under which head and for what loss, assuming they are able to make out a case, will the claimants be entitled to claim compensation. Suffice it to say, Section 306 indicates that amongst causes of action which survive are included some actions of a personal nature. This apart, the claim for damages on account of loss of estate of the injured would, at any rate, not abate on his death. This aspect appeal's to have been overlooked by the learned Tribunal.

14. The petition has to be allowed. The impugned order is quashed and the prayer for substitution is allowed.