

(2011) 07 CHH CK 0020
In the Chhattisgarh High Court
Case No : M.A. (C) No. 683 of 2009

Hukum Lal Sahu

APPELLANT

Vs

Rajesh Sahu and Others

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Chhattisgarh Motor Vehicles Rules, 1994 — Rule 226
Civil Procedure Code, 1908 (CPC) — Section 2(11)
Motor Vehicles Act, 1988 — Section 163(1), 166, 166(1), 168, 169

Citation : (2011) 4 CGLJ 623

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Judgement

Hon"ble Shri I.M. Quddusi, J.—This appeal has been filed against the impugned order dated 25-02-2009 passed by Additional Motor Accident Claims Tribunal, (F.T.C.), Rajnandgaon (for short "the Tribunal") in Claim Case No. 43/2009 by the appellants, dismissing the claim petition on the ground that since the injured/claimant has died his legal heirs have no right to substitution as claimants. Brief facts of the case are that on 06-02-2007 at about 7-30 P.M., claimant Hukum Lal Sahu (hereinafter referred to as "the claimant") was going on his motorcycle to Gidhva. On the way, between Somni Baigatola to Navagaon Road, one Jeep bearing registration No, C.G. 07/ZA 0988 being driven by respondent No. 1 (Rajesh Sahu) in a rash and negligent manner dashed the claimant, as a result of which the claimant sustained injuries on his right leg and above knee. The report of the incident was given to the Police Station Somni.

2. The injured/claimant (Hukum Lal Sahu) had filed a petition u/s 166 of the Motor Vehicles Act (for short "the Act") before the Tribunal claiming total amount of compensation of Rs. 8,54,900/- for the injury sustained by him in the accident.

3. During the pendency of the claim petition, the sole injured/claimant died. Therefore, the legal heirs of the injured/claimant moved an application for substitution but the learned Tribunal rejected the same as not maintainable and

further that the claim petition filed by the injured/claimant was not survived any more after his death. Being aggrieved, the legal heirs of the deceased have filed the instant appeal.

4. In fact, there was allegation on behalf of the legal heirs of the deceased/the present appellants that the death was as a result of the injuries caused to the injured in the motor accident and his treatment was continued. That is why, they wanted to amend the claim petition accordingly, but the Claims Tribunal refused to accept the submission and rejected the application and thus dismissed the claim petition as abated.

5. It is true that in ordinary way if the injured person files a claim petition for compensation/damages due to permanent disability and during the pendency of the claim petition, he dies, the claim petition does not survive any more and the same is to be abated on the death of the claimant and would not survive to his legal heirs. The full Bench of Madhya Pradesh High Court in Smt. Bhagwati Bai and Another Vs. Bablu @ Mukund and Others, has held that a claim for personal injury would not survive to his legal representatives, except as regards the claim for pecuniary loss to the estate of the claimant.

6. The definition of legal representative has been given in Section 2 sub-section (11) of CPC which is reproduced as under:

2(11). "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

7. According to above quoted definition, the term is not only confined to legal heirs but also to the competent to inherit the property of the deceased but he should represent the estate of the deceased.

8. In the case of Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, ; Hon"ble Apex Court has held in paras 4 and 5 as under:

4. After hearing learned counsel for the parties, we are of opinion that the learned Judicial Commissioner committed serious error of law in setting aside the order of the trial Judge. "Legal Representative" as defined in CPC which was admittedly applicable to the proceedings in the suit, means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is used in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The definition is inclusive in character and its scope is wide, it is not confined to legal heirs only instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or

administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". If there are many heirs, those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased. In the instant case it is not disputed that under the Portuguese Law of Inheritance which was applicable to Goa at the relevant time Mrs. Nalini Bai had acquired "Meeira rights" according to which she had acquired half share in the estate left by the deceased Vinaique Naique and the remaining half share was inherited by sons and daughters of the deceased who were subsequently brought on record. On the admitted facts Mrs. Nalini Bai therefore represented the estate of the deceased Vinaique Naique. Once the name of Mrs. Nalini Bai was brought on record within time and the application for setting aside abatement was allowed by the trial Judge, the suit could proceed on merits and the mere fact that the remaining legal representatives were brought on record at a subsequent stage could not render the suit defective. The Custodian of the appellant Bank had no knowledge that there were other legal representatives of deceased defendant along with Mrs. Nalini Bai. He had filed affidavit that on making diligent and bona fide inquiry, he had come to know that Nalini Bai was the sole legal representative but later on the acquired knowledge that the deceased had left four sons and two daughters as legal representatives, along with Mrs. Nalini Bai, therefore, he made another application for bringing them on record. The trial Judge accepted the testimony of the Custodian, and placing reliance on the decision of Andhra Pradesh High Court in Mannem Venkataramayya Vs. M. Munnetamma and Others, , he allowed the substitution application. The trial court committed no error in law, instead he applied correct principles of law.

5. In *Daya Ram and Others Vs. Shyam Sundari*, this Court recognised the principle of representation of the estate by some heirs, where the defendant died during the pendency of the suit to enforce claim against him and all the heirs are not brought on record within time. This Court held that if after bona fide inquiry, some, but not all the heirs, of a deceased defendant, are brought on record the heirs so brought on record represent the entire estate of the deceased and the decision of the court in the absence of fraud or collusion binds even those who are not brought on record as well as those who are impleaded as legal representatives of the deceased defendant. In *N.K. Mohammad Sulaiman Vs. N.C. Mohammad Ismail and Others*, this Court rejected the contention that in a suit to enforce a mortgage instituted after the death of a Muslim, if all the heirs of the deceased were not impleaded in the suit and a decree was obtained, and in execution the property was sold, the auction purchaser could have title only to the extent of the interest of the heirs who were impleaded, and he could have no title to the interest of those heirs who had not been impleaded to the suit. The Court held, that those who were impleaded as party to the suit in place of the deceased defendant represented the entire estate as they had share in the property and since they had been brought on record the decree was binding on the entire estate.

9. Section 166 (1) of the Act provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 163 may be made by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. In view of sub-section (1) of Section 166, if the legal representatives of the deceased wanted to substitute themselves in place of the deceased to prove that the death of the deceased was as a result of injuries, an opportunity should have been given to them to prove the same.

10. Having regard to the above legal position, we find that the deceased, who was an injured/claimant had spent expenses for getting his treatment, which is certainly a "pecuniary loss" to the estate of the claimant and as such that would form part of the estate of the claimant for which his legal representatives would be entitled to get the same. Therefore, in our opinion, in any case, the legal heirs of the deceased would be entitled to get the amount equally to the "pecuniary loss" to the estate of the injured/claimant who died during the pendency of the claim petition u/s 166 of the Act.

11. In view of the above, we are of the opinion that the matter requires reconsideration at the end of the Tribunal. Therefore, we allow this appeal, set aside the impugned order and remit the matter back to the Tribunal for decision afresh.

12. The Tribunal first of all allow the substitution application and the legal heirs shall be substituted on record. Thereafter, the parties shall be allowed to amend the pleadings, adduce further evidence, file the documents or get the documents verified etc.

13. Besides this, the substitution of the legal heirs of the injured/claimant was necessary in view of the fact that the injured who had become deceased during the pendency of the claim petition got "pecuniary loss" and as a result of the accident and the legal heirs could claim for "pecuniary loss" to the estate of the deceased. Therefore, the Tribunal shall conduct an enquiry as provided under the provisions of Sections 168 and 169 of the Act and Rule 226 of the C.G. Motor Vehicle Rules, 1994. Thereafter, a decision shall be taken afresh as early as possible.

14. The records of the Tribunal shall be sent back without any further delay. It is pointed out that the impugned order was passed by the Fast Track Court, acting as MACT. In this regard, learned District Judge is also a Principal MACT, he shall receive the same or shall transfer to any other M.A.C.T.

15. The parties shall appear before the Claims Tribunal on 24-08-2011. No order as to costs.