
(1990) 12 GUJ CK 0011
In the Gujarat High Court
Case No : F.A. No. 361 of 1979

Jenabai and Others

APPELLANT

Vs

Gujarat State Road Trans. Corpn. and Others

RESPONDENT

Date of Decision : 27-12-1990

Acts Referred:

Employees Compensation Act, 1923 — Section 3
Succession Act, 1925 — Section 212, 306

Citation : (1991) 1 ACC 529 : (1991) ACJ 585 : (1991) 1 GLR 352

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : D.I. Desai and H.M. Abdulla, for the Appellant; A.K. Shah and P.K. Jani, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—This appeal is directed against the judgment and award passed by Motor Accidents Claims Tribunal, Kutch at Bhuj, in Motor Accident Claim Petition No. 14 of 1975, by invoking the aids of the provisions of Section 110-D of the Motor Vehicles Act, 1939 ("Act" for short hereinafter).

2. A short, but interesting, question which has arisen in this appeal is, as to whether legal representatives of the deceased claimant, who had sustained injuries in a vehicular accident and who had died a death unconnected with the injuries which arose but of the road accident, are entitled to continue the action for compensation? With a view to appreciate the aforesaid question raised in this appeal, a resume of material facts may be stated at the outset.

3. One deceased Abdul Karim Musa, who is hereinafter referred to as the "original claimant" for the sake of convenience and brevity, claimed Rs. 9,999/- by way of compensation for the personal injuries sustained by him in an accident on account of collision between a S.T. bus and a motor tanker. The accident in question occurred on 21.1.1975, at about 10 a.m. when the claimant was travelling in a G.S.R.T.C. bus No. GTE 4660 which was proceeding from Anjar to

Rajkot, as a passenger. The said bus was driven by respondent No. 2/original opponent No. 2 and it was owned by respondent No. 1/ original opponent No. 1. They are hereinafter referred to as the "original opponent Nos. 1 and 2" for the sake of convenience and brevity. It was alleged that the said bus was driven by the original opponent No. 2 with excessive speed before the accident. The said S.T. bus collided with an oil tanker No. GTY 3265. The said tanker was driven by original opponent No. 3, it was owned by original opponent No. 4 and it was insured with original opponent No. 5. Initially, the driver, owner and the insurer of the tanker were impleaded as respondent Nos. 3, 4 and 5 in this appeal. Subsequently, respondent Nos. 3 and 4, i.e., original opponent Nos. 3 and 4, came to be deleted. As a result of the collision between the S.T. bus and the motor tanker, many passengers, including the original claimant, were injured. The original claimant, Abdul Karim Musa, was shifted to hospital as he had sustained injuries, including fracture on the left wrist. It was contended that the accident in question occurred on account of the rash and negligent driving on the part of the drivers of the S.T. bus and the tanker. Therefore, the original claimant claimed Rs. 9,999/- by way of compensation for personal injuries sustained by him from all the opponents by filing the aforesaid claim petition on 19.7.1975.

4. Unfortunately, the original claimant died on 4.9.1976, during the pendency of the said claim petition before the Motor Accidents Claims Tribunal ("Tribunal" for short hereinafter). Thereafter the widow and the minor children of the deceased original claimant preferred an application, at Exh. 33, for being impleaded as heirs and legal representatives of the deceased, on 5.10.1976. It was contended in the said application under Order 22, Rule 3 of the CPC that the cause of action of the original claim made by the original claimant survived to them, being the heirs and legal representatives of the deceased. It was contended that they were entitled to be substituted in place of the original claimant and prosecute the original claim. The Tribunal was pleased to allow the said application and that is how the heirs and legal representatives of the original claimant, who are the appellants in this appeal, came to be impleaded as claimants, after the unfortunate demise of the original claimant.

5. The claim petition was resisted by the S.T. bus and motor tanker parties. Three claim petition Nos. 10, 13 and 14 of 1975 were decided by a common judgment by the Tribunal by judgment and award dated 6.7.1978. The Tribunal was pleased to hold that the driver of S.T. bus only was rash and negligent and was responsible for the accident. It was also held that the deceased, original claimant, had sustained injuries on account of the accident in question. Two claim petitions, Nos. 10 and 13 of 1975 were allowed. However, the claim petition No. 14 of 1975 filed by the original claimant, deceased Abdul Karim Musa, was dismissed. The Tribunal held that the claim for compensation on account of personal injuries not resulting in death, would not survive to the heirs and legal representatives and therefore, they were not entitled to continue the action and to claim compensation. Thus, it was found by the Tribunal that the original claimant had died not as a result of injuries sustained by him in the

aforesaid accident. Therefore, in the opinion of the Tribunal, the death of the original claimant which was unconnected with the injuries would not give any right to the heirs and legal representatives to continue and maintain the action for compensation. In short, the Tribunal was pleased to hold that in a claim for personal injuries, when the claimant dies during the pendency of the proceedings and the death is not a result of the said injuries, his heirs and legal representatives cannot be allowed to continue the application as the right to claim compensation for personal injuries would also die along with the death of the original claimant.

6. Being dissatisfied by the said judgment and award, disallowing the claim of the legal heirs and representatives of the deceased claimant, they have, now, come up before this court challenging its legality and validity.

7. The matter was kept for hearing on different dates and was called out on many occasions. However, neither the learned counsel for the appellants nor the appellants appeared in this appeal. The learned counsel for respondent Nos. 1 and 2/original opponent Nos. 1 and 2, Mr. A.K. Shah, appeared and seriously contended that the finding of the Tribunal that the appellants are not entitled to maintain and continue the claim petition is legal and justified. Thus, the controversy in the present appeal is circumscribed in a very short compass.

8. It is an admitted fact that the original claimant, Abdul Karim Musa, had sustained injuries in the aforesaid road accident which arose on account of rash and negligent driving on the part of the driver of the S.T. bus. The original claimant preferred a claim petition under Section. 110-A of the Act. Pending the claim petition, the original claimant died otherwise than as a result of the accidental injuries. His legal heirs and representatives were substituted. But on the principle of *actio personalis moritur cum persona* and also because of Section 306 of the Indian Succession Act, 1925, which says that cause of action for defamation, assault or other personal injuries not causing death does not survive. The claim for personal injuries came to be dismissed. This finding of the Tribunal is challenged in this appeal, which is supported by the learned counsel for the respondent Nos. 1 and 2/ original opponent Nos. 1 and 2.

9. It is contended that in view of the specific provisions in Section 306 of the Indian Succession Act, 1925, the cause of action to claim compensation would not survive to the legal representatives. This contention was also raised before the Tribunal and the Tribunal has accepted it. Section 306 of the Indian Succession Act is based on the maxim *actio personalis moritur cum persona*. Section 306 of the Indian Succession Act, 1925, reads as under:

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 proceeding 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, 1860, 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.

A plain reading of Section 306 of the Indian Succession Act would go to show that as a general rule, actions founded upon proprietary rights would survive but the personal actions would not survive. The English principle of common law laid down that if an injury was done, either to the person or to property, for which damages were the only remedy, the action dies with the death of the person to whom or by whom the wrong was done. This is embodied in the maxim *actio in personam moritur cum persona*. The cause of action which excluded or which does not survive in view of the exception in Section 306 of the Indian Succession Act, like defamation, assault or other personal injuries not causing death of the party, is to be examined in the light of the rationale and the purpose. The rationale and the purpose of such cause of action, like defamation, assault or personal injuries not causing the death belong to the realm of tort where it involves only non-pecuniary loss to the person wronged. But there is no good reason why the deceased's estate should not recover for non-pecuniary loss to the deceased. Since the aim of award of damages is to compensate the person wronged, there is no reason why measure of damages pertaining to estate should be in any way affected or limited by the death of the original victim of the accident. In short, compensation and not the penalty being the gist of the damages, it is not so compelling that an action for the benefit of the estate should not lie for the damages suffered by the deceased person. If the estate has suffered loss by reason of the loss to the deceased being pecuniary an action to recover such loss is proper. But if the loss is non-pecuniary, as it may, for instance, be in torts involving injury to reputation or to the person, the recovery of such a loss by the estate is excluded.

10. Tort, frequently, involves a non-pecuniary loss. Even pecuniary loss of the deceased, being personal to him has no proper entitlement to a place in the assessment of the damages which goes to his estate. But for the pecuniary loss suffered by the deceased on account of such injuries, an action would lie or action would survive for the benefit of the estate of the deceased. The claim, on account of loss to the estate of the deceased, would, undoubtedly, survive and would pass over to his heirs or legal representatives. Section 306 of the Indian Succession Act does not exclude right to recover claim on the basis of proprietary right. In a case of personal injuries, arising out of vehicular accident, it may include pecuniary loss as well. This pecuniary loss or any loss which is referable to the loss to estate would be a proprietary or right pertaining to property. Therefore, the right to maintain the action or to continue the action for recovery of pecuniary and proprietary loss which are referable or attributable to the loss to the estate, cannot be said to have been taken away by the provisions of Section 306 of the Indian Succession Act. If the provisions of Section 306 of the Indian Succession Act are extended to all causes of action, including those affecting proprietary or property, i.e., to the estate, it would be to stultify to a great extent

the provisions of Section 212(2). If it is stretched to that, it would be nugatory, which empowers a Hindu, Mohammadan, Buddhist, Sikh, Jain, Indian Christian or Parsi for applying for letters of administration in case of intestacy. Such a construction of Section 306 of the Indian Succession Act would raise a direct conflict with the provisions of Order 22, Rule 3 (1) of the Civil Procedure Code. Moreover, the liability to pay compensation is created immediately on the occurrence of the accident to the person suffering the injury and must amount to a debt payable to him and pass over to the heirs of the workman on his death and does not abate. Thus, provisions of Section 306 of the Indian Succession Act have no application to such cases. Therefore, the maxim *actio personalis moritur cum persona* on which Section 306 of the Indian Succession Act is based, cannot have a blanket applicability in all actions even in a case of personal injuries wherein the damages flow from the head or under the head of loss to the estate. It may be mentioned that in England, the said maxim has been criticised as harsh, unconscionable and unjust. The rightful claim falling in the realm of pecuniary or proprietary or loss to the deceased's estate would survive, which is not personal to the deceased. It may also be mentioned that the words "personal injury" occurring in Section 306 mean bodily or physical injury as opposed to the injury to the proprietary right. Therefore, a cause of action in respect of injury to the property or loss referable to the deceased's estate flowing from the personal injury would not fall within the exception, but would, undoubtedly, survive. But, if interpreted otherwise, as held by the Tribunal, would mean unjust enrichment and benefit to the wrongdoer's estate and unjustifiable injury to the estate of the deceased. Unfortunately, the Tribunal has failed to address itself to such a vital and important aspect while considering and examining the provisions of Section 306 of Indian Succession Act.

11. Reliance is placed on a decision of Punjab & Haryana High Court in the case of *Calcutta Insurance Ltd. Vs. Bhupinder Singh and Others*, . In the said case, the claim for personal injuries came to be dismissed as the original claimant died during the pendency of the proceedings otherwise than as the result of the accidental injuries. Therefore, it was held that the legal representatives cannot be allowed to continue the application. In the said case, the provisions of Section 110-A (1) (a) and the provisions of Section 306 of the Indian Succession Act were considered. It was held in that case that right to claim compensation would not survive to the legal representatives in view of the provisions of Section 306 of the Indian Succession Act. In the said case the loss to the estate of the deceased was not considered. That decision, therefore, cannot be held to be fully applicable to the facts of the present case.

12. Reliance is also placed on a decision rendered in the case of *Narinder Kaur and Others Vs. State of H.P. and Others*, . In the said case, the claimant had died during the pendency of the proceedings. In that case the application by the legal representatives for amending the petition under Order 6, Rule 17 of the CPC was made but it was held in that case that the legal representatives had no right to move for amendment unless they had been impleaded as party to the petition. It

was observed in that case that they had an independent right to move a petition on account of death of the injured under the Act. This decision is not applicable to the facts of the present case as in the case on hand the legal representatives were already allowed to be substituted before the Tribunal.

13. The learned counsel for the respondent Nos. 1 and 2 has also relied on a decision of the Supreme Court rendered in the case of Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair, . In that case, the appellant filed a suit before the Sub-Judge against the respondent claiming damages for defamation. But the suit was dismissed. The appellant filed an appeal in the District Court and the District Judge partly decreed the suit. Respondent filed second appeal before the High Court and the appeal was allowed reversing the decree passed by the District Judge. Against the High Court judgment in dismissal of the decree, the appeal by special leave was filed and during that appeal the appellant died. Legal representatives of the appellant filed an application for their substitution and condonation of delay in making the said application. In the facts of that case it was held that the right to sue to the legal representatives of the deceased appellant does not survive. This decision of the Supreme Court is also not applicable to the facts of the present case. The suit was for defamation and it was dismissed and the plaintiff had filed an appeal and the appellant/ plaintiff was seeking in that appeal for enforcement of his right to sue for damages for defamation. It was held, therefore, that after his death the legal representatives have no right to sue an action for defamation.

14. It was also mentioned at the Bar that the point in focus in this appeal is not settled by any decision of this court or the Supreme Court. Therefore, obviously, any decision of this court or the Supreme Court is not brought to the notice of this court in this appeal. The aforesaid decisions relied on behalf of the respondent Nos. 1 and 2/ original opponent Nos. 1 and 2 are not applicable to the facts of the present case as the question of damages to the estate of the deceased was not directly in focus.

15. The provisions of Section 306 of the Indian Succession Act relate only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tortfeasor. Therefore, it can be concluded that the maxim *actio personalis moritur cum persona* has been considerably abrogated or modified by the provisions of Section 306 of the Indian Succession Act. Section 306 of the Indian Succession Act, explicitly, prescribes 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 his executors or administrators; except causes of action for defamation, assault or other personal injuries not causing the death of the party. The loss to the estate or injury to the proprietary or property right affecting the estate of the deceased, thus, cannot be said to have been covered by the exception contained in Section 306 of the Indian Succession Act. The view of this court is also fortified by the decision rendered in the case of Sampati Lal and Others Vs. Hari Singh and

Others, . It was clearly held in the said decision that the right to sue is available to the legal representatives of the deceased as a claim on account of the deceased survived and passed over to his legal representatives. It was held in the said case that expenses incurred on treatment and loss of income from the date of accident to death amounts to a loss to the estate.

16. It is very clear from para 7 of the impugned judgment that the deceased had claimed Rs. 2,200/- for medical expenses and Rs. 575/- for miscellaneous expenses, etc. The claim under such heads would, undoubtedly, fall within the field of loss to the estate. If such amount would not have been spent by the deceased it was to go to the hands of the appellants or legal representatives of the deceased. Likewise, loss of past income award-able to the deceased on account of wrong done to him, subject to reasonable expenses which would have been incurred by the deceased for himself would also be a loss to the estate. It can safely be concluded that had the deceased not sustained the injuries, there would not have been loss of income and consequently there would not have been any detrimental effect on the estate of the deceased. If the unfortunate accident had not occurred the income or expenses falling within the head of loss to the estate would have augmented the estate and same would have gone in the hands of the heirs and legal representatives of the deceased. The loss of past income for the period from the date of accident till the inability on the part of the deceased to earn on account of the injuries, subject to reasonable expenses for himself, would also form a part of estate of the deceased. No doubt, the loss of income occurring after the death of the deceased would not be a loss to the estate. The action for amount of claim which is not attributable to the loss of estate of the deceased could not survive to the appellants. In other words, the heirs and legal representatives of the deceased would not be entitled to and eligible to claim the amount of claim which is not referable to or not attributable to the loss to the estate. Unfortunately, the Tribunal applied the doctrine of *actio personalis moritur cum persona* along with the provisions of Section 306 of the Indian Succession Act in respect of the entire claim without taking into account the separate claim under the head of loss to the estate of the deceased, Abdul Karim Musa. This proposition of law, unfortunately, could not be brought to the notice of the Tribunal. With the result, the approach of the Tribunal in so far as it related to the dismissal of the claim in respect of loss to the estate of the deceased cannot be sustained.

17. In the case of *Thailammal and Others Vs. A.V. Mallayya Pillai and Others*, , it is clearly held that the cause of action would survive to the legal representatives of the deceased who was the original claimant and who died pending the proceedings on account of death otherwise than as a result of the accidental injuries, in so far as the damages to the estate of the deceased were concerned. It is interesting to note that in that judgment it was also observed that the claim will survive to the legal representatives in so far as the loss to the estate of the deceased was concerned. Incidentally, it was also observed in the said decision that even a claim under the head of pain and sufferings and on the permanent

disablement, the rejection of the claim was doubtful but the court was bound by a decision of the Bench of the Madras High Court in the case of C.P. Kandaswamy and Others Vs. Mariappa Stores and Others, .

18. Incidentally, it may also be mentioned that could liability to compensate under the Workmen's Compensation Act, 1923, in case of an employment injury to the workman abate or die on account of demise of the workman unconnected with the employment? Suppose, in a given case, the workman files an application for compensation u/s 3 of the Workmen's Compensation Act, 1923 and during the pendency of the proceedings he dies otherwise than as a result of the employment injuries. Would that right be lost in view of the provisions of Section 306 of the Indian Succession Act If the interpretation made by the Tribunal in the present case is accepted then the liability to compensate him under the Workmen's Compensation Act, 1923, would abate. Of course, the language in Section 306 of the Indian Succession Act, no doubt, appears to be general. But it is not always that a general import must necessarily receive a general and wide meaning divorced from the material facts of the case. The expression "other personal injuries not causing the death of the party" is preceded by the words, "defamation, assault" as defined in the Penal Code. The words "other personal injuries must, therefore, receive colour from the earlier words and ought to be construed with the words preceding. It is also settled proposition of law that benevolent legislation is required to be construed liberally so as to advance the underlying object and purpose of the provision. It is also well settled that if interpretation of a welfare legislation or any provision of the statute is capable of two constructions, that construction should be preferred which furthers the policy of the Act or provision concerned and which is more beneficiary for the class in whose interest the law has been made.

19. If the interpretation put by the Tribunal in the impugned judgment is accepted, it would, undoubtedly, run counter to the purpose and policy of the benevolent provisions under the Act and would result in unjust benefit to the estate of the wrongdoers and substantial loss to the estate of the persons wronged. Such an interpretation ipse dixit is not only erroneous but is illegal.

20. With the result, the impugned judgment and award of the Tribunal dismissing the entire claim is illegal. Therefore, the appeal is required to be allowed and the impugned judgment and award are required to be set aside.

21. Unfortunately, the Tribunal concerned has disallowed the claim and has not separately computed the amount of compensation awardable to the heirs and legal representatives of the deceased/original claimant specified under the head of loss to the estate and, therefore, the matter is required to be sent back to the Tribunal with direction to proceed expeditiously in the matter and adjudicate upon the claim in respect of the loss to the estate of the deceased, Abdul Karim Musa, original claimant.

22. In the result, the appeal is allowed. The concerned Tribunal is directed to

proceed further in the matter and decide the claim in respect of the loss to the estate as indicated hereinbefore, as early as possible, as the matter is old and not later than three months after the receipt of the record. Since nobody has appeared on behalf of the appellants in the present case, the parties are directed to bear their own costs.