
(2011) 11 CHH CK 0037
In the Chhattisgarh High Court
Case No : Misc. Appeal No. 1233 of 2003

Kala Baikaishik and Others

APPELLANT

Vs

Kaljeet Singh and Others

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)
Motor Vehicles Act, 1988 — Section 165, 166, 166(1)

Citation : (2012) 1 CGLJ 140 : (2012) 2 TAC 903

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

Bench : Full Bench

Advocate : Sudeep Agrawal, for the Appellant; Prashant Gupta, Advocate, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Shri I.M. Quddusi, J.—This appeal has been filed by the appellant/claimants against the order dated 3.12.2003 passed by the First Additional Motor Accident Claims Tribunal, Bilaspur (in short "the Tribunal") whereby application of legal heirs of the deceased for substitution has been rejected and consequently, the claim case has also been dismissed as not maintainable on account of death of the injured claimant. Brief facts of the case, as per averments made in the claim petition, are that on 9.7.2002 at about 5.40 pm Manharan Lal Kaushik, after completing his duties, was returning to his Village - Navapara by Mahendra Bus No. CG 10 ZA 0235. However, the driver of the said bus by driving in a rash and negligent manner, dashed it against the tree, as a result of which 40-50 persons sitting in the bus, including Manharanlal, sustained grievous injuries on various parts of his body, his left leg was fractured and he became permanently disabled. All the injuries sustained by him were grievous and permanent in nature. The injured/claimant had to incur Rs. 1,50,000/- on his medical treatment. Therefore, he filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 (in short "the Act, 1988") for a total compensation of Rs. 8,28,000/- under various heads. However, during pendency of the claim case, on 27.4.2003

injured claimant Manharanlal died.

2. After the death of original claimant Manharanlal, the legal heir/ representative of the deceased preferred an application for substitution. However, by the impugned order, the said application has been rejected by the Tribunal on the ground that in the case of injured claimant, the right to sue does not survive to the legal heirs of the injured claimant after his death.

3. We have heard learned counsel for the parties, perused the material on record, including the impugned order.

4. Section 166(1) of the Motor Vehicles Act, 1988 provides that an application for compensation arising out of an accident of the nature specified in sub-section (i) of section 165 may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased. A proviso to this section has been added that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

5. "Legal Representative" has not been defined in the Motor Vehicles Act or the Rules made thereunder. It has been defined in sub-section (11) of section 2 of the Code of Civil Procedure, 1908 which reads as under:

"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;

6. In case of Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd., and Another in Appeal (Civil) No. 1702/2007, decided on 30th of March, 2007, relying upon the decision rendered in Custodian Brandies of Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, , Hon"ble the Supreme Court held that "The definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir, competent to inherit the property of the deceased can 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."

In Smt. Manjuri Bera's case (supra), the Supreme Court has further relied on a decision rendered in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, and observed that "a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

7. In the instant case, the claims Tribunal should have taken note of the fact that if the injured deceased had taken loan or debt from his friends; or relatives or from some other sources for medical treatment, conveyance etc., then after his death, the said amount will be liable to be recovered from the legal heirs of the deceased and they shall be liable to pay the debts due to the injured deceased. In such circumstances, denying the legal heirs to be substituted in place of the injured deceased would not only be against the provisions of law but also will be an injustice to them.

8. In the matters of Bhagwati Bai and Another Vs. Bablu and Others 2007 ACJ 682 3, the Full Bench of the MP High Court while dealing with the same issue as to whether claim for personal injury filed u/s 166 of the Act 1988 would abate on the death of injured-claimant and would not survive to his legal representatives except as regards the claim for pecuniary loss to the estate of the injured, has held in para 15 as under:

15. In the result, we are of the considered opinion that a claim for personal injury filed u/s 166 of the Motor Vehicles 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. The matter will now be placed before the Division Bench for assessment of the pecuniary loss caused to the estate of the deceased Pancham Singh on account of the motor accident suffered by him on the basis of pleadings and proof before the Tribunal/court.

9. Thus, following the principles of law laid down in Bhagwati Bai³ (supra), we are of the opinion that the impugned order passed by the claims Tribunal rejecting the application of the legal heirs of the injured deceased for substitution and consequently, dismissing the claim case, is not sustainable in the eye of law and deserves to be set aside.

10. In the result, the appeal is allowed. The impugned order dated 3.12.2003 passed by the claims Tribunal is hereby set aside. The matter is remitted back to the Tribunal, with a direction to allow the application of the legal heir of the deceased for substitution and thereafter, decide the claim case in accordance with law on the basis of pleadings and evidence adduced by the parties. LCR shall be sent back to the Tribunal without further delay.