

(1974) 12 AP CK 0021
In the Andhra Pradesh High Court
Case No : A.A.O. No. 221 of 1971

Kongara Narayanamma and Others

APPELLANT

Vs

Uppala China Simhachalam and Others

RESPONDENT

Date of Decision : 27-12-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, 151 , 2
Fatal Accidents Act, 1855 — Section 1A, 2
Motor Vehicles Act, 1939 — Section 110(1), 110A, 110B, 110C, 110D
Succession Act, 1925 — Section 306

Citation : (1974) 12 AP CK 0021

Hon'ble Judges : A.V. Krishna Rao, J

Bench : Single Bench

Advocate : P.L. Narasimha, for the Appellant; G.P. Sarathy, for the Respondent

Final Decision : Allowed

Judgement

A.V. Krishna Rao, J.—This is an appeal filed u/s 110-D of the Motor Vehicles Act, 1939. The Appellants have filed an application I.A. No. 626 of 1970 in O.P. No. 149 of 1966 on the file of the Motor Vehicles Claims Tribunal, Guntur. The said application was filed under the provisions of Order 22, Rule 10 and Section 151, Code of Civil Procedure, for adding the Appellants as legal representatives of Petitioner in the main original petition. The application was opposed by the 3rd Respondent in the main original petition on the ground that the cause of action did not survive to the Appellants, and that, therefore they could not be added as legal representatives of the deceased Petitioner in the main original petition. The Tribunal had accepted the contention of the 3rd Respondent and dismissed the application to implead the Appellants as legal representatives of the deceased original Petitioner. As a consequence of this order, the main original petition was also dismissed.

2. O.P. No. 149 of 1966 was filed by one Kongara Venkateswararao, under Clause (a) of Section 110-A(1) of the Motor Vehicles Act, claiming compensation for the

injuries sustained by him as a result of an accident which occurred at about 9-30 P.M. on 30th April, 1966 by reason of the lorry A.P K. 2520 belonging to the 1st Respondent in the original petition which was being driven by the 2nd Respondent rashly and negligently, had dashed against Venkateswararao who was proceeding by a Rickshaw with his wife and niece to Peddakakani. The 3rd Respondent in the original petition is the Insurance Company. The Petitioner in the original petition who was carrying on business in Auto Spare parts had sustained multiple injuries and also fracture of both the legs which had permanently disabled him. He claimed damages in a sum of Rs. 10,000. Venkateswararao died on 3rd March, 1970 while the original petition was pending leaving behind him his wife and children as his legal representatives who are the Appellants herein. They filed I.A. No. 626 of 1970 to bring them on record as the legal representatives of the deceased Venkateswararao which was dismissed by the Tribunal. The correctness of the order of the Tribunal is canvassed in the present appeal.

3. This appeal is contested by the 3rd Respondent-Insurance company, who resisted the application I.A. No. 626 of 1970 before the Tribunal.

4. The learned Counsel for the 3rd Respondent raised a preliminary objection that the appeal is not maintainable. The contention of the Counsel for the 3rd Respondent is that u/s 110-D(I) of the Motor Vehicles Act, an appeal lies to the High Court at the instance of a person aggrieved by an award of a Claims Tribunal within 90 days from the date of the award and in the instant case as there has been no award by the Tribunal, no appeal lies. The Counsel submitted that the Petitioner in the original petition having died before the proceeding terminated in an award being made by the Tribunal, no appeal would lie against an order in an Interlocutory Application made in the original petition refusing to bring the Appellants on record.

5. By reason of the Order on the Interlocutory Application refusing to implead the Appellants as legal representatives of the deceased Petitioner in the original petition, the Tribunal had dismissed the main original petition itself. The consequence of dismissal of the original petition became inevitable by reason of the fact that the application by the legal representatives was dismissed.

6. The Counsel for the 3rd Respondent referred to Section 110B of the Act. The said section provides that:

On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

The learned Counsel urged that there must be an inquiry into the claim and it must result in an award which determines the amount of just compensation and specifying the persons who are liable to pay the same in terms of Section 110-B of the Act. As there was no enquiry in this case, there was never any award determining the compensation and that, therefore, as an appeal lies only against an award, the appeal is not maintainable. The contention of the Counsel for the 3rd Respondent is that Section 110-B and Section 110-D should be read together and the word "award" occurring in both the sections should be given the same meaning. When the Claims Tribunal had dismissed the original petition for whatever reason no appeal would lie, as there was no award determining the amount of compensation. This argument, if accepted, would result in an anomalous situation which could never have been contemplated by the Legislature in providing an appeal as per Section 110-D of the Act, i.e., if the claim is dismissed the claimant cannot prefer an appeal, while if compensation of an amount exceeding Rs. 2,000 is awarded, an appeal would lie u/s 110-D (1) of the Act. It is difficult to envisage that the Legislature intended such a consequence. Section 110-D uses the words "any person aggrieved by an award of Claims Tribunal". "Any person" cannot of course mean only the owner or driver or the insurance company. They must take in a person in the position of a claimant who certainly would be an aggrieved person when his claim is dismissed. That takes us to the question as to the meaning of an "award" in Section 110-D. u/s 110-B of the Act on the presentation of a petition u/s 110-A, the Tribunal is to hold an enquiry. An inquiry must result in a decision. That decision becomes an award. The decision may determine the compensation payable or may dismiss the application. Whether it dismisses the application or determines the compensation payable in accordance with that section, it would be a decision and is an award. The meaning of the word noun "award" as given in Webster's New World Dictionary is "a decision as by Judges." The concise Oxford Dictionary gives the meaning of an "award" as "a judicial decision." The Chambers Dictionary gives the meaning of an award "Judgment." But the meaning sought to be given by the 3rd Respondent's counsel to the word "award" would defeat the very purpose of the enactment and render Section 110-D, providing for appeals to the High Court nugatory in relation to the claimants, where the claim is dismissed. The learned Counsel for the 3rd Respondent did not place any authority before me wherein the meaning ascribed by him to an award received acceptance. On the other hand the authority is the other way about.

6A. In a decision reported in B. Govindarajulu Chetty Vs. M.L.A. Govindaraja Mudaliar and Others, , Chandra Reddy, Chief Justice and Ramamurthi, J, had considered the question in detail. Their Lordships pointed out, after referring to the relevant provisions in the Act, that it is an obvious proposition that any interpretation which would defeat this specific purpose of the special provision should be avoided and an interpretation which effectuates the purpose should be accepted and preferred. It was also pointed out that the avowed object of the

provision contained in Section 110-D was not to make the decision of the Claims Tribunal final, but on the other hand to make the decision of the High Court alone final and conclusive. It was further observed thus:

In our opinion, the expression "award" in Section 110-D must be understood as the decision of the Claims Tribunal whether a total dismissal of the claim or the determination of particular amount of compensation. Section 110-B merely provides as to how the Claims Tribunal should conduct the enquiry and what its decision, should contain, in case the decision involves a determination of the amount of compensation payable....

There is no justification whatsoever for discriminating the claimant and the opposing parties in the matter of right of appeal, which would be the anomalous result if the contention of learned Counsel for the Respondents were accepted.

7. Their Lordships expressed the considered view that "on a proper interpretation of Section 110-B, an award would comprehend every decision of the Tribunal, whether for or against the claimant or the opposing parties." It was also observed that while it was a sound rule of construction to presume that the same meaning is to be given to the same words occurring in different parts of an Act of a Legislature, the presumption is very slight, and if sufficient reason could be assigned it would be legitimate and proper in order to effectuate the purpose of an enactment and to arrive at a harmonious construction of the statute as a whole to construe a word in one part of an enactment in a different sense from that which it bears in another part of the enactment Reliance was placed upon Craies on Statutes, 6th Edition, page 168 in making the aforesaid observations.

8. In a decision reported in G. Gopalaswami Vs. G. Navalgaria and Others, , Kailasam, J., had to deal with a preliminary objection of the nature raised herein in this case. In that case the Claims Tribunal had refused to entertain an application which was filed beyond 60 days after the date of the accident. It was contended that the order of the Tribunal refusing to entertain the application was not an award. The learned Judge had rejected the contention. He expressed an opinion that the word "award" was used to include a decision by the Claims Tribunal in dealing with an application for compensation arising out of an accident.

9. The Appeal, therefore, is maintainable subject to the next point which arises for consideration.

10. The next point is: Does the cause of action survive to the Appellants after the death of the Petitioner in the main original petition ? The Tribunal held that it does not survive and that, therefore; the application filed by the legal representatives to come on record is liable to be dismissed.

11. u/s 110-A (I) of the Motor Vehicles Act, an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made-

- (a) by the person who has sustained the injury; or
- (b) where death has resulted from the accident, by the legal representative of the deceased; or
- (c) by any agent duly authorised by the person injured or the legal representatives of the deceased, as the case may be.

12. In the instant case we are concerned only with Clause (a) as the action was initiated by the person who had sustained the injury. Clauses (b) and (c) have no application to the instant case for it cannot be said that the death has resulted by reason of the injury and also the action was not initiated by the legal representatives of the deceased. The only question is whether the action initiated under Clause (a) survives to the legal representatives after the death of the person. It is contended on behalf of the 3rd Respondent that the claim for damages consequent upon the injury is purely personal and the cause of action died with him and no legal representatives of the deceased-Petitioner could continue the action. It is based upon the maxim of *actio personalis moritur cum persona*.

13. 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 criticized 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 the 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.

14. u/s 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 1-A 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.

15. After the advent of the motorcar, transport by motor vehicles posed a constant threat of death, injury and damage to persons and property as well. In the case of accidents, suits for compensation could be filed in the ordinary civil Courts. The process was necessarily expensive and tardy. Therefore, in the place of the civil Courts, the Legislature had under the Motor Vehicles Act, created a new forum. Tribunals were constituted under the Motor Vehicles Act. Sections 110A to 110F were enacted. These provisions, however, only relate to procedure and have nothing to do with the substantive rights and liabilities of the parties. The object was to provide an easier, cheaper and speedier remedy to persons who have sustained injuries by reason of the rash and negligent driving of motor vehicles or where such rash and negligent driving has resulted in the death of a person to the legal representatives of the deceased for claiming compensation. As was pointed out in *C.K.S. Iyer v. T.K. Nair* 1970 A.C.J. 210 in relation to Section 1-A of the Fatal Accidents Act, compulsory damages u/s 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that u/s 2, the measure of damages is the economic loss sustained by the estate.

16. In CM A. Nos. 372 and 374 of 1972 dated 16th October, 1974 a Bench of this Court wherein I was a member had held that the word "legal representatives" occurring u/s 110-A of the Motor Vehicles Act must have the same meaning as defined in Section 2 (ii) of the Code of Civil Procedure.

17. When a person sues for compensation in respect of the injuries sustained by him u/s 110-A (I) (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 (I) 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 ?

18. On behalf of the 3rd Respondent, a decision relied upon by the lower Court i.e., *Calcutta Insurance Ltd. v. Bhupender Singh*, to dismiss the Appellant's

application to come on the record as legal representatives, was again cited before me. In the above decision, a single judge of the High Court of Punjab and Haryana had held that in respect of a claim made for personal injuries u/s 110-A of the Motor Vehicles Act where the claimant died during the pendency of the proceedings, the right to claim compensation for personal injuries ceased with the death of the injured. Reliance in that case was placed upon a Division Bench decision of the Patna High Court in *Jogindra Kuar v. Jagdish Singh* 1970 A.C.J. 344. The learned judge had referred to Section 306 of the Indian Succession Act and opined that this section left no room for doubt that cases of personal injury not resulting in the death of the person injured gave rise only to a personal action which the executors or administrators of, that person were not entitled to continue on his demise. Illustration (i) to the section which is as follows was relied on:

A collision takes place on a railway is consequence of some neglect or default of an official, and a passenger is severely hurt, but not so as to cause death. He afterwards died without having brought any action. The cause of action does not survive.

19. In the above illustration, the injured passenger died without having brought any action. The illustration cannot lend support to the view that in case the injured person had brought an action claiming compensation under various heads one of the heads relating to a loss to his property by reason of the accident causing the injury, it would not survive to his legal representative. In the illustration, no action was brought by the injured person. The illustration cannot be said to cover the circumstances of the particular case before me where the injured had in fact initiated an action for compensation.

20. In *Jogindra Kuer and Others Vs. Jagdish Singh and Others*, the Division Bench pointed out that the claim for compensation made by an injured person could be split up into two heads. In that case the Plaintiff who died during the pendency of the suit claimed under two broad heads. One was in respect of the cost of repairs of the motor car which was damaged due to the collision between Plaintiff's motor car and a truck belonging to the Defendant's in the case. The other was in respect of the expenses incurred in treatment and for compensation for the injuries sustained by the Plaintiff. The trial Court had awarded a compensation of Rs. 2,000 in respect of the injuries against Defendants 1 to 3 who were the owners and driver of the vehicle. Rs. 1,000 in respect of expenses incurred for the treatment, and Rs. 2,500 as costs of repairs to the motor car. The Plaintiff not being satisfied with the amount of compensation awarded, preferred an appeal, and during the pendency of the appeal, he died. In the appeal before the Division Bench, it was contended that the Plaintiff's right to seek relief was at an end on his death and his substituted heirs could not prosecute the appeal any further. In the plaint the claim for compensation was made in a sum of Rs. 12,500. It was held in the judgment that the said claim could be split up into- broad heads i.e., one was in respect of the cost of repairs

of the motor car and the other one in respect of the expenses incurred in treatment and for compensation for the injuries sustained by the Plaintiff. The last two claims were held to be claims not relating to any property. It was held that the right to claim an enhanced compensation with regard to these two items viz., expenses incurred in treatment and for compensation for the injuries came to an end in view of the maxim *actio personalis moritur cum persona*. It was held that the car which belonged to the Plaintiff had after his death passed on to the legal representatives and that the legal representatives of the Plaintiff were entitled to a decree for Rs. 3,000 against Defendants 1 to 3 which was the amount decreed by the trial Court and also the sum of Rs. 2,500 in respect of the cost of repairs to the motor car against all the Defendants.

21. The above bench decision has undoubtedly recognised that if the Plaintiff who died during the pendency of the appeal could claim loss to his property or in other words to his estate, the legal representatives could claim the same. With great respect to the learned judges, I find myself however unable to agree with the view that with regard to expenses incurred for the treatment of the Plaintiff the cause of action rested with the Plaintiff alone and could not be claimed by the legal representatives.

21A. In making a claim, a claimant could claim loss to his property of whatever description caused by the accident. There is no warrant for holding that the cause of action in respect of that loss would not survive to the legal representatives, in Halsbury's Laws of England Vol. 28 page, it was stated that it was well settled that under the head "loss to the estate of the deceased" damages could be claimed towards pain and suffering, loss of earnings and other damages actually suffered by the victim between the date of the accident and the moment of death, damages towards loss of personal property and damages towards for loss of expectation of life may be awarded. If after the death of a person injured, the legal representatives could claim for pain and suffering loss of earnings as loss to the estate, I fail to see on what principle if a claim was made by an injured person and he dies thereafter the cause of action in respect of the aforementioned thing would not survive to the legal representatives.

22. The decision of the Division Bench of the Calcutta High Court reported in Superintendent and Remembrancer of Legal Affairs, West Bengal on behalf of the State of West Bengal Vs. D. Surya Rao and Another, affords considerable assistance to the view I maintain. In that case one Augustine Paul Rozaria was involved in a motor accident on 2nd March, 1965 and sustained injuries as a result thereof. He filed a claim petition u/s 110-A of the Motor Vehicles Act. During the pendency of the claim, he died on 5th October, 1965. When the matter was brought to the notice of the Tribunal the Counsel for the deceased requested time for substitution of the heirs and legal representatives of the deceased. It was rejected on the ground that on the death of Rozaria the cause of action did not survive and so the question of substitution of heirs and legal representatives did not arise, and it was held that the claim had abated. In

revision to the High Court, the Tribunal's order was set aside and the case was sent back with permission to file an application for substitution and directing the Tribunal to consider the prayer for substitution on merits. Thereafter the application was taken up by the Tribunal. The Tribunal was of the view that though the deceased died later as a result of the physical injuries received in the above accident and the cause of action survived, but the prayer for substitution could not be allowed as the claim of the heirs for compensation would stand on a different footing, i.e., based on a different cause of action having regard to Clauses (a) and (b) of Section 110-A of the Motor Vehicles Act. The High Court upheld the view of the Tribunal that the cause of action did survive. It found itself unable to give effect to the view of the Tribunal that in view of the different causes of action under Clauses (a) and (b) of Section 110-A, the substitution could not be ordered. It was pointed out by the High Court that u/s 110-A the making of claims under Clause (a) and (b) are based on two different footings which are independent and exclusive and that it was no bar to the heirs and legal representatives of the deceased being allowed to prosecute the cause of action of their predecessor under Clause (a) when the same was permissible under law on the footing that the cause of action survived to them. They expressed the view that the claim made under Clause (a) should be allowed to be pursued but not under both Clauses (a) and (b) at the same time. The Bench also observed that the provisions of Order 22, Code of Civil Procedure, did not apply and there was no question of abatement. In the result, it was held that the Petitioners before the Court, who were the heirs of the deceased, were entitled to be substituted in the place of the deceased, claimant in the pending proceeding before the Tribunal, subject to the reservation that on such substitution they would be entitled to prosecute only that part of the claim of the deceased which would be attributable to physical injuries causing the death of the deceased and subject further, that in case they choose to prosecute the present proceeding on that footing, they would no longer be entitled to make the same claim on the independent provision i.e., Section 110-A (1) (b). The above case is an authority for the position that u/s 110-A (1) (a), the cause of action survives to the heirs or legal representatives on the death of the claimant and the pending proceeding could be continued by them in respect of compensation claimed for physical injuries even where the physical injuries had later resulted in the death of the deceased after his making a claim.

23. In the light of the foregoing discussion, I am of the view that the order of the Tribunal dismissing LA. No. 626 of 1970 and the consequent dismissal of O.P. No. 149 of 1966 should be set aside. I.A. No. 626 of 1970 is ordered. The Tribunal will proceed to dispose of O.P. No. 149 of 1966 in the light of the observation contained herein. The appeal is accordingly allowed and the matter is remanded to the Tribunal. There will be no order as to costs in this Appeal.