(1904) 02 CAL CK 0011

In the Calcutta High Court

Krishna Behary Sen APPELLANT

Vs

The Corporation of Calcutta RESPONDENT

Date of Decision : 25-02-1904

Acts Referred:
Probate and Administration Act, 1881 — Section 89

Citation : (1904) ILR (Cal) 406

Hon'ble Judges : Henderson, J

Bench : Single Bench

Judgement

Henderson, J.—In this case the plaintiff sues for damages, which are laid at Rs. 5,000, for malicious prosecution. The grounds upon which the damages are based are (1) that he suffered pecuniary loss in consequence of having to spend money upon his defence in the prosecution, and (2) that he had been put to great annoyance and trouble of mind and loss of time.

2. The suit was filed on the 19th November 1900, and the plaintiff died on the 8th September 1902, pending the hearing of the suit. Upon his death an application was made on behalf of his sons and legal representatives to have their names substituted in place of his upon the record, and that was done under an order of the 17th February 1903.

3. It is now said that the present plaintiffs are unable to maintain this suit on the ground that the cause of action did not survive to them.

4. So far as the claim for damages is based upon the injury to the plaintiff''s reputation, and upon the annoyance and trouble of mind caused to him, it is admitted that the plaintiffs are not entitled to pursue their claim. It is said, however, that the claim in respect of the pecuniary loss is an injury to the estate of the deceased, and that therefore the plaintiffs are entitled to go on with the suit, as if it had been a suit by the original plaintiff himself to recover the loss he had been put to by reason of defending himself against the prosecution. It is not contended that a suit for malicious prosecution is not a personal action. It is a

personal action, and it appears to me that the Common Law rule of actio personalis moritur cum persona applies. In case of a malicious prosecution it has been said that there are three sorts of damages which may result--(1) damages to a man''s fame, as if the matter of which the man is accused is scandalous; (2) damages where a man is put in danger of losing his life, limb or his liberty; (3) damages to a man''s property, as where he is forced to spend money in necessary charges to acquit himself of the crime of which he is accused, and that according to the circumstances he may sue for all or any of these different kinds of damages, but in each case the cause of action is the malicious prosecution.

5. In the case of Lendon v. London Road Car Co. (1888) 4 T.L.R. 448 the question as to survival of an action for the personal injuries after the death of the plaintiff before trial arose. The personal injuries were the result of an accident, and it was admitted that, under, the general rule of law, on action for personal injury died with the person. There the plaintiff had claimed damages for loss of earnings and for various sums paid for medical expenses. In his judgment Lord Coleridge said that the action was for personal injuries, that is, for injuries to the person, and the heads of damages relied upon (except as to one matter) resulted directly from those personal injuries. He went on to say: "No case showed that an action for personal injuries causing pecuniary loss could be continued after the death of the party injured, and the case of Pulling v. The Great Eastern Railway Co. (1882) L.R. 9 Q.B.D. 110 shewed just the contrary." In the case referred to by Lord Coleridge it was said: "None of the authorities go so far as to say that, where the cause of action is in substance an injury to the person, the personal representative can maintain an action merely because the person so injured incurred in his lifetime some expenditure of money in consequence of the personal injury;" and further on: "There is no decision which supports the proposition that because, in consequence of such injury, the person injured is put to expense, the case is brought within the category of cases to which the Statute of Edward III applies. Medical expenses are almost always made an element of damage in actions for injury to the person, but it has never before been suggested that the personal representative could maintain an action on the strength of such expenses."

6. Act XII of 1855 has been referred to, but it is admitted that that Act, which deals with the maintenance of cases by executors, administrators or representatives of a deceased person for recovery of certain moneys, applies to cases where the person injured might in his lifetime have maintained, but had not instituted an action.

7. Section 89 of the Probate and Administration Act has also been referred to. That section declares that all demands whatsoever, and all rights to prosecute or defend any suit, or other 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, or other personal injuries not causing the death of the party. Now the

matter complained of in this case is clearly a personal injury covered by that section. That being so the right of suit or rather the cause of action did not survive to the representatives of the plaintiff, and therefore the suit must be dismissed with costs on scale No. 2.