
(2019) 10 SHI CK 0103
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 400 Of 2017

Krishna Devi & Others

APPELLANT

Vs

Diwan Singh & Others

RESPONDENT

Date of Decision : 23-10-2019

Acts Referred:

Land Acquisition Act, 1984 — Section 18
Evidence Act, 1872 — Section 306

Citation : (2019) 10 SHI CK 0103

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : H.C. Sharma, Nitin Thakur, Naresh Sharma

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Challenge in this petition is to an order dated 14.09.2016, passed by learned Motor Accident Claims Tribunal (III), Shimla, whereby application of the petitioners for release of compensation amount was dismissed.

2. Bare minimum facts required for adjudication of the instant petition may be noticed hereinafter:-

2(i) One Sh. Gian Chand met with an accident on 08.11.2008. Claim petition was preferred by his widow Smt. Krishna Devi, son Sh. Chaman Lal, mother Smt. Sansaru Devi and father Sh. Bhagat Ram as claimants No. 1-4, respectively. This claim petition was allowed and vide award dated 19.12.2014 passed in MACP No. 10-S/2 of 2014/09, a compensation amount of Rs.10,99,400/- along with interest @ 7.5% from the date of filing of petition to its realization was granted.

2(ii) It is not in dispute that claimant/petitioners No.1-3 have been released their shares of compensation in terms of the award. The dispute is in respect of share falling to original claimant No.4 / Sh. Bhagat Ram, father of deceased Sh. Gian

Chand. It is the admitted case of the petitioners that Sh. Bhagat Ram had died on 06.03.2010, i.e. during the pendency of the claim petition. Petitioners have brought on record the Legal Heir Certificate of original claimant No.4/ late Sh. Bhagat Ram at Annexure P-4. As per this certificate, Sh. Bhagat Ram was survived by:- (i) his widow Smt. Sansaru Devi. (ii) daughter Smt. Madhu. (iii) daughter-in-law Smt. Krishna Devi w/o late Sh. Gian Chand and (iv) grandson Sh. Chaman Lal s/o late Sh. Gian Chand. Out of these four legal heirs, except Smt. Madhu, the other legal heirs/ present petitioners were already on record of the claim petition.

3. Present petitioners moved an application for release of share of late Sh. Bhagat Ram being his legal representatives. This application has been rejected vide impugned order on the ground that the award having been pronounced in favour of a dead person has become nullity and accordingly, share of late Sh. Bhagat Ram cannot be released in favour of his legal heirs. Aggrieved, petitioners have preferred present petition:-

4. I have heard Mr. H.C. Sharma, learned counsel for the petitioner and Mr. Nitin Thakur, learned counsel, for the respondents and gone through the appended record.

4(i) I am of the considered view that the learned Tribunal below has not exercised the jurisdiction vested in it in accordance with law for the following reasons:-

4(i)(a) The award was passed in favour of four claimants. One of them, i.e. claimant No.4, admittedly had died during the pendency of the claim petition, however, solely on that count in the facts and circumstances of the case, award could not have been held to have become a nullity. The award was in favour of claimant No.4 and not against him wherein claimant No.4 was held entitled to compensation amount being dependent upon his deceased son Gian Chand.

4(i)(b) In the facts of the instant case, the shares falling in terms of the award on account of death of Sh. Gian Chand, had already been released to claimants No. 1-3, i.e. petitioners.

Therefore, in the facts and circumstances of the case, after release of compensation amount to claimants/petitioners No. 1-3, award could not be held to be a nullity on account of death of claimant No.4 Sh. Bhagat Ram. Therefore, in no circumstances, award could have been held to be a nullity.

4(i)(c) Out of four legal heirs of original claimant No.4/late Sh. Bhagat Ram, three legal heirs, i.e. present petitioners were already on the record of the case before the MACT Tribunal. It was only his daughter Smt. Madhu, sister of deceased late Sh. Gian Chand, who was not on the record.

4(i)(d) A Division Bench of this court in LHLJ 2007 (HP) 270 titled as Collector Land Acquisition NHPC vs. Khewa Ram and others had framed following two questions for determination:-

"1. Whether an award under the Land Acquisition Act passed in favour of a dead person is nullity?

2. Whether in a Reference Petition under Section

18 of the Land Acquisition Act, 1984 where there are more than one petitioners and one of them dies, whether the petition abates as a whole or only qua the deceased?"

The above questions were answered in following manner:-

"12. In conclusion, the legal position can be summarized as follows:-

1. That a duty is cast upon the reference court to decide a reference petition even if the claimant does not appear.

2. If the claimant does not appear despite notice he does so at his own risk and the Court can answer the reference in the absence of the evidence led by the claimant.

3. A situation may arise where the claimant absents himself after leading evidence. In such a situation, the Court is bound to decide the reference petition on the basis of the evidence led before it.

13. The question that next arises is as to what happens if the claimant has died during the proceedings. This can also happen under various circumstances, some of which the being dealt with hereunder:-

a. In case there is only one claimant in an isolated case of land acquisition and the claimant dies, then obviously if the Court is unaware about the death of the claimant, it will proceed to decide the reference on the material placed on record before it. In such a case, if either the legal representatives of the claimant or the acquiring authority files an appeal, then the award of the District Judge will have to be set aside and the reference proceedings deemed to have been abated. The questions whether abatement should be set aside and whether the delay, if any, should be condoned, are questions to be decided by the District Judge alone and not by the appellate court.

a. However even in the aforesaid situation, the award cannot be said to be a nullity since the reference court is bound by law to answer the reference. In case none of the parties is aggrieved, the legal representatives can execute the award in accordance with law.

b. In cases where there are more than one claimants and each is owner of separate share, then the death of one of the claimants can never render the award to be a nullity. The award is answered in favour of all the claimants. Therefore, in an appeal filed either by the claimants or by the acquiring authority, the legal representatives of the deceased-claimant can be brought on record even during the course of the appeal and it is not necessary to refer the matter back to the reference court .

c. Where there are more than one petitions and they are decided by a common award and the sole claimant in one of the petitions has died during the pendency of the reference proceedings, the entire award cannot be termed a nullity. Since, the award is a common award based on common evidence led by all the parties, the legal representatives of the deceased can be brought on record during the pendency of the appeal also.

d. In cases (c) and (d) above, if any, will be qua the deceased and the entire proceedings will not abate. In both these cases the legal representatives can be brought on record even during the pendency of the appeal."

Relying upon the above judgment in the CMP(M) No. 274 of 2015 in RFA No. 80 of 2014, this Court observed as under:-

"3. The present is a case which is covered by (b) and (c) of para 13 of the judgment supra, because deceased Des Raj was not the only petitioner in the reference petition but his brother S/Sh. Jitender, Prakash Chand, Diwakar, Gian Chand and Tipender being co-owners of the acquired land were also the petitioners with him. Above all, the reference petition, they preferred has been decided by a common award passed in a batch of petitions on the basis of common evidence available on record. Therefore, irrespective of the death of deceased respondent Des Raj during the course of the proceedings in the reference petition in the trial Court, the question of abatement of the appeal and substitution of his legal representative can be gone into by this court in the present appeal. Since, his brothers, petitioners No. 1 to 3, 5 and 6 were their on record to represent the estate of the deceased petitioner-respondent and to pursue the petition, therefore, the question of abatement does not arise. The proposed legal representatives of deceased respondent Des Raj named in para 3 of the application are otherwise also required to be brought on record being entitled to receive the compensation in respect of the acquired land to the extent of their share and also to straighten the record."

In III (2017) ACC 795 (Kar.) titled as United India Insurance Co. Ltd. v. Mariyappa & Ors., it was observed thus:-

"19. So far as the entitlement of each claimant is concerned, it was brought to the notice of this Court that the first claimant, the grandfather died during the pendency of the proceedings before the Tribunal. Remaining claimants are father, brother and the sister of the deceased. They are all Class-II heirs. Therefore, they shall be entitled for equal share in the compensation."

High Court of Gujarat in 2015 (2) GLH 499, titled as Madhuben Maheshbhai Patel and Ors. vs. Joseph Francis Mewan & 1 Anr., observed as under:-

"10. Considering the aforesaid decision of the Division Bench of this Court in the case of Surpal Singh Ladhubha Gohil; decisions of the learned Single Judge of this Court in the case of Jenabai Widow of Abdul Karim Musa and in the case of Amrishkumar Vinodbhai; and aforesaid two decisions of the learned Single Judge

of the Rajasthan High Court, we are of the opinion that maxim "actio personalis moritur cum persona" on which section 306 of the Indian Evidence Act is based cannot have an applicability in all actions even in an case of personal injuries where damages flows from the head or under the head of loss to the estate. Therefore, even after the death of the injured claimant, claim petition does not abate and right to sue survive to his heirs and legal representatives in so far as loss to the estate is concerned which would include personal expenses incurred on the treatment and other claim related to loss to the estate. Under the circumstances, the issue referred to the Division Bench is answered accordingly. Consequently, it is held that no error has been committed by the learned Tribunal in permitting the heirs to be brought on record of the claim petition and permitting the heirs of the injured claimant who died subsequently to proceed further with the claim petition. However, the clam petition and even appeal for enhancement would be confine to the claim for the loss to the estate as observed hereinabove."

5. In view of the above, the impugned order is set aside. The petitioners are granted the liberty to approach the learned Tribunal by moving appropriate applications in accordance with law for their impleadment in the case, for release of the share of original claimant No.4/late Sh. Bhagat Ram as per their entitlement. The applications be decided in accordance with law. The present petition stands disposed of in the above terms along with pending application(s), if any.