

(1986) 10 OHC CK 0025
In the Orissa High Court

Mandari Rewa and Others

APPELLANT

Vs

Jagabandhu Ghadei and Another

RESPONDENT

Date of Decision : 29-10-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110D

Citation : (1987) 1 ACC 304 : (1987) ACJ 1084

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—Legal representatives of the injured claimant are the appellants in this appeal purporting to be u/s 110-D of the Motor Vehicles Act, 1939 (in short "the Act").

2. As a result of an accident caused by the truck bearing registration No. ORU 9233 on the Express High Way near Badapal on 6-8-1979 at 8 a.m., the claimant sustained fracture of the left leg, left elbow and injuries on other parts of the body. He was admitted as an indoor patient in the Government Hospital at Kendrapara and was transferred to S.G.B. Medical College Hospital on the next day. On that account, he claimed compensation of Rs. 30,000/-. After the case was made ready for hearing, an application was filed by the learned Counsel for the claimant that the petitioner died on 11-5-1982 for which substitution was necessary. The Tribunal posted the case to 3-6-1982 for taking steps for substitution. No step for substitution, however, was taken and the case was adjourned from day to day till 20th October, 1982, when the following order was passed.

It is reported by the Advocate for the petitioner that the petitioner died. This is a case claiming compensation for sustaining injuries in a motor accident. Right to compensation no more exists after the death of the deceased. The learned Advocate for the petitioner files a petition for time to show that the right subsists to the L.Rs. even after the death of the petitioner. Put up on 9-11-82 for citation of the decision by the Advocate for the petitioner.

3. The case was thereafter, adjourned till 10-1-1983 on which day, the following order was passed :

Sri S.K. Mohanty, Advocate files fresh vakalatnama on behalf of the petitioner Madhuri Bewa and also files fresh claim petition and a petition for substitution. Put up on the date fixed.

4. The order does not reflect the correct position. The petition filed was not for substitution. Along with the fresh application u/s 110-A claiming Rs. 50,000/- compensation, this petition was filed to accept the application for the claim where it was stated that the claim application of the injured may be treated as a part of the claim application. The relevant portion of the petition reads as follows:

1. That the husband of the petitioner sustained serious injuries on his body and was undergoing treatment till the date of his death.

2. That the husband of the petitioner filed the claim application for compensation for his injuries and during his treatment he died due to his injuries sustained in the motor accident.

3. That due to the death of the deceased the petitioners are entitled to get the compensation for the death of Dharanighara Jena and file the application for claim by way of amendment.

4. That the claim application filed by the petitioners may be a part of the claim application filed by the deceased.

Prayer

The petitioners pray this Hon"ble Court to be pleased to accept the application for claim,

And for this act of kindness, the petitioner as in duty bound shall ever pray.

5. On such a petition, the impugned order was passed which reads as follows:

The petitioner is represented by his advocate. None appears for the opposite parties. The claim is for sustaining injury by the petitioner in a motor accident. The petitioner is dead. The claim of compensation being a personal one the right to sue does not survive after the death of the petitioner. The claim, therefore, abates. Hence, the petition for substitution is dismissed and the claim for compensation is dismissed as the claim abates.

6. Mr. R.N. Mohanty, the learned Counsel for the appellants, submitted that the dismissal of the claim petition is an error of law. The Tribunal ought to have allowed substitution and continued the enquiry. Mr. K. C.J. Ray, the learned Counsel for the respondent No. 2 on the other hand relies on the maxim "action" personalis moritur cum persona" in the Law of Torts.

7. It is now the settled law of this Court in the decision reported in ILR 1972 Cut 275 (Oriental Fire and General Insurance Company Limited v. (Mrs. Kamal Kamini

Das and Ors.) followed in the latest decision, reported in Orissa Road Transport Company Limited Vs. Umakanta Singh and Another, that the right to compensation on account of injuries sustained in a motor vehicle accident is a branch of the Law of Torts. For the benefit of the claimants special procedure has only been provided under the Act. The Act provides that in respect of injuries short of death, the injured is to make the claim and in case of death the legal representatives shall make the claim. There is no departure from the common law maxim in the Law of Torts relied upon by Mr. Jagdev Ray.

8. The appellants rightly filed a fresh application. The same ought to have been registered as a separate proceeding and continued as per Law. The said application has not yet been disposed of. It has only been tagged to the present proceeding. The Tribunal shall deal with the said application separately in accordance with law. The claim of the deceased injured, however, has rightly been dismissed on the death of the claimant.

9. The appeal is accordingly, dismissed. There shall be no order as to costs.