

(1972) 09 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 71 of 1963

M/s. Oriental Fire and General Insurance Co. Ltd., New Delhi
and another

APPELLANT

Vs

Raja Ram Gupta and others

RESPONDENT

Date of Decision : 29-09-1972

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1972) 09 P&H CK 0032

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : D.R. Mahajan with Mr. Munishwar Puri, for the Appellant; L.M. Sari for the Respondents Nos. 1 and 2 and Mr. J.S. Wasu, Advocate General (Punjab), for the Respondents 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Nath Mittal, J.—This judgment of mind will dispose of 22 appeals and six revision petitions under Article 227 of the Constitution of India, the details of which are given hereinafter. All the appeals and the petitions have been filed against an award of the Motor Accidents Claims Tribunal (hereinafter referred to "the Tribunal) dated December 12, 1967, under the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"), by which the Tribunal decided seventeen claim applications.

2. The facts which have given rise to these appeals are the Bus No. P.N.T. 4129 (hereinafter referred to as the Private Bus") belonging to Manhor Singh Sethi, left Julluadur at about 6.00 P.M. on February 3, 1964, carrying a marriage party for Moga via Ludhiana. When in reached near Chaheru over-bridge on the Grand Trunk Road, a bullock-cart was proceeding towards the top of the aforesaid bridge. At that time, a bus bearing No. P.N.O. 76 (hereinafter referred to as "the State Bus") belonging to the Punjab Roadways was coming from the opposite direction on the over-bridge. The driver of the private bus was overtaking the

gadda and he had gone towards his right side. Both the buses collided and several passengers of both the bases received serious injuries. Both the drivers of the buses and some passengers died on account of the aforesaid accident. Seventeen claim applications were riled on behalf of the injured passengers and the legal representatives of the deceased, which were tried together and disposed of by a single judgment. The private bus was insured with M/s Oriental Fire and General Insurance Company Limited (hereinafter referred to as the Insurer"). The claim applications were filed against the State of Punjab, Manohar Singh Sethi and the Insurer. Separate written statements were died by the respondents who denied the allegations of the claimants and contested the claims. Inter alia, it was pleaded by the State that they were not liable to pay any compensation as the driver of the State bus was not driving it rashly and negligently and that the accident took place on account of rash and negligent driving of the private bus. The private owner and the Insurer of the private bus also denied the allegations regarding negligence of their driver and stated that the accident was caused on account of rash and negligent driving of the State bus. The tribunal came to the conclusion that the driver of the private bus was negligent to the extent of three-fourth and that of the State Bus to the extent of one-fourth. Consequently, it awarded various amounts of compensation to the claimants. The particulars of the appeals and revisions and amounts awarded by the Tribunal, are as follows:--

Serial No.

No. of appeal or revision.

Name of the parties in appeal.

Claim Application No.

Amount awarded

Category I-A

1

116/68

Punjab Stale v. Sham Sunder

98 C.T./64

Rs. 20,000.00

2.

117/68

Punjab State v. Shrimati Sarswati Devi

97 C.T./64

Rs. 27,750.00

3

118/68

Punjab State v. Vijay Kumar Chopra

113 C-T./64

Rs. 6,000.00

4

120/68

Punjab State v. Jaan Nath

99 C.T./64

Rs. 3288 00

5

121/68

Punjab State v. Rajhinder Kaur

112 C.T./64

Rs. 9,46500

6

123/68

Punjab Stats v. Ashok Kumar

106 C.T./64

Rs. 6,000.00

7

124/68

Punjab State `v. VishwaNath

114 C.T./64

Rs. 5,500 00

category I-B

(Petitions filed u/s 227 of the Constitution of India)

8

C.R. No. 691/68

Punjab State v. Dharampaul

98 C.T./64

Rs. 300.00

9

C.R. No. 784/68

Punjab State v. Kabul Singh

105 C.T./64

Rs. 160.00

10

C.R. No. 117/68

Punjab State v. Om Parkash

104 C.T./64

Rs. 120000

Category 11-A

11

71/68

Oriental Fire v. Raja Ram and General Insurance Company Limited

86 C.T./64

Rs. 14,000.00

12

75/68

do v. VishwaNath

114 CT/64

Rs. 5,500.00

13

76/68

do v. Vijay Kumar

113 C.T/64

Rs. 6,000.00

14

79/68

do v. Ashok Kumar

106 C.T./64

Rs. 6,00.00

15

82/68

do v. Rajinder Kumar

112 C.T./64

Rs. 9,465 00

16

72/68

do v. Sham Sunder

98 C.T./64

Rs. 20,000.00

17

72/68

do v. ShrimatiSarswatiDevi

97 C.T./64

Rs. 27,750.00

18

74/68

do v. JaganNath

99 C T /64

Rs. 3,288 00

19

77/68

do v. RameshwarDass

101 C.T /64

Rs. 7,500.00

20

80/68

do v. MadanLal

100 C T./64

Rs. 12,000.00

21

78/68

do v. BalbirKaur

95 C.T/64

Rs. 27,000.CO

Category II-B

(Petitions filed u/s 227 of the Constitution of India)

22

C.R. No. 418/68

Oriental Fire & General Insurance Company Limited v. Dharam Paul

88 C.T /64

Rs. 300.00

23

C.R. No. 419/68

do v. OmParkashGarg

104 C.T./64

Rs. 1,200.00

24

C.R. No. 420/68

do v. V. Kabul Singh

105 C.T./64

Rs. 160.00

Category III

25

133/68

Raja Ram v. Oriental Fire & General Insurance Company Limited

86 C.T./64

Rs. 9,000.00

26

134/68

VishwaNath v. do

114 CT/64

Rs. 5 500.00

27

135/68

RajinderKaur v. do

112 C.T./64

Ks. 9.46500

28

153/68

vijay Kumar v. do

113 C.T./64

Rs. 6,000.00

3. Mr. Lalit Mohan Sun has raised a Preliminary objection to the effect that the appeals and civil revisions filed under Article 227 of the Constitution of India filed by the State of Punjab, Manohar Singh Sethi and the Insurer, have abated on account of death of Manohar Singh Sethi, the private owner, on April, 21, 1968. He also states that no application has been filed for impleading his legal representatives on the record Mr. Des Raj Mahajan, the learned counsel for the Insurance Company and Mr. Manohar Singh Sethi, and the learned counsel for the State have controverted the aforesaid contention. They have stated that the appeals and the civil revisions under Article 227 of the Constitution of India do not abate. For the sake of convenience, I have made a division of the aforesaid cases in three categories. The first category relates to the appeals and revisions under Articles 227 of the Constitution of India filed by the State. Again first category has been sub-divided into two parts, namely Part "A" and Part "B", Part "A" in Category I relates to the appeals and Part "B" relates to civil revisions under Article 227 of the Constitution of India. Similarly in Category II, Part "A" relates to appeals filed by the Insurer and Mr. Manohar Singh Sethi and Part "B" to civil revisions under Article 227 of the Constitution. Category III relates to appeals filed by the claimants.

4. In the first instance, I shall deal with the cases of Category I-A. The said cases have been shown in the table above at serial Nos. 1 to 7. It is not disputed that Manohar Singh Sethi died on April 21, 1968. Manohar Singh Sethi is one of the respondents in all the aforesaid appeals. The claim of the appellants from arguments and the grounds of appeals appears to be that the driver of the State Bus is not liable for the accident at all, and that it was the driver of the private bus who was responsible for that and therefore, the state was not liable to pay any compensation. If the State is held not to be liable to pay any compensation and the amount of compensation is not reduced, then it would be the liability of the private owner to pay the whole amount to the claimants in the absence of the private owner in the array of the respondents, his liability cannot be increased. In all the cases, therefore, the impleading of Manohar Singh Sethi was essential as he was a necessary party. The decision cannot be taken in the appeals in his absence. In these circumstances, we have to see the effect of his death on the appeals. The learned counsel for the State has stated that the appeals under the Act do not abate on the death of a party. In support of his contention, he has relied on *The State of Rajasthan v. Mst. Parwati Devi* 1966 ACJ 123 Raj . The facts of that case were that Shrimati Parwati Devi, widow of Navneetlal, filed a suit against the State for recovery of Rs. 20 000/- as damages under the Fatal Accidents, Act, 1885 (hereinafter referred to as "the Fatal Act"). Her case was that her husband was employed as a Clerk in the office of the Executive Engineer, Public Works Department, and when he was travelling on official business in a truck belonging to the State, it caught fire on accrual of defect in its engine. As a result thereof, her husband had to jump out of the truck and in doing so, he struck against a stone and was killed. The suit was contested and a decree was passed in favour of the plaintiff for Rs. 14,780/- against which the State filed an appeal. When the appeal came up for Hearing, it was brought to the notice of State that Shrimati Parwati had died long before and her legal representatives had not been brought on record within the time permitted by law and consequently the appeal had abated. The matter came up before a Division Bench of the Rajasthan High Court and the learned Judges observed as follows :--

Held, such suits were by virtue of the provisions of S. 1-A of the Fatal Accidents Act representative suits, like suits under Order 1 Rule 8 of the CPC and all the persons for whose benefit they were filed should constructively be deemed to be parties to the suit. There was, therefore, no question of abatement arising in suits of this character or in appeals arising out of such suits. The provisions of Order 22 of the CPC were not attracted in such cases. All that was necessary for the appellant was to make an application to bring on record some or all of the persons whom the deceased represented.

5. Relying on the aforesaid observations of the learned Division Bench, the learned counsel for the State submits that even on the death of any other party in appeal, the appeal would not abate. In my view, the observations in the said case are not applicable to the facts of the present case. In this case, it is not the claimant who has died but it is the owner of the vehicle against whom, a decree

has been passed, had died. The Code of Civil Procedure no doubt does not apply in the proceedings before the Tribunals constituted under the Act. It also does not apply to the proceedings in appeal under the said Act. The general principles of abatement shall, however, be applicable where the appeal cannot proceed without the deceased party. In the case of death of a claimant, the matter is different. The observations of the Courts in cases of death of a claimant either before the Tribunal or during the course of appeal will not be applicable to the cases where non-claimants who are necessary parties, had died. No direct case has been brought to my notice and the matter is *res Integra*. Another case, *New Suraj Transport Company v. M/s. Rubi General Insurance Company* (F.A.O. No. 145 of 1968) has been cited before me which was decided by me on April 21, 1972. That was again a case where the claimant had died during the pendency of appeal. I have specifically stated in that case that the observations will apply only in the case of death of a claimant either at the stage of claim or appeal but they will not apply in the case of death of other persons. Any observations in that case, will, therefore, not apply to the facts of the present case. In various proceedings the CPC is not applicable but it has been held that the general principles of abatement will, however, govern those proceedings. The principles of abatement are based on equitable considerations and they are that cases should not be decided in the absence of a necessary party. In writs under Article 226 of the Constitution of India, it has been held by this Court that the general principles of Order 22, rules 3 and 4 of the CPC relating to substitution as distinguished from the technical provisions will apply. The observations of R.S. Sarkaria, J. in *Bhagwan Singh and others v. Additional Director of Consolidation, Punjab, Ferozepur* AIR 1968 P&H 360, are as follows: --

This Court will, however ; apply the principles as distinguished from the technical provisions of Order 22, rules 3 and 4 of the CPC relating to substitution in appropriate cases in the exercise of its discretion on the ground of Justice, equity and good conscience.

6. In *Dula Singh Vs. The Union of India (UOI) and Others*, a Division Bench of this Court held that an application for impleading the legal representatives of the deceased in writ proceedings will be governed by Article 137 of the Constitution. While making those observations, the learned Bench has proceeded on the assumption that the proceedings under Article 226 abate though it is not said in so many words in the judgment. In my view the analogy of writ petitions is applicable in the case of appeals under the enactments before this Court. In the absence of the parties it will not be possible to decide the cases. Therefore, in the circumstances stated above, it cannot be said that law of abatement will not apply in appeals on the death of a necessary party.

7. For the reasons recorded above, in my view, on the death of Manohar Singh Sethi, respondent, the appeals cannot proceed and stand abated.

CATEGORY I-B

8. It may be mentioned that the State has filed these revision petitions u/s 110-D of the Act. From the reading of the said section, it is clear that no revision is maintainable under that section. The amount awarded in all these claims is less than Rs. 2,000/-. u/s 110-D of the Act, no appeal can be filed against such awards. I, therefore, treat these revision petitions under Article 227 of the Constitution which appears to be the only provision under which this Court can entertain them. In these cases, the sole grievance of the appellants appears to be that excessive compensation has been awarded. That may not even be a sufficient ground for interference under Article 227 of the Constitution. However, at this stage, I am only concerned with the question of abatement. While determining the question, of compensation, the presence of legal representatives of Manohar Singh Sethi is necessary and the proceedings cannot continue in their absence. The aforesaid revision petitions under Article 227, on the facts of these cases stand on the same footing as writ proceedings under Article 226 of the Constitution. In fact, the case of Bhagwan Singh (supra) decided by Sarkaria J., was also under Articles 226 and 227 of the Constitution.

9. For the reasons aforesaid, these revision petitions also cannot proceed in the absence of Manohar Singh Sethi, and, as such, these also stand abated.

CATEGORY II-A

10. In this category, the appellants are the Insurer and Manohar Singh Sethi, deceased. The only contention which has been raised by the learned counsel for the appellants is that even if Manohar Singh Sethi had died, that will not affect insurer's right of appeal. In my view, the aforesaid contention of the learned counsel for the appellants is untenable. The amount of compensation for which liability has been fixed on Manohar Singh Sethi has been apportioned between the deceased and the Insurer. Under the Act, the liability of the Insurer is limited. In case, it is held that the liability of the Insurer should be decreased, naturally the liability of Manohar Singh Sethi will increase, if the amount of compensation awarded to the claimants, remains the same. The decree between the claimants and Manohar Singh Sethi has become final. The liability of Insurance Company has been fixed taking into consideration the liability of Manohar Singh Sethi. In these circumstances, the liability of Insurance Company cannot be changed. The reasons for abatement which have been given under Category I-A therefore, apply in the present appeals also.

11. Another argument advanced by the learned counsel for the appellants is that the total liability of the Insurer has been fixed at Rs. 31, 129/- whereas under the Act, the Insurer can be held liable only to the extent of Rs. 20,000/-. In support of his contention he has relied on clause (b) of sub-section (2) of section 95 of the Act, which is in the following terms :--

95(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :--

(a) * * *

(b) Where the vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver.

12. Mr. Lalit Mohan suri submits that under clause (b) of sub-section (2) of section 95 of the Act, the Insurer is liable to the extent of Rs. 20, 000/- to the passengers carried for hire or reward and for an equal amount in respect of persons other than the aforesaid persons. He further submits that the total liability of the insurer under the aforesaid section is to the extent of Rs. 40,000/-. From the reading of the section, it appears that the interpretation put by Mr. Lalit Mohan Suri is correct. Mr. Des Raj Mahajan has conceded that in case the Court comes to a conclusion that the Insurance Company is liable to pay compensation of Rs. 20, 000/ in the case of passengers and Rs. 20, 000/- for others, then his appeals have got no merit,

13. For the reasons aforesaid, I do not find any force in these appeals and the same are dismissed as abated.

CATEGORY II-B

14. For the reasons recorded under Category I-B the revision petitions in this part also abate.

CATEGORY III

15. Mr. Lalit Mohan Suri has conceded that in the case it is held that the appeals in the above-mentioned categories bad abated, his appeals also stand abated. I have already held that the appeals in Categories I-A and II-A have abated. These appeals, therefore, also stand abated. In the circumstances of these cases, I make no order as to costs.