
(1990) 12 SHI CK 0021
In the High Court Of Himachal Pradesh
Case No : L.P.A. No's. 8 and 10 of 1982

Narinder Kaur and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 11-12-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 6 Rule 17, 151
Motor Vehicles Act, 1939 — Section 110A

Citation : (1991) ACJ 767 : (1991) 2 ShimLC 381

Hon'ble Judges : P.C.B. Menon, C.J.; Davinder Gupta, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; D.K. Khanna and M.L. Chauhan, A.A.Gs., for the Respondent

Judgement

Devinder Gupta, J.—This judgment will dispose of L.P.A. No. 8 of 1982 (Narinder Kaur v. State of H.P.) and No. 10 of 1982 (H.R.T.C. v. Narinder Kaur) as they arise out of the same judgment delivered by a learned single Judge of this court in F.A.O. No. 18 of 1976 on May 24, 1982. [Reported in 1983 ACJ 34.

2. One Ajit Singh, while travelling on July 4, 19 73, in jeep No. DHB 5086 from Totu to Shimla, received serious injuries as a result of accident with truck No. HIM 4126 owned by the State of H.P. The accident occurred near Research Institute and Government of India Press on Cart Road, Shimla. Said Ajit Singh alleging the accident to have occurred due to rash and negligent driving of the driver of the truck filed a petition on January 2, 1974 u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") before the Motor Accidents Claims Tribunal, Shimla, claiming a sum of Rs. 50,000/- as compensation on account of pain, shock, disability, loss of earning capacity, treatment expenses and special nourishment etc. A sum of Rs. 1,600/- was claimed by way of damages caused to the jeep owned by him.

3. On and from 2.10.1974, management of the Himachal Government Transport of the State of Himachal Pradesh was taken over by the Himachal Road Transport

Corporation and the claim of the said Ajit Singh (hereinafter to be called as the "original claimant") was allowed to proceed against the said Corporation. The claim petition was resisted by the Corporation before the Tribunal. The original claimant was asked to produce evidence in support of his claim but before any evidence could be led, he expired on February 10, 1975.

4. On April 5, 1975, an application under Order 22, Rule 3 of the CPC read with Section 151 of the same Code was moved by the heirs of original claimant, who are now appellants in L.PA No. 8 of 1982 (hereinafter to be called as "the claimants"), seeking to be brought on record as claimants in place of original claimant. The application was resisted by the respondent Corporation on the ground that the original claimant had laid a claim for personal injuries and as such on his death right to claim compensation could not survive to his heirs. The claimants filed a rejoinder to the said reply pointing out that they were entitled to continue the application in respect of the loss, which had accrued on the receipt of the injuries by the original claimant, including the amount which he had incurred on his treatment and loss of business etc. as also the damage caused to the jeep. During the pendency of the application, on August 25, 1975, an application under Order 6, Rule 17 of the Code of Civil Procedure, along with proposed amended petition, was moved by the claimants seeking amendment of the claim petition by laying an additional claim of Rs. 2,00,000/- on the ground that the original claimant, who received serious injuries in the accident, died due to such injuries. This application was also resisted by the respondent Corporation by denying that the death of the original claimant was in any manner relatable to the injuries suffered by him in the accident which occurred on July 4, 1973.

5. The Tribunal on January 9, 1976, by a common order dismissed both the applications. The claimants challenged the said order by filing F.A.O. No. 18 of 1976. The learned single Judge came to the conclusion that the Tribunal was not justified in rejecting the application moved by the claimants for being brought on record as legal representatives of original claimant without returning a finding with respect to the cause of the death of the original claimant especially when the original claimant had also laid a claim with respect to loss to the estate but in so far as the order of Tribunal rejecting the application of the claimants for amendment of claim petition was concerned, it was upheld on the ground that the claimants had an independent right to move the application for the grant of compensation on the death of original claimant. While partly allowing the appeal, the learned single Judge remanded the matter with the following observations:

... I remand this case to the learned Tribunal with the directions to hold an enquiry in respect of the allegation that Ajit Singh deceased had died as a result of the personal injuries suffered by him in the motor accident in question and in case it is so found, to allow the applications of the appellants made by them under Order 22, Rule 3 and Section 151, CPC and to bring them on record in place of the deceased claimant. In case the finding is that Ajit Singh deceased met with a natural death unconnected with the personal injuries suffered by him

in the motor accident in question, the application of the appellants under Order 22, Rule 3 read with Section 151, CPC for bringing them on record would be allowed only to the extent it pertains to the claim in respect of the damage alleged to have been caused to the jeep. In that case the claim of compensation in respect of the bodily injuries shall be deemed to have abated.

6. Against this order, both, the claimants as well as the Corporation, have filed the present appeals. The contention of the claimants is that the cause of action in the claim petition before the Tribunal on the death of original claimant survived to them being the heirs and thus they were not only entitled to prosecute the claim laid by the original claimant but also to lay an additional claim for which separate application was moved by them seeking amendment to the claim petition. It was further contended that even if the additional claim laid by way of amendment is not allowed even in that case, the same should have been treated as an independent petition filed by them u/s 110-A of the Act and since they were bonafide in prosecuting their remedy before the Tribunal, delay of fifteen days in moving the application seeking the amendment of the original claim petition deserved to be condoned.

7. On the other hand, the argument of the learned counsel for the respondent Corporation was that cases of personal injury not resulting in death of the injured give rise only to personal action which the heirs of such person are not entitled to continue on his demise and as the claim for compensation laid by the original claimant was for personal injuries, both physical and mental, the right to make the claim being personal to him died with him on the principle of *actio personalis moritur cum persona*.

8. We have heard the learned counsel for the parties and gone through the records. The principle of *actio personalis moritur cum persona* relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tortfeasor. In its applicability, the principle stands considerably modified by the provisions of Section 306 of the Indian Succession Act, which clearly lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his death survive except causes of action for defamation, assault 1/ personal injuries not causing death of the party etc. which come to an end with the death of injured. The loss to the estate is thus not covered by the exceptions contained in Section 306 of the Indian Succession Act. While taking this view, we are fortified by the decisions of the Supreme Court in *Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair*, and *M. Veerappa Vs. Evelyn Sequeira and Others*, . The claimants as legal representatives of the original claimant were, as such, entitled to be substituted in his place with a view to continue the proceedings in the case and to have a decision on the claim in respect of the loss caused to the estate of the deceased.

9. In so far as the additional claim laid by the claimants is concerned, it was an independent claim which they were entitled to make under the provisions of

Section 110-A of the Act. To succeed in this claim, no doubt they will have to prove that the death of the original claimant was due to the injuries sustained by him in the accident in question and was not due to any other intervening circumstance not connected with the injuries sustained during the course of the accident.

10. After the matter had been heard, learned counsel for the claimants pleaded that a submission had been made in alternative to treat the amended petition as a separate petition and to try it as a claim laid by the claimants made u/s 110-A of the Act and as they had been bona fide in prosecuting their remedy before the Tribunal the delay of about fifteen days deserved to be condoned. Learned counsel for the respondent Corporation has no objection in treating the amended petition as a separate claim petition made by the claimants independently, subject, however, to the right of the Corporation to contest the same on all other available grounds except the ground of limitation. We order accordingly.

11. In view of the above, both the appeals are disposed of as indicated above with a further direction to the Tribunal that claim petition dated August 23, 1975 instituted on August 25, 1975, which is at page 27 of the record of the Tribunal will be registered as a separate petition having been made within the period of limitation and will be disposed of in accordance with law. As the claim petition has become pretty old and arises out of an accident which occurred in the year 1973, therefore, efforts should be made to dispose of the same as expeditiously as possible and not later than June 30, 1991. Parties will bear their own costs. The parties are directed to appear before the M.A.C.T. on 21.12.1990.