(1980) 07 GAU CK 0005

In the Gauhati High Court

Case No : Civil Revision No. 24 of 1977

New India Assurance Co. Ltd. APPELLANT

Vs

Purabi Saikia and Others RESPONDENT

Date of Decision : 21-07-1980

Acts Referred:

- Assam Motor Accidents Claims Tribunals Rules, 1960 — Rule 22
- Civil Procedure Code, 1882 — Section 431
- Civil Procedure Code, 1908 (CPC) — Section 115
- Constitution of India, 1950 — Article 136, 227, 39A, 41
- Insurance Act, 1938 — Section 7
- Legal Representatives Suits Act, 1855 — Section 1
- Motor Vehicles Act, 1939 — Section 101, 102, 103, 103A, 110A
- Succession Act, 1925 — Section 306

Citation : (1980) 07 GAU CK 0005

Hon'ble Judges : K.N. Saikia, J;K. Lahiri, J

Bench : Division Bench

Advocate : P. Choudhuri and Mr. B.K. Acharyya, for the Appellant; S.N. Chetra, A.K. Choudhary and Mr. S. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

K. Lahiri, J.—The petition arises from a battle between a nationalised insurance company (the Petitioner) a public institution and the children of the injured (now deceased) 4 young girls and a minor boy. The claim is for an award of expenditure incurred for the treatment of the injured. The present application u/s 115 of the CPC read with Article 227 of the Constitution unfolds a telling story. A simple case of compensation proceeding has just crossed its 10th year. The injured and his wife died in the course of the proceeding, leaving the children pitted against the might of the insurer, to recover none too high a compensation.

2. Before we express our view on the question mooted, we would observe some disquietening features of the case. It took about 7 years to complete the proceeding before the Tribunal though such claims, on the mandates of the law

makers, require quick despatch. In the course of hearing before the Tribunal the Applicant died and in the course of proceeding in this High Court his widow followed him. The amount of claim awarded for expenditure incurred for treatment of the injured cannot be on the high side. Against the surviving 5 young legal representatives of the injured contests a public institution. The Petitioner is aware that it can contest the proceeding on the limited grounds set out in Section 96 of the Act and the point taken does not fall within the ambit of that section. The Supreme Court of India has reiterated in several cases that public bodies should resist the temptation to raise technical pleas or defeat honest claims by legally permissible but unjust contention including the narrow question of limitation. In this context the Supreme Court in The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another, observed:

public institutions convict themselves of untrustworthiness out of their own mouth by resorting to such defences.

When the State of Haryana, in State of Haryana v. Darshana Devi 1979 A.C.J. 205 (S.C.), contested the claim of compensation for the killing of the sole bread winner and the Government raised the question of court fee payable by the claimants, the Supreme Court observed that the Government committed a social wrong and injustice in not settling the claim but fighting like a cantankerous litigant. Their Lordships pointed out the solemn duty of the State enjoined in Articles 39-A and 41 of the Constitution, namely, its duty to render public assistance, without litigation in cases of disablement and undeserved want. It has been observed that insurance against third party risk is compulsory, motor insurance has been nationalised, the victims are mostly below the poverty line and litigation is nothing but compounded misery; it recommended on the spot payment of compensation and critically observed that accident claims pending before the Tribunals in heartless slowness. It noticed the need to make pretrial settlement by narrowing down all technical controversy, bearing in mind that it is the prime duty of all to "wipe every tear from every eye" which has judicial relevance, "for law must keep its promise to justice."

3. It has been contended on behalf of the Petitioner, time without number, that justice is blind. Is justice blind or the dispensers mere computers? Law is what law should be and must serve its objects and purposes. Law must be warm and not a cold collocation of words. It must grant congruous relief to the beneficiaries of the legislation. Protective provisions of insurance in the Act are for poor Indians. They are the recipients who must be given the benefits unless any insurmountable blockade prevents the grant of relief. It is a case where the injured did suffer the injury, was hospitalised, did expend money for his treatment and claimed refund of expenditure incurred by him towards treatment of the injuries. The learned Counsel for the Petitioner has very rightly desisted from disputing that the injured was wronged, his family members suffered and the estate suffered pecuniary loss in meeting the medical expenditure. The Petitioner fights on principles, to obtain a settled decision. The contest is not on

moral principle nor based on humanitarian principle but on a very technical question of law which requires a straight answer.

4. On 25.6.70 while Jogen Saikia (since dead) was travelling in his car a diesel truck bearing No. ASZ 4264 allegedly driven rashly and negligently came from the opposite direction and collided with the car, while the car was on its extreme left hand side. Late Saikia sustained an injury on his neck, had to be hospitalised and filed an application for award of compensation u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter described as "the Act") before the Motor Accidents Claims Tribunal, Gauhati (hereinafter described as "the Tribunal"). It was registered on 13.8.1970. The claim of the injured was for compensation for medical expenses incurred by him for the treatment of the injury sustained. The claimed amount is Rs. 25,000/-. The proceeding continued, the Petitioner examined himself and one witness. But during the course of the proceeding he died in New Delhi on 24.6.76 while working for gain as Member of Official Legislative Language Commission of Government of India. Upon his death, his widow, 4 daughters and a son made an application before the Tribunal for permitting them to be substituted in place of the Applicant. It was claimed by them that one of the reasons for the premature death of Shri Saikia was shock sustained by him in the accident. It was vehemently opposed by the Petitioner-insurer. The Tribunal upon hearing the parties allowed the prayer by its order dated 12.11.76 and adjourned the proceedings till 27.1.77 for further evidence on behalf of the Applicants. 2 more witnesses were examined on behalf of the claimants. None of the opposite parties adduced any evidence though they were granted time. The case of the opposite parties was closed and the date of argument was fixed on 11.4.77. In the meantime the Petitioner filed an application on 18.3.77 before this Court. A rule has been issued and the proceeding before the Tribunal has been stayed. The matter was heard by a single Bench and referred to a larger Bench.

Mr. P. Choudhuri, learned Counsel for the Petitioner contends that the Tribunal had no jurisdiction to permit the legal respresentatives to be substituted in the cause before the Tribunal in view of the maxim "actio personalis moritur cum persona", (referred to as "the maxim" hereinafter) and Section 306, Indian Succession Act (hereinafter referred as "the Succession Act"). The main line of attack is that the right to sue for damages for injury sustained in a motor accident is a "personal injury" and the cause of action is extinguished on the death of the injured. In other words, the learned Counsel contends that right to sue for damages for "personal injuries" not causing the death of the injured is extinguished on his death. The learned Counsel relies on some of the decisions of the High Court in support of his contention.

5. The learned Counsel for the Petitioner contends that Section 306 of the Succession Act incorporates the Common Law rule "actio personalis moritur cum persona" (a personal right of action dies with the person) to the extent that all demands whatsoever and all rights to prosecute or defend any action at the time

of his decease are extinguished in respect of causes of action for defamation and assault as defined in the Indian Penal Code or other personal injuries not causing the death of the party or the relief sought could not be enjoyed or granting it would be nugatory. As the injured, in the instant case, sustained "personal injury" and died after lodging his claim for compensation, his death being not the result of the injury sustained, the cause of action for his "personal injury" extinguished on his death. Thus, the Petitioner claims, the Tribunal acted without jurisdiction in allowing the legal representatives of the deceased to be substituted on his death as they could not continue or maintain the proceedings in view of the bar imposed u/s 306 of the Succession Act read with "the common law rule".

6. After due consideration of the contentions of the learned Counsel appearing on behalf of the parties, we hold that the Tribunal was justified in permitting the legal representatives to be substituted. We set out our reasons hereinbelow:

(i) Even assuming that an action before the Claims Tribunal under Chapter VIII of the Act is an action in tort and the insured is a tort-feasor, we find ourselves confronted with a situation in which we cannot apply the provisions of Section 306 of the Succession Act or ''the maxim''. The reason is not far to seek. The maxim as well as Section 306 speak that on the death of the person causing personal injury the right of action is extinguished. It is one part of the section. The other part of the section is that the right to prosecute is extinguished on the death of the injured. These constitute an integral part of the whole system envisaged in Section 306 and the maxim. Is there any warrant for applying one portion of the maxim and/or Section 306 when we are unable to apply the other portion which forms an integral part of the whole system? It will be seen on perusal of Section 102 of the Act that the death of an insured (owner of a vehicle) after an accident giving rise to a cause of action for claim under Chapter VIII of the Act does not extinguish a cause of action arising out of the accident against his estate or against his insurer. It follows, therefore, that the death of the insured (tortfeasor) does not extinguish the cause of action. Therefore, half of Section 306 is inapplicable in a claim proceeding in view of the provision of Section 102 of the Act. In the result, we are constrained to hold that we do not see any warrant for applying only one part of Section 306 of the Succession Act and/or the maxim, without taking along with it the other portion which forms an integral part of the whole system. Section 102 of the Act postulates that Section 306 of the Succession Act as well as the maxim are inapplicable in a claims proceeding under the Act.

(ii) Now, let us turn to the right to prosecute such action. It is contended that it is a "personal action" and therefore, the claim lodged by the Petitioner was extinguished on his death. Does ''the Act'' characterise such actions to be "personal actions"? Personal action signifies an action which can be brought by the person himself, who is injured and not by his legal representatives, vide Mozley and Whitley''s Legal Dictionary. A "personal action" has been defined in

Black''s Law Dictionary, (Revised 4th Edition, on page 50) as "An action which can be brought by the person himself, who is injured and not by his legal representatives". However, Section 110-A(1)(c) of the Act rules that an action for compensation can be brought by a duly authorised agent of the person injured. As such, such a claim can be lodged by the injured vide Section 110-A(1)(a) of the Act as well as by his agent or representative u/s 110-A(1)(c). Hence, the "character of the action" expressed in the Act is not a personal action. When Section 110-A of the Act sets out the nature and character of the action to be not personal, it shuts the door of the applicability of Section 306 of the Succession Act or the maxim in claims proceedings under Chapter VIII of the Act.

(iii) The maxim, underlying Section 306 of the Succession Act, a Common Law rule of England, has been extended from its homeland. It does not stand to reason why the unwholesome maxim should be nourished in India and made applicable to proceedings under a social legislation in a welfare State. The object and policy of introducing Chapter VIII of the Act is to provide for compensation to little Indians, most of whom are way below the poverty line. Compensation is ensured by making statutory provision of insurance against third party risk compulsory. Does it stand to reason that heirs of an injured should be deprived, denied or forbidden to get compensation of the loss for wrongs committed against his predecessor which occasioned pecuniary loss to them and/or the estate of the deceased injured ? We note that the Legal Representatives'' Suit Act, 1855, enables executors, administrators or representatives to sue in respect of certain wrongs committed in the lifetime of a deceased. u/s 1 of the said Act, an action can be maintained by the executors, administrators or representatives of any person deceased, for any wrong committed in the lifetime of such person, which has occasioned any "pecuniary loss" to the estate of the deceased. Expenditure incurred for medical relief, loss of earning of the injured, etc. are some of the instances of such pecuniary loss to the estate, when a wrong is committed to a person in consequence of which he sustains pain, disfigurement, etc., which are absolutely personal in character and have nothing to do with pecuniary loss to his family and/or the estate, the provisions of Section I may be inapplicable and Section 306 of the Succession Act may come into play. However, when the consequence of an injury (harm or damage) occasions any pecuniary loss to the family or the estate of the deceased, an administrator etc. is always entitled to maintain action u/s 1 of the Legal Representatives'' Suits Act and Section 306 of the Succession Act has no application. In the instant case, the entire claim of the deceased was for medical expenses incurred by him. The expenditure occasioned pecuniary loss to his estate and the children of the deceased had to bear the brunt of the pecuniary loss. Hence they have every right to maintain the action initiated by their father. In the result, we hold the impugned order to be valid.

(iv) As to the true construction of the words "personal injuries" which occur in Section 306, Succession Act, there is a conflict of authorities. According to Calcutta High Court, in Krishna Behari Singh''s case ILR Cal. 993 , Bhupendra

Narayan Sinha Vs. Chandramoni Gupta, the expression "other personal injuries" are confined to physical injuries alone whereas vide Motilal Satyanarayan Vs. Harnarayan Premsukh, ; Rustomji Dorabji Vs. W.H. Nurse and Parthasarathi Naidu, Punjab Singh v. Ramautar Singh AIR 1920 Pat 841 , Ratanlal Bhannalal Mahajan Vs. Baboolal Hajarilal Jain and Others, the expression includes claim for compensation for loss of reputation and mental agony of the injured as well. In AIR 1931 9 (Nagpur) it has been held that the expression includes in-juries of all descriptions caused by tortious act and is not restricted to bodily injuries alone. Different methods were adopted by the learned Judges under different set of circumstances. None dealt with the facts revealed and the problem which has cropped up in the instant case.

Let us analyse independently to ascertain the meaning of the expression and the purpose why the expression is used in the structure of the provisions contained in Section 306 of the Succession Act. Defamation, assault as defined in the Indian Penal Code and other personal injuries not causing death have been included in Section 306 along with "the cases where on the death of the party, the relief sought could not be enjoyed or granting it would be nugatory". In assault under the I.P.C., actual physical violence is not necessary. However, in causing "personal injuries", use of force is undoubtedly essential. In assault no bodily injury is caused or physical violence effected. The effect of assault is mental agony or loss of reputation.

These are out and out personal. However, the expression "personal injuries not causing death" connote injuries that result some effect just short of causing death. Ordinarily, the nature and character of the injuries contemplate bodily injury, like a cut, bruise or a broken limb, or the like, as distinguished from injuries to his property or reputation. Such personal injury may cause three-fold effects. First, the injured may suffer mental agony or loss of reputation, bodily pain or sufference of personal nature and character, say, personal loss due to disfigurement, mar of beauty, mental agony or loss of reputation etc. These are entirely and exclusively personal to the injured. Secondly, the injury may cause pecuniary loss to the estate of the injured resulting from the accident, say, expenditure incurred for treatment, hospitalisation, etc. Thirdly, pecuniary loss may be sustained by the members of the family of the injured. "Personal injury" which results loss of the nature and character set out under the first head are personal loss to the injured and may be grouped with defamation and assault, which occasion personal loss only. The personal injuries not causing death must be considered to be injuries or wrongs of the classes preceding and succeeding the expression. The preceding words "defamation and assault" as well as the subsequent expression "the relief sought could not be enjoyed or granting it would be nugatory", in Section 306 of the Succession Act, lead us to interpret the expression in a restrictive sense. The word "injury" means any wrong or damage done to another on his person and does not include wrong or damage caused to his rights, reputation or property. The nature of the injury is limited to "personal injury" and no other class of injury. The word "personal" as defined in

Black''s Law Dictionary (Revised 4th Edition) reads:

appertaining to the person; belonging to an individual; limited to the person....

Therefore, only the wrong or damage which pertains to the injured alone and belongs to him alone or limited to the injured alone, is the wrong and damage which die along with the death of the injured. But, damages or wrongs which travels beyond the personal loss of the injured, but falls in an area where the effect of wrong or loss are borne by others, they are not covered within the purview of the said expression. When pecuniary loss is occasioned to the family members of the injured and/or their estate suffer pecuniary loss resulting from the injury, such claims cannot be said to be personal claims to attract Section 306. While considering the question of damages occasioned by a fatal accident Sir Shadilal, C.J., in AIR 1925 636 (Lahore) observed on page 636:

The law contemplates two sorts of damages : the one is the pecuniary loss to the estate of the deceased resulting from the accident; the other is the pecuniary loss sustained by the members of his family through his death. The action for the latter is brought by the legal representative, not for the estate, but as trustees for the relatives beneficially entitled; while the damages for the loss caused to the estate are claimed on behalf of the estate and when recovered, form part of the assets of the estate.

The principles enunciated have been approved by the Supreme Court in Gobald Motor Service Ltd. v. R.M.K. Veluswami 1958 A.C.J. 179 (S.C.). Dealing with the same matter, the Supreme Court, in C.K.S. Iyer v. T.K. Nair 1970 A.C.J. 110 (S.C.) examined the effect of an accident under the Fatal Accidents Act and considered the nature and character of losses sustained in such accidents resulting in the death of the injured and described them as (1) pecuniary loss to the beneficiaries and (2) loss sustained by the estate. In our opinion, in an accident involving personal injury not resulting in death cause these damages as well as absolutely personal damage or wrong, as the cause of action thereof ''dies with the death of the injured, but the classes of damages which cause damage or wrong to the estate or family members can be maintained, even on the death of the injured, as they affect pecuniary losses to the members of the family or the estate that devolves on the heirs. As such, in respect of claim of damages under the last two categories of damages, the legal representatives of the deceased injured are entitled to recover damages and can maintain action.

(v) There is another facet standing as a stumbling block against acceptance of the Petitioners contention. The Tribunal is a creature of Statute. It has no power to dismiss a proceeding on the death of any of the parties as the provisions of Order 22 of the CPC are not applicable to the proceedings. Power of such dismissal must be expressly conferred by the Statute empowering the Tribunal to dismiss a proceeding on the happening of such contingency. In Samsul Huda v. London and Lancashire Insurance Co. Ltd. AIR 1972 Gau. 121 , it has been held that the Tribunal cannot dismiss a proceeding for default of appearance of the claimant after framing of the issues. It relied on Commissioner of Income Tax, Madras Vs. S. Chenniappa Mudaliar, The Tribunal dismissed an application for compensation on default of appearance of the claimant. this Court held that the Tribunal had acted without jurisdiction. Scanning the Act and the provisions of the Rules made u/s 111-A of the Act styled as "The Assam Motor Accidents Claims Tribunal Rules, 1960", we find that the provisions of rule 22 have been purposely omitted in the Rules. Only some of the provisions of the CPC been applied and insofar as the other procedures and powers are concerned the Tribunal has been given all powers to follow such procedure "as it thinks fit"-vide Section 110-C of the Act. It follows, therefore, that the provisions of Order 22 have been intentionally withheld permitting claims proceedings to continue notwithstanding death of a party. It shows the intention of the legislature not to apply the provisions of Section 306 of the Succession Act, in such proceedings. This apart, the Tribunal, a creature of Statute, cannot dismiss a proceeding on the death of a claimant and is bound to permit the proceedings to be continued by executors, administrators or legal representatives. This is precisely what the Tribunal has done in the instant case and as such the order is impacable.

(vi) There is no bar imposed in the Act or the Rules framed thereunder to substitute legal representatives on the death of the Applicant. Hence the exercise of the power cannot be termed to be without jurisdiction to attract Section 115, CPC or Article 227 of the Constitution.

(vii) All third party insurance policies are effected by the owners of the vehicles for their benefit as well as for the benefit of those who would be entitled to compensation. The policy of insurance is for the benefit of the third parties. The policy creates a trust in favour of the objects named in the policy. In our opinion, such a policy effected by a man for the benefit of unnamed person enures for the benefit of any such beneficiary. The principles are applicable in the case of accident insurance policy as well vide Snell''s Principles of Equity, 26th Edition at page 103-104. Therefore, the trust so created by the insured in favour of the third party is a trust created in favour of the third party and on the happening of an accident the injured is entitled to the trust so created and even if he dies his legal representatives have rights to pursue the claims to recover the policy money. In this view of the matter as well, a legal representative of the injured have the right to continue such proceedings.

(viii) The Supreme Court has held in D. Nataraja Mudaliar Vs. The State Transport Authority, Madras, that while granting permits, the Transport Tribunals function quasi-judicially. In Dhani Devi Vs. Sant Bihari and Others, the Supreme Court has held that on the death of the Applicant before the final disposal of his application for grant of a permit in respect of his vehicle, the Regional Transport Authority has power to substitute the persons succeeding to the possession of the vehicle, in place of the deceased Applicant and to allow the successor to prosecute the application. The main thrust of the decision is that the relief asked for in the application was dependent upon and related to the possession of the vehicles and as such, the application was capable of being revived at the instance of the person succeeding to the possession of the vehicle. The same view has been taken by their Lordships in Maharashtra State Board Transport Corporation Vs. Mangrulpir Jt. Motor Service (P) Ltd., and Others, and in Ram Autar Lal Jain Vs. Maya Kaur and Others, The last named decision ruled why their Lordships had held in Ram Autar Lal Jain Vs. The Minister of Transport and Others, that substitution in that case was an improper exercise of discretion. Their Lordships held that in Ram Autar Lal Jain Vs. The Minister of Transport and Others, the successors was not in possession of the vehicle. Hence, it follows that in quasi-judicial proceedings under the Motor Vehicles Act, substitution is permissible. Therefore, the order of substitution in this quasi-judicial proceeding before the Claims Tribunal must be held to be within the power of the Tribunal. It follows from the decisions that if the relief asked for is connected with the property left behind by the deceased, the heirs can continue the claim, if due to any accident there was any pecuniary loss to the estate of the deceased and/or pecuniary loss sustained by the heirs. The medical expenditure incurred, in the instant case, was expended from the income of the deceased and it definitely had some effect on the heirs as they were also deprived of the amount which would have gone to them. In this view of the matter as well, we hold that the impugned order is valid.

(ix) In criminal appeals we find that an appeal abates on the death of a convict except in appeal from a sentence of fine. The reason is that the imposition of fine affects the estate and if the conviction stands the fine may be realised, or, if the conviction is quashed, the fine paid by the convict may be recovered by the heirs of the deceased. The rational, that an appeal from a sentence of fine does not abate, is based on the principle that the representatives of the deceased convict cannot be allowed to appeal unless he could establish a "legal interest" as opposed to sentimental interest, i.e., clearing the name of the convict. However, an appeal does not abate in the case of a sentence of fine. Let us take another contingency, say, the allegation against X is that he has murdered his father which disentitles him to succeed. He dies after conviction or on presentation of the appeal. The successors of X may prefer an appeal or claim substitution, because it affects their legal right to succeed to the property on proof of innocence of X, which establishes that the successor has "a legal interest" as opposed to sentimental interest in the case.

In The State of Kerala Vs. Narayani Amma Kamala Devi, their Lordships considered Pranab Kumar Mitra Vs. The State of West Bengal and Another, and held that an application for revision could be filed by a legal representative of a deceased convict sentenced to fine. It was held that though the provisions of Section 431 of the old Code did not apply to revisions, the heirs or successors of the convict sentenced to fine could prefer a revision even after the death of the convict. The underlying principle is that if the cause of action affects the estate, legal representative is entitled to prosecute the cause even on the death of the deceased convict.

In Bondada Gajapathy Rao Vs. State of Andhra Pradesh, the convict was sentenced to imprisonment for life. He preferred an appeal under Article 136 of the Constitution, but died during the pendency of the appeal. The Supreme Court refused the leave sought by his legal representative to continue the appeal. However, it held that if sentence of fine affects the property it is just and proper to allow continuance of the hearing on the death of the accused by his heir. Sarkar, J., observed as follows:

The principle on which the hearing of a proceeding may be continued after the death of an accused would appear to be the effect of the sentence on his property in the hands of his legal representatives. If the sentence affects that property, the legal representatives can be said to be interested in the proceeding and allowed to continue it.

Mudholkar, J., on the authority of the decisions of English Courts and the Supreme Court of U.S.A. held that the right to intervene in such an appeal is permissible if the pecuniary interests of the heirs are affected. His Lordship observed:

That interest would only be a pecuniary one and where the estate is not affected by the conviction there would be no ground for allowing the intervention of the heir or executor.

Therefore, the right to continue the action depends on the question whether the judgment rendered touched the assets of heirs or touched assets which would come to the legal representatives or not. Herein, there is no contest that the expenditure incurred caused pecuniary loss to the estate as well as the heirs of the deceased and the present proceeding is directly concerned with recovery of such damages. It is not a proceeding to recover something from another person or authority on the strength of the award by the Tribunal. As such, we find the impugned order to be valid.

(x) Let us probe the matter from another angle to resolve the question. We find that under the Common Law Rule a person injured by reason of another man''s negligence has no right of action against the insurer who has undertaken to indemnify the wrong-doer. His only cause of action is against the wrong-doer, whether the wrong is treated as a tort or as a breach of contract. Let us scan the provision of the Act to find out as to whether (1) the Common Law Rule is applicable in respect of the claim proceedings, (2) whether the injured has cause of action against the wrong-doer, alone and (3) whether the injured has no right of action against the insurer.

The Act enables a third party, who has a claim against an assured to establish a direct right of action against the insurer of the assured under various circumstances, including his insolvency. Section 95(5) of the Act provides that "Notwithstanding anything elsewhere contained in any law", an insurer is liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. The liability to indemnify is not limited to the assured in a third party insurance. It extends to the extent of indemnifying the third party. The liability of the insurer to the person or classes of persons named generally in the policy though not specified, is imprinted in the section. The classes of persons and/or the third party though not named specifically are actually the beneficiaries. Thus, a trust is created in favour of the third party (though not named specifically). Thus, a policy effected by the assured for the benefit of third party (not named specifically) enures for the benefit of any third party, if an accident occurs due to negligence of the driver. The trust money is kept in security by the insurer u/s 95-AA of the Act, which provides that in addition to the deposits to be made u/s 7 of the Insurance Act, 1938, every such insurer is bound to keep deposit with the Reserve Bank or the State Bank a sum of Rs. 30,000/- as security for the due discharge of any liability covered by a policy of insurance issued in accordance with the provisions of this Chapter. (Italics by us). The deposit can be used only for meeting the claims arising in respect of insurance against third party risk. When an award is made but the claimant fails to recover the money from the insurer or the driver, or if the insurer goes into liquidation, the security deposit may be directed to be paid by the Claims Tribunal, to satisfy the claim awarded by it. Section 96 imposes a duty or obligation on insurers to satisfy judgments against persons injured in respect of the third parties. Section 97 confers right on third parties against the insurers on insolvency of insured. Section 99 prohibits any settlement between the insurer and the insured in respect of any claim which might be made by a third party, unless such third party is a party to the settlement. u/s 101, insolvency of the insured does not affect the liability of the insured for claim or claims by third parties. Even the death of the insured is not a bar to the survival of any cause of action arising out of an accident against the estate of the insured or against the insurer vide Section 102 of the Act, The grant of certificate of insurance, although the policy of insurance is not issued, ensures the right of the third party to claim compensation in accordance with the terms of the certificate of insurance. In the event of less favourable terms in the "policy" than those contained in the "certificate", the "certificate of insurance" will prevail (vide Section 103). Even transfer of ownership of the insured motor vehicles does not absolve the liability of an insurer (vide Section 103-A). Section 110-B empowers the Claims Tribunal to award compensation specifying the amount payable by (1) the insurer, or (2) the owner, or (3) the driver. Section 110-C(2A) provides for the contingencies where the insurer shall be impleaded as a party to the claims proceeding, namely when there is a collusion between the claimant and the insured, or the insured fails to contest the claim. Under these contingencies, the insurer becomes a party proper and is entitled to take up all grounds of defence available to the assured. This apart, the insurer has a statutory right in a claims proceeding to defend the action on the ground set out in Section 96(2)(a) to (e) of the Act. It follows, therefore, that an insurer can defend the action on limited grounds u/s 96 and in certain contingencies provided in Section 110-C(2A) take up all grounds of defence available to the insured. Thus, on judgment of a claim the insurer undoubtedly becomes a party to the proceeding. u/s 110-E, any money due from any person including the insured and/or the insurer may be recovered as arrears of land revenue.

Therefore, we find that under certain contingencies a third party has a direct right of action against the insurer, viz., on the death or insolvency of the insured etc. The insurer is liable to indemnify a third party; a trust is created in favour of third party and the trust money is kept in security deposit by the insurer. The insurer is always a party to the proceeding and under certain contingencies it can itself become the main Defendant, like death, insolvency, collusion or failure of the insured to defend the action. No settlement in respect of a claim by a third party can be arrived at without the third party. The Tribunal can award compensation to be paid by the insurer as well. Under these circumstances, it cannot be said that an injured has no right of action against the insurer nor can it be said that the insurer is not liable to indemnify the injured. Therefore, on scanning the relevant provisions of the Act we find that the Common Law Rule that a person injured, by reason of another man''s negligence, has no right of action the insurer who has undertaken to indemnify the wrong-doer is inapplicable to claims proceeding. Further, we find that action brought by an injured must be projected not only against the wrong doer but also against the insurer as well. The injured is entitled to a separate relief against the insurer in the award by the Tribunal. We also find that the injured has positive and definite right of action against the insurer. Similarly an insurer has positive rights to contest the proceeding on some limited but specified grounds u/s 96 of the Act. In the contingencies set out in Section 110-C(2A) of the Act, the insurer becomes the sole contestant. All these features in the Act make the provisions of Section 306 of the Succession Act inapplicable in claims proceeding.

(xi) The right of action of a third party is not exclusively a tortious action. His right flows from the contract of insurance as well as from the statutory provisions of the Act. The cause of action flows out from certificate/policy of insurance governed by the statutory provisions of the Act. We are of the firm opinion that the common law rule as well as the rigours of Section 306 of the Succession Act do not extend to the personal actions founded upon any obligation, contract, Covenant or any other similar duty to be performed; the causes of action survive in such cases. In the result, we hold that in claims proceedings Section 306 has no application.

(xii) The same conclusion is reached after due scrutiny of Section 110-A of the Act. Section 110-A reads as follows:

110-A. Application for compensation.

(1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made--

(a) by the person who has sustained the injury; or (aa) by the owner of the property; or

(b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

The section enumerates the classes of persons who may file applications for compensation arising out of an accident. The persons who are directly entitled to award in their favour are those enumerated in Clauses (a), (aa) and (b). They can file application directly and obtain award independently. Clauses (a) (aa) envisage persons who are directly affected by the accident whereas Clause (b) states that when the third party dies as a result of an accident his legal representatives are entitled to lodge the claim. Now, we come to Clause (a). The clause has two parts bifurcated by a word "or" making the clause disjunctive or alternative. We notice that the first part of the clause enables a duly authorised agent of the injured (note, not deceased) to lodge a claim. It covers, inter alia, cases when the injured, as a result of injury or otherwise, is incapable or incapacitated from filing application in person or is unwilling to lodge the claim himself or is a minor or insane etc., his agent may prosecute a claim. It is an independent right of the agent to lodge a claim. Now, we turn to the second part of Clause (c). At a glance it gives an impression as if it is a mere repetition of Clause (b). This, however, is not so. This part does not contain the pertinent words "where death has resulted from the accident", which find place in Clause (b). As such, this part of the clause puts it in a category of cases altogether different from Clause (b). In our opinion, the second part of Clause (b) is an auxilliary provision. It authorises "the legal representative of the deceased" covered by Clause (b) to bring action on the death of the latter. It also empowers the legal representative of the deceased. Owner of the property, covered by Clause (aa) as well as the legal representative of the deceased injured covered by Clause (a). In this view of the matter, we hold that the second part of Clause (c), on just and proper construction, reasonably and logically covers the cases of legal representative of the deceased injured covered by Clause (a). As such, the express provision contained in the section empowers the legal representative of the deceased injured to lodge and/or to continue the proceeding if the injured dies not as a result of the accident.

In construing the provision we have given a construction that a social legislation in a welfare State demands. If it is taken as liberal, we would observe that the construction has received interpretation in consonance with the object, policy and target of Parliament. We have identified the target of Parliamentary legislation and we have considered our duty "to see that the target is hit" and not merely to record that it has been missed. We are of the firm view that law is made of two components i.e., (1) the body and (2) the soul. The cold letter of the enactment is its body whereas logic, reason and sense constitute the soul of law. To extract the real meaning of the letter it is the duty of the court to find out "the soul". We have learned towards "purpose oriented construction" keeping in view the orthodox "plain-meaning rule". We have concentrated on the purpose of the Act. We have given a construction to avoid injustice, absurdity and futility which would have been at variance with the policy of the legislation. In doing so we have kept in fore-front Indian social legal conditions. It is edifying to recall what Krishna Iyer, J. has stated in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others,

We are clearly of the view that statutory construction which fulfils the mandate of the statute must find favour with the judges, except where the words and the context rebel against such flexibility. We would prefer to be liberal rather than lexical when reading the meaning of industrial legislation....

What his lordship compacted after making a long excursion as to the methodology of construction from early Roman civil law to the most modern jurisprudence and jurisprudential approach of indigenous as well as foreign decisions including some leading decisions of our Supreme Court in dealing with a social legislation. In our opinion, the principles enumerated by his lordship regarding industrial legislation touching the economy of India equally apply to public welfare insurance protection, social legislation made for the little Indians.

(xiii) We would observe that while considering the observation of Justice Iyer in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, it opened a new vista after reading Edgar Bodenheimer''s Jurisprudence--The philosophy and method of the law, a bit carefully. We quote an observation appearing on page 292 Revised Edition, 1974:

The law of torts, too, often pays attention to the subjective psychological springs of human actions. A jury may be authorised to impose punitive damages for an intentional battery or assault, while this power may be non-existent in case of an injury inflicted through negligence. In several states of the union, the truth of a libelous statement will not exclupate the maker of the statement unless it was published with good motives and for justifiable ends. In other areas of the law, the presence of bona fides may be the precondition for the recognition of rights and disadvantageous consequences may attach to an exercise of rights motivated by pure malice or spite. In the law of unfair competition, where a man opens a business not for the sake of financial gain but with the sole and exclusive intent to drive another person out of business for reasons of personal animosity, the malevolence of the motive may give rise to an action in tort.

We find that Section 306 deals with tortious action which "pay attention to the subjective psychological springs of human actions", i.e., the intentional acts. If a person is defamed it is an intentional human action to malign another. Similarly, it is a case of intentional assault which has been dealt with in the section. Similarly personal injuries not resulting in death in Section 306 of the Succession Act, deals with the causation of intentional hurt or injury. In our opinion, it does not deal with the cases of accidental damage or hurt. Chapter VIII of Motor

Vehicles Act deals with award of compensation where the injuries are done negligently. Therefore, assault or injury sustained negligently does not fall within the province of Section 306 of the Succession Act.

7. For the foregoing reasons we have no hesitation in coming to the conclusion that the cause of action, in the instant case, did not extinguish on the death of late Saikia and the Tribunal is justified in allowing the heirs to be substituted and prosecute the case.

8. Mr. Choudhuri, learned Counsel for the Petitioner has referred the following decisions in support of his contention, viz., Ratanchand v. Municipal Committee, Hinganghat AIR 1931 Na 9 ; Calcutta Insurance Ltd. v. Bhupinder Singh 1970 A.C.J. 344 (P. and H.); Ratanlal Bhannalal Mahajan Vs. Baboolal Hajarilal Jain and Others, Jogindra Kuer v. Jagdish Singh 1958 A.C.J. 288 (Patna); Arunachalam Chettiar v. V. Subramaniam AIR 1958 Mad 142 ; New India Assurance Co. v. Punjab Roadways, Ambala City 1958 A.C.J. 381 (Punj.); Piriska Rozario and Others Vs. The Ford Foundation and Another, We have carefully gone through the judgment. The views expressed in the decisions are weighty and deal with the other side of the picture drawn by us. Their Lordships were never asked to approach the problem from the angles dealt with by us. We have approached the problem and reached the conclusion from different angles. We are reluctantly compelled to express most respectfully that we cannot concur with the reasons and the conclusions reached in the said decisions. However, we would add that the view expressed by us finds strong support from Piriska Rozario and Others Vs. The Ford Foundation and Another, We record our deep appreciation to Mr. Choudhuri, learned Counsel for the Petitioner and Mr. Chetia, the young counsel who defended the cause of the opposite parties for their illuminating arguments and able forensic abilities and we have derived considerable assistance from the learned Counsel in reaching the conclusions.

9. Mr. Chetia urged that the Petitioner is not entitled to take up the plea in view of the bar imposed u/s 96(2) of the Act. Although the contention has strong force, we do not propose to express our view on it in this application.

10. In the result, the application is dismissed with costs, which we assess at Rs. 500/-. Send down the records forthwith to the learned Tribunal. In view of long delay in disposal of the case the learned Tribunal is cautiously reminded to take up the case out of turn and dispose of the matter at the earliest possible convenience of the Tribunal, preferably within 2 months from the date of receipt of the records, on hearing the argument of the parties on the materials already on record.

11. We were busy in connection with the sitting of the Advisory Board constituted under the Assam Preventive Detention Ordinance, 1980 and there was no sitting of the High Court from 7th to 20th July, 1980 for picketing. Hence, judgment could not be delivered earlier.

K.N. Saikia, J.

12. I agree.

