
(1999) 04 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.A. No. 423 of 1989

Piraniya through LRs

APPELLANT

Vs

Makhan alias Makhan Lal Kachhi and Another

RESPONDENT

Date of Decision : 23-04-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 92
Succession Act, 1925 — Section 306

Citation : (2001) ACJ 364

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : R.K. Samaiya, for the Appellant; Rajan Banerjee, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pandey, J.—This is an appeal u/s 110-D of the Motor Vehicles Act, 1939 (henceforth "the Act of 1939"), arising out of the order dated 26.7.89, passed by the Motor Accidents Claims Tribunal, in Claim Case No. 19 of 1988.

2. It appears that one Jamuna Yadav died in a motor accident on 7.1.1988. Thereupon, his mother Piraniya filed an application u/s 110-A of "the Act of 1939", claiming compensation for the death of Jamuna, from the owner and driver of the vehicle. The claim was valued at Rs. 65,000 (Rs. sixty-five thousand).

3. It appears that during the pendency of the claim case, Piraniya also died and, therefore, an application, purporting to be under Order 22, Rule 3 of the Code of Civil Procedure, was filed for substituting the name of Ram Sewak, son of Gangadeen Chamar and Ghanshoo Chamar, son of Gajji Chamar. So far as Ghanshoo Chamar was concerned, he is son of Piraniya and so far as Ram Sewak was concerned, he is nephew of Piraniya. No objection appears to have been raised regarding continuance of the claim case, filed by Piraniya, after her death, by Ram Sewak and Ghanshoo Chamar. Despite this fact, the Claims Tribunal

dismissed the claim petition filed by Piraniya, for the reason, it held that the aforesaid two persons Ram Sewak and Ghanshoo Chamar could not continue the claim case filed by Piraniya. It was held that after the death of Piraniya, the claim abated.

4. In this appeal against that order, it is being argued that at least Ghanshoo Chamar was entitled to continue the claim of Piraniya after her death, as he represented her estate.

5. As against this, the argument advanced by learned counsel for the respondents is that the appellants could not be said to be the persons dependent upon Jamuna Yadav and, therefore, the claim abated in toto.

6. In the opinion of this court, this appeal deserves to be allowed on the short ground that the claim did not abate with the death of Piraniya. It is true that Order 22 of the CPC has not been made applicable by Rule 240 of the Motor Vehicles Rules, 1994 and, therefore, Order 22 of the CPC cannot be invoked for considering the case at hand. The common law principle shall govern the case of the appellants. It has been held that the common law principle was that as a general rule the death of either party would result in abatement of the suit based on tort affecting the plaintiff personally. It cannot be disputed that the claim based on the tort of negligence except the claim u/s 92-A of "the Act of 1939" (Sic. abates). The maxim that was applied to the cases of tort in common law of England is the well-known maxim, i.e., *actio personalis moritur cum persona* (a personal action dies with the person). This common rule has been modified by the Law Reform (Miscellaneous Provisions) Act, 1970 in England. So far as India is concerned, Section 306 of the Indian Succession Act lays down under the rule regarding the survival of the action after the death of a person. Section 306 of the Indian Succession Act, 1925, is reproduced as under:

Section 306: Demands and rights of action of or against deceased survive to and against executor or administrator.--All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

It is clear from Section 306 of the Indian Succession Act, 1925 that so far as causes of action which are limited to defamation or assault or other injuries not causing death of the parties cannot be proceeded against the executor or the administrator. Similarly, the personal injuries not causing the death of the parties, cannot be proceeded against the executor or the administrator. Even the cases of those injuries not causing death cannot be proceeded with provided the relief sought could not be enjoyed by the plaintiff or granting it would be nugatory. The Supreme Court in the case of Melepurath Sankunni Ezhuthassan

Vs. Thekittil Geopalankutty Nair, , has relied on the text of Section 306 of the Indian Succession Act, 1925, for holding that the person who had right to the estate of the deceased after his death could continue the suit. This court too would apply the same principle to the facts of the case. The death of Piraniya resulted in grant of right of action to her successor-in-title and it cannot be denied that Ghanshoo Chamar who is her son would be her successor-in-title. It was he who could reap the benefit of estate of deceased Piraniya after her death as her successor. Therefore, the right of action brought upon by her did not die with her death. It cannot be said that Ghanshoo Chamar cannot claim compensation on account of death of his mother who was admittedly entitled to claim compensation from the respondents. If the respondents have paid her compensation just after the accident, then Ghanshoo Chamar would have inherited that property. Consequently, also the right to receive compensation can be inherited by Ghanshoo Chamar and he can continue the claim. The principle of *actio personalis moritur cum persona* would not apply to the facts of the case because of the death of Piraniya. The right to continue the suit was the estate to which Ghanshoo Chamar had right to succeed. For all these reasons, the right to sue survives and the appellant No. 2, Ghanshoo Chamar can continue the claim against the respondents as a legal representative of Piraniya.

7. The result is that the appeal succeeds and is allowed. The impugned order dated 26.7.1989 is hereby set aside. The office is directed to send back the record of the case. The parties are directed to appear before the Claims Tribunal on 23.6.1999 for taking further date. Looking to the facts and circumstances of the case that this case has been pending since 1989, the Claims Tribunal shall expedite the hearing and try to deliver the final award within a period of six months from the date of receipt of this order.