

(1968) 05 CAL CK 0040
In the Calcutta High Court
Case No : Civil Rule No. 1884 of 1967

Piriska Rozario and Others	Vs	APPELLANT
The Ford Foundation and Another		RESPONDENT

Date of Decision : 07-05-1968

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 238
Civil Procedure Code, 1908 (CPC) — Section 20
Motor Vehicles Act, 1939 — Section 110A, 110C
Succession Act, 1925 — Section 306

Citation : AIR 1969 Cal 394 : (1968) 2 ILR (Cal) 496

Hon'ble Judges : P.N. Mookerjee, J;A.K. Dutt, J

Bench : Division Bench

Advocate : Amarnath Roy Chowdhury and Mrinal Kumar Ghose, for the Appellant; C.C. Ganguly and Nani Gopal Dutta, for the Respondent

Final Decision : Partly Allowed

Judgement

Mookerjee, J.—This Rule raises some important questions. It arises out of a proceeding under the Motor Vehicles Act.

2. The points for consideration are whether the tribunal under the Act, hearing claim petitions, has power to order substitution of the legal heirs and representatives of a deceased claimant and. If so, under what circumstances and with what effect.

3. The Instant proceeding was started as a claim, proceeding by one Augustine Paul Rozario, who filed this claim case for compensation on account of Injuries, sustained by him in a motor accident, which took place on March 2, 1965, in Ballygunge Circular Road. During the pendency of the said claim case, the above claimant died on October 5. 1965. This fact was brought to the notice of the tribunal below on November 2, 1965, by the learned Advocate for the deceased claimant and he prayed for time to file a petition for substitution of the heirs and legal representatives of the said deceased. That petition was originally rejected

by the tribunal below by its order No. 3, dated November 2, 1965, on the ground that on the death of Rozario his cause-of-action did not survive and so no question of substitution of his heirs did arise. It was also held that the claim case, in the circumstances, had abated. Against that order, the present petitioners, who claimed to be the heirs and legal representatives of the deceased Augustine Paul Rozaria, moved this Hon'ble Court in revision and, eventually, that Rule was made absolute- The Tribunal's order, complained against in the Rule, namely, the order, dated November 2, 1965, was set aside and the case was sent back to the Tribunal below with permission to the present petitioners to file an application for substitution and with direction to the tribunal to consider the said prayer for substitution on merits in accordance with law.

4. Thereafter, the present application for substitution was filed by the petitioners and this application has, eventually, been dismissed by the learned tribunal below upon the view that although the Instant case was one, where the deceased died as a result of the physical injuries, received in the above accident, and that, in consequence, the cause-of-action did survive and, prima facie, substitution would have been permissible, the prayer for substitution could not be allowed, as the claim of the heirs for compensation would stand on a different footing and would, really, be based on a different cause-of-action. and accordingly, that claim could not be pursued in the present or original proceeding and, further, as the two causes-of-action would be different, there would be no question also of amendment of the instant claim petition. It is against this order that the present Rule was obtained by the petitioners.

5. The Rule has been opposed on behalf of the opposite parties substantially on the grounds, given by the tribunal below for rejecting the petitioners' above application and, also, on the ground that the tribunal's view that this was a case, where the original cause-of-action did survive, was erroneous, and, in the instant case, the proceedings could not be continued by the heirs and legal representatives of the deceased.

6. For proper appreciation of the above questions, it is necessary to state the facts in some detail. As we have said above, the deceased concerned, Augustine Paul Rozario was involved in the motor accident in question, which took place on March 2, 1965, and sustained injuries as a result thereof. He was, later on, removed for treatment, originally to Sambhu Nath Pandit Hospital, and thereafter, to a nursing home (Arta Sebayatan Nursing Home) and, finally, to Chittaranjan Hospital, where he eventually died on October 10, 1965, and, according to the finding of the tribunal below, his death was really as a result of the injuries, received by him from the accident in question.

7. In spite of the above, however, it has been contended on behalf of the opposite parties that the cause-of-action of the deceased for the original claim, which was based on the physical injuries, received as above, did not survive to his heirs and legal representatives on account of the maxim "*actio personalis moritur cum persona*", or, in other words, that it was entirely a personal claim,

which could not survive after the death of the deceased. This contention has been negated by the tribunal below upon the view that the instant case would be well covered by Section 306 of the Indian Succession Act, or, to be more exact, by the principles, underlying the said section, as, in the view of the tribunal below, the death, in the instant case, was occasioned by the physical injuries, received as a result of the accident in question, and, accordingly, the present case would be one of physical injuries, causing the death of the injured person, and not one of "physical injuries, not causing the death of the injured person," so as to be excluded from the benefit of the said section or its underlying principles.

8. In our view, the tribunal below has come to the correct decision on the above point. The maxim "*actio personalis moritur cum persona*," although an ancient English maxim and a part of the English common law, has been subjected to very severe criticism, even in England, It has been called an unjust maxim, obscure in its origin, inaccurate in its expression and uncertain in its application, and it often causes grave injustice. It is no part of our law except to the extent that it has been recognised by statutes in this country. Indeed, in a decision of this Court (vide *Bhupendra Narayan Sinha Vs. Chandramoni Gupta*, a broad view was expressed that this maxim is no part of the Indian Law. Be that as it may, it is perfectly clear that, so far as any particular part of the English common law is concerned, in the absence of any statutory provision or any established law or usage in this country, recognising the same, the Courts here are entitled to invoke and apply its underlying principles, only when they are in consonance with justice, equity and good conscience; or, in other words, the claim of the English common law to govern legal relation in this country is founded on the absence of any statutory provision, governing such relationship, and on its consonance with principles of justice, equity and good conscience. As we have already said, the maxim in question has been criticised, even in England, as harsh, unconscionable and unjust. In these circumstances, it cannot be applied as part of the Indian Law on principles of justice, equity and good conscience. It has, however, been recognised, though only to a limited extent by our statutes (Vide, e.g., Section 306 of the Indian Succession Act, which is the nearest, relevant for our present purpose). To the extent, therefore, that the maxim has been recognised in the above Section 306 of the Indian Succession Act, read in the light of its other provisions, and the underlying principles, deduced from the same, it may be given effect in the case. Under the said section and its underlying principle in the light of the other parts of the statute, causes-of-action, arising in cases of personal injuries, causing the death of the injured, would survive to his executors and administrators, in cases, where probate or letters of administration are necessary under the law, and to his heirs and legal representatives in other cases. We are, therefore, in agreement with the learned tribunal below, that the original cause-of-action, to the extent, of course, that it was based on personal injuries, causing the death of the deceased, as found by the tribunal below in the instant case, did survive to the petitioners and they were entitled to be

substituted in his place for continuing the said proceeding for purposes of giving effect to the same.

9. The ultimate view of the learned tribunal below that the above cannot be given effect to, in the instant case, as the cause-of-action, so far as the heirs are concerned, would be an entirely different cause-of-action, appears to be based on a misconception. The statute in question, namely, the Motor Vehicles Act, contains ample indication, in its claim section (Section 110-A), that the two claims are based on two different footings, which are independent and exclusive, but that is no bar to the heirs and legal representatives of the deceased being allowed to prosecute the cause-of-action of their predecessor, when that is permissible under the law on the footing that that cause-of-action survives to them. The claims and causes-of-action under Clauses (a) and (b) of Section 110-A [Clause (c) being an auxiliary clause, applicable to either] may not be wholly similar and, to the extent, they should be allowed to be pursued only under one of the above two clauses. Beyond that, no further limitation or restriction need be put.

10. A point has been raised that, as to the power of substitution of the tribunal, there is no express provision in the statute. It is true that, although some of the other provisions of the CPC have been specifically attracted by one of the sections (Section 11-A) and the rules under the Motor Vehicles Act, (Rule 238), Order 22 of the Code has not been so attracted. But there is no express exclusion of the inherent powers of the tribunal to do justice between the parties and Section 110-C, which entitles the tribunal to follow such summary procedure, as it thinks fit, subject to any rules that may be made in this behalf, sufficiently confirms that the statute intended to recognise such inherent powers and to preserve the same, A similar approach was made by the Punjab High Court in *New India Assurance Co. Ltd, New Delhi v. Punjab Roadways, Ambala City*, AIR 1964 Punj 235. Indeed, it would, obviously cause great injustice to the heirs and legal representatives of the deceased, if the claim is held to abate on the death of the deceased. That, indeed, was, also it is quite apparent, the view of this Court on the previous occasion, when the matter was brought up here by the petitioners and we see no reason to differ from it. We may also point out that, Order 22 of the Code not applying, as above, the question of abatement will not arise. The *Jogindra Kuer and Others Vs. Jagdish Singh and Others*, is clearly distinguishable, as there the cause-of-action did not survive (vide p. 551 of the Report).

11. In the above view, we would hold that the petitioners are entitled to be substituted in place of the deceased claimant in the pending proceeding before the tribunal below, subject to this reservation that, on such substitution, they will be entitled to prosecute only that part of the claim of the deceased, which would be attributable to physical injuries, causing the death of the deceased, and subject, further, to this that, in case they choose to prosecute the present proceeding on that footing, they will no longer be entitled to make the same

claim on the independent provision [Section 110-A (1) (b)]. We would, also, in the circumstances of this case, permit the petitioners to exercise their option to prosecute, either the original claim to the extent, permissible to them under the aforesaid directions, and/or their independent claim under the other part [Section 110-A (b)] of the statute, in the light of our observations, made above, by necessary amendment of the original claim petition, as this, in our opinion, would avoid multiplicity of proceedings and also serve the ends of justice. The opposite parties will, of course, have. In that event, right to file additional objection.

12. Subject as above, this Rule will be made absolute, the order of the tribunal below will be set aside and the case will be sent back to it to be dealt with in accordance with law in the light of the observations, made in this judgment.

13. There will be no order for costs in this Rule.

A.K. Dutt, J.

14. I agree.