
(2000) 02 MP CK 0086
In the Madhya Pradesh High Court
Case No : M.A. No. 845 of 1994

Rameshwari Paliya and Another

APPELLANT

Vs

Rajesh Kumar Jaiswal and Others

RESPONDENT

Date of Decision : 28-02-2000

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 140, 142, 144, 173
Succession Act, 1925 — Section 306

Citation : (2001) ACJ 850 : (2001) 2 MPJR 51

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : R.S. Tiwari, for the Appellant; H.S. Ruprah, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.

This is an appeal against the order dated 14.7.1994 passed by Additional Motor Accidents Claims Tribunal, Sohagpur (henceforth "the Claims Tribunal") in Motor Accident Claim Case No. 6 of 1987. The Claims Tribunal has dismissed the claim case filed on behalf of deceased Rajendra Paliya on the ground that the claim case automatically abated after expiry of 90 days of the death of Rajendra Paliya. The Claims Tribunal, by the impugned order, dismissed the application under Order 22, Rule 3 of the CPC as well as an application u/s 5 of Limitation Act (which should have been filed under Order 22, Rule 9 of the Code of Civil Procedure). It was held that there is no question of substitution of legal representatives of deceased Rajendra Paliya on record as cause of action does not survive to legal representatives of the deceased. This appeal is preferred by the legal representatives of deceased Rajendra Paliya, under Order 43, Rule 1 (k) of the Code of Civil Procedure.

It appears that Rajendra Paliya had made a claim for compensation against the respondents on the ground that he suffered injuries on 11.4.1985 because of

rash and negligent driving of two trucks mentioned in the application.

A preliminary objection was raised on behalf of the respondents that no misc. appeal lies under Order 43, Rule 1 (k) of the Code of Civil Procedure.

The learned counsel for the appellant, by way of abundant caution, has filed an application for converting this appeal into a civil revision. This application is registered as I.A. No. 27 of 1999. This order shall dispose of that application. It has also been argued that the decision is on merits and as such appealable u/s 173 of the Motor Vehicles Act, 1988.

The question is whether this appeal should be considered as an appeal under Order 43, Rule 1 (k) of the CPC because the application under Order 22, Rule 3 of the CPC for bringing the LRs of Rajendra Paliya on record has been dismissed along with the application for condonation of delay in setting aside the abatement or should it be treated as dismissal of the claim case on the ground that the death of Rajendra Paliya extinguished the claim. If so, it would be dismissal of the award on merits and appealable as such u/s 173 of the Motor Vehicles Act, 1988.

The learned counsel for the respondents has cited a decision of a Full Bench of this court in Mithulal Har Prasad Naik v. Badri Prasad Kanchhedilal 1980 MPLJ 778, for supporting his argument that no appeal lay against the impugned order.

It may be necessary for this court to make a reference to a decision of this court in Mohd. Yousuf and Others Vs. Smt. Jyotsana Ben and Others, , for resolving the controversy between the parties. It has been held in this case, relying on an earlier decision of this court in Govardhan Badrilal Mahajan v. Ganesh Balkrishna Deshmukh 1962 MPLJ 325, that the forum of appeal or revision has to be determined by what the court actually does and not what the court ought to have done.

The Claims Tribunal appears to have passed two-fold order. Firstly, it holds that after expiry of ninety days of the death of Rajendra Paliya the claim case abated for non-compliance of Order 22, Rule 3, Code of Civil Procedure. This could only be if the "cause of action" survived after the death of Rajendra Paliya and Order 22, Rule 3 of the CPC applied. The second part of the order is that the proceedings for recovery of compensation cannot go on as the right to sue does not survive. This court is, therefore, called upon to consider the two apparently conflicting lines of thought in the order of the Claims Tribunal for finding out what it has done. It appears to this court that if the appellants want to succeed they must get that part of the order of the Claims Tribunal set aside which says that the proceedings for recovery of compensation cannot go on as the death of Rajendra Paliya has automatically extinguished the right to sue. This is the second part of the impugned order, which must be set aside. This part is larger part of the two-fold order. The first part of the order is its smaller part regarding abatement after ninety days. In such a composite and conflicting order the remedy has to be judged from the ultimate result to the appellants. The ultimate

result to the appellant is that their claim case has been dismissed on the ground that the death of Rajendra Paliya extinguished right to recover compensation. The fact of the death of claimant completely destroyed the right to sue without any chance of revival. The Claims Tribunal dismissed the entire claim as not maintainable consequent to the death of Rajendra Paliya. This is that it purported to do by the order impugned. If this be the conclusion of the Claims Tribunal, it amounts to dismissal of the award lock, stock and barrel. The remedy of the appellants is to challenge the final dismissal of award u/s 173 of Motor Vehicles Act, 1988, by filing an appeal against the second part of the order. The first part of the order can also be set aside in the appeal u/s 173 of the Motor Vehicles Act, 1988, as it forms the part of a composite order in respect of same subject-matter. In view of the discussion aforesaid, the Full Bench decision in the case of Mithulal Har Prasad Naik 1980 MPLJ 778, relied upon by the learned counsel for the respondents need not be considered. This court is of the view that in reality, the decision given by the Claims Tribunal is on merits because it holds that by subsequent event of death of Rajendra Paliya the entire claim was extinguished. The preliminary objection is rejected and so also the I.A. No. 27 of 1999.

However, it would be necessary to consider the first part of the order on merits with a view to clarify the legal position on the point. The first question, therefore, that has to be decided, is-if Order 22 of the CPC was applicable to the facts of this case at all. In the opinion of this court, Order 22 of the CPC would not apply on the death of the claimant. Chapter IX of Madhya Pradesh Motor Vehicles Rules, 1994, provides for the procedure to be followed by the Claims Tribunals. Rule 240 of that Chapter specifically lays down certain provisions of the CPC which are applicable to the Claims Tribunals in a claim case, save as otherwise expressly provided in the Act or Rules. The provisions of Order 22 of the CPC have not been made applicable to a case pending before the Claims Tribunal, so also the provisions of Order 43, Rule 1 (k) of the Code of Civil Procedure. In view of this matter, it has to be presumed that Order 22 of the CPC has been omitted by the legislature and it does not apply to the cases pending before the Claims Tribunals. No other provision has been pointed out to me from which it can be inferred that either the Act or any other provision in the Rules prescribes that Order 22 of the CPC applies. The aforesaid conclusion is supported by a decision of a Division Bench of this court in the case of Chuhamal Issardas v. Haji Wali Mohammed 1968 ACJ 391 (MP). The Division Bench has followed the decision of Rajasthan High Court in State of Rajasthan v. Parwati Devi 1966 ACJ 123 (Rajasthan), for holding that Order 22 of the CPC does not apply. If Order 22 of the CPC did not apply, the application for bringing legal representatives of Rajendra Paliya on record would not lie under Order 22, Rule 3 read with Rule 9 of the Code of Civil Procedure. Therefore, there would be no question of application of limitation of 90 days for holding that the appeal abated after 90 days. For this reason, the first part of the order that the claim case abated after ninety days does not stand scrutiny. It is incorrect.

The next question is, if the appellants could continue the claim case after the

death of Rajendra Paliya, and if so, under what provision of law? The answer to this question would take us to the realm of substantive law. In case, the right to file the application for compensation before the Claims Tribunal, under the facts and circumstances, is an inheritable right, the Claims Tribunal shall have ample power in law and justice to entertain an application for substituting the names of legal representatives instead of the claimant. If the right to bring the application for compensation is so intimately and inextricably connected with the personality of the claimant that it cannot be inherited or succeeded to by the surviving successors then, the claim case would be defeated by his death.

It is well established that the general liability of the owner of a motor vehicle and that of driver has not been made statutory. It is still based on law of Torts or negligence. This principle was recognized by a decision of a Full Bench of this court in the case of *Mangilal v. Parasram* 1970 ACJ 86 (MP). It is also true that a part of liability has been made absolute by the statute by Section 140 of the Motor Vehicles Act, 1988. Section 144 of the Motor Vehicles Act, 1988, gives overriding effect to the Chapter, wherein this section falls, over any other provision of the Act of 1988 or of any other law for the time being in force. A similar provision was made by adding Section 92-A to the Motor Vehicles Act, 1939. However, the general principle that law of Torts applies to cases of motor accidents has been modified partially to the limited extent of liability given in Section 140 of Motor Vehicles Act, 1988, at the time of accident. In the case of *Gujarat State Road Trans. Corpn. v. Ramanbhai Prabhatbhai* 19871 ACJ 56(SC), the Supreme Court has stated the same principle after noticing the change in the statute, at page 568 as follows:

(9) ...It is thus seen that to a limited extent relief has been granted u/s 92-A of the Act to the legal representatives of the victims who have died on account of motor vehicle accidents. Now they can claim Rs. 15,000 without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified....

Thus, the right of an injured claimant is two-fold:

(i) covered by Section 140 of Motor Vehicles Act, 1988 in case he suffered a permanent disablement defined by Section 142 thereof. Here, the right to obtain compensation is given to the claimant, irrespective of the fact whether the persons legally responsible to pay compensation were at fault or not. The consequence of this right is that it creates liability on the owner and the driver to pay statutory compensation without consideration of the fact if they were negligent or not. The insurer's liability would be subject to the policy, if it is in force, and (ii) apart from the right to recover the limited statutory compensation on no fault basis, the right to recover the balance of compensation under the law

of Torts continues as was the position prior to amendment by Section 92-A of Motor Vehicles Act, 1939. This right created the consequent liability on the parties responsible for the accident, and upon the insurer to pay the claimant according to the policy of insurance.

The question that has to be determined is if (i) the no fault liability (ii) the liability in accordance with law of Torts under the heading of negligence of driver and consequent liability of owner still survives after the death of the claimant. The answer to this question will be determined by the fact if the right of the claimant suffering the injuries is personal to him and it is extinguished with his death. This is a case where death of the party has not created a cause of action. The injuries suffered by the original claimant created a "cause of action" in his favour. We have to look into Section 306 of Indian Succession Act to find out if the "cause of action" survives after the death of the claimant. It reads as under:

306. Demand and right of 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 cause 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 could not be enjoyed or granting it would be nugatory.

It would be clear that a claim for all "personal injuries" not causing the death of the claimant does not survive his death. It is clear pointer to the fact that the "cause of action" for personal injuries does not survive the death of the claimant. The view of this court is supported by the decision of Supreme Court in Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair 1986 ACJ 440 (SC). The Apex Court in that case was required to consider the fate of a civil suit for defamation upon the death of plaintiff during the pendency of special leave to appeal, against the judgment and decree of the High Court dismissing the suit of the plaintiff-appellant. It was held that death extinguished the "cause of action" as the death was at the stage when the suit of the appellant stood dismissed. Reliance was placed on Section 306 of Indian Succession Act. It is true that Section 306 (ibid) expressly excludes the survival of cause of action in case of the death of a plaintiff in case of defamation. However, it goes to add, inter alia, that the action in respect of an assault as defined in the Indian Penal Code or other personal injuries not causing the death of the party, shall be in the same category. That means they would not survive. In other words, the statute says that the common law maxim *actio personalis moritur cum persona* would apply to aforesaid cases. There can be hardly any doubt that claim of the applicant was based on personal injuries and it drowned with the death of applicant/ claimant. It is difficult to accept the contention of learned counsel for the appellants that a part of claim of the applicant/ claimant still survives. He claimed that this court should bifurcate the claim of the appellants for money in several heads under

torts and hold that what the claimant spent in treating himself on account of injuries suffered by him was a loss to his estate. It survived his death. It appears, there is some confusion of thought. The question is if the "cause of action" survives. If the "cause of action" in a suit is based on personal injuries, is dead, the claim fails. There cannot be bifurcation of cause of action on the foundation of the remedy awarded to the claimant under several heads of that cause of action. The cause of action determines the remedy which is sub-divided into various heads. The subdivisions cannot create a "cause of action".

As a result of aforesaid discussion, there is no merit in this appeal. The appeal fails and it is, accordingly, dismissed. No costs.