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**(2006) 11 MP CK 0040**  
**In the Madhya Pradesh High Court**

Smt. Bhagwati Bai and Another

APPELLANT

Vs

Bablu @ Mukund and Others

RESPONDENT

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**Date of Decision :** 04-11-2006

**Acts Referred:**

Legal Representatives Suits Act, 1855 — Section 1  
Motor Vehicles Act, 1988 — Section 165, 166  
Succession Act, 1925 — Section 306

**Citation :** (2007) ACJ 682 : AIR 2007 MP 38 : (2007) ILR (MP) 24 : (2007) 2 JCR 115 : (2006) 4 MPLJ 579

**Hon'ble Judges :** A.K. Patnaik, C.J;Subhash Samvatsar, J;A.K. Gohil, J

**Bench :** Full Bench

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## Judgement

A.K. Patnaik, C.J.

This is a reference made by the Division Bench of this Court to the Full Bench in a motor accident claims appeal.

The background facts in which the reference has made, are that prior to the accident, Pancham Singh was a driver working in the Madhya Pradesh State Road Transport Corporation. On 29-9-1998 Pancham Singh while going towards his house in the noon, was hit by a Bajaj M-80 two wheeler bearing MP 07-Y/4003 driven by the respondent No. 1, owned by the respondent No. 2 and insured with the respondent No. 3. Pancham Singh filed a claim case u/s 166 of the Motor Vehicles Act, 1988, on 1-4-1999 before the 1st Additional Motor Accident Claims Tribunal, Gwalior, which was subsequently numbered as Claim Case No. 33/2002, alleging that as a result of rash and negligent driving of the said two wheeler by the respondent No. 1, he suffered fracture in the knee of the right foot and wrist of the left hand and he was admitted in the hospital and had to undergo treatment. In the claim petition, Pancham Singh claimed compensation of Rs. 6,50,000/- as per details hereinbe-low--

- (i) Mental & physical pain during Rs. 1,00,000.00 hospitalization and thereafter.
- (ii) Permanent disability/deformity. Rs. 1,00,000.00 (iii) Loss of longevity of life

due to the Rs. 1,00,000.00 injuries sustained in the accident. (iv) Expenses incurred on treatment Rs. 1,00,000.00 medicines, diet & transportation etc. (v) Mental torture sustained by wife and Rs. 0,50,000.00 children due to the accident,. (vi) Loss of employment and loss of earnings Rs. 2,00,000.00 due to the accident. Total: Rs. 6,50,000.00 During the pendency of the claim petition, Pancham Singh died on 29-5-1999 and the present appellants, namely the wife and the son of Pancham Singh, were substituted in place of Pancham Singh in the said claim case. Finally, the Tribunal made an award of only Rs. 10,000/- in favour of the claimants on 14-8-2003. Aggrieved by the said award, the appellants have filed this appeal for enhancement.

When the appeal was taken up for hearing by the Division Bench on 7-4-2006, Mr. S.S. Bansal, learned Counsel appearing for the respondent No. 3/Insurance Company, cited the judgment of the Division Bench of this Court in Umedchand Golcha v. Dayaram and Ors. 2001 (1) LLJ 365, in which the Division Bench has held on the basis of the principle contained in Section 306 of the Indian Succession Act, 1925, that on the death of the claimant who had suffered the personal injury in the accident, the legal representatives of the claimant would be entitled to only loss of estate and rest of the claims of such person who had suffered injury, shall abate. Mr. Devendra Choubey, learned Counsel appearing for the appellants/claimants, on the other hand, submitted that this was not the principle laid down in Section 306 of the Indian Succession Act, 1925, and in any case, the provision of Section 306 of the Indian Succession Act, 1925, did not apply to a claim case for personal injury filed under the Motor Vehicles Act, 1988.

Considering the far-reaching consequences of the aforesaid judgment of the Division Bench in Umedchand Golcha v. Dayaram and Ors. (supra), on claims for compensation for personal injuries on the rights of the legal representatives of the claimant, the Division Bench passed an order on 21-4-2006 referring the following question of law to a Full Bench :

Whether a claim for personal injuries filed u/s 166 of the Motor Vehicles Act, 1988, except as regards the estate of the claimant would abate on the death of the claimant or would survive to his legal representatives ?

We have heard the learned Counsel for the parties on the aforesaid question of law referred to us.

Mr. Devendra Choubey, learned Counsel appearing for the appellants, submitted that under Sub-section (1) of Section 166 of the Motor Vehicles Act, 1988, an application for compensation arising out of an accident involving bodily injury to a person arising out of use of a motor vehicle, can be filed not only by the person, who had sustained injury, but also by all or any of the legal representatives of the deceased or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased. He submitted that therefore, an application for compensation arising out of an accident involving bodily injury to a person, can also be continued by the legal

representative of person who had suffered bodily injury. He further submitted that once an application is filed by the person who had sustained injury for compensation u/s 166 of the Motor Vehicles Act, 1988, such an application will not abate on the death of the person who had sustained injury because the provisions of Order 22 of the Code of Civil Procedure, 1908, relating to abatement do not apply to motor accident claim cases as has been held by a Division Bench of this Court in Chuharmal and Ors. v. Wall Mohammad and Ors. 1968 LLJ 1013. He submitted that the Motor Vehicles Act, 1988, is a Special Act whereas the Indian Succession Act, 1925 is a General Act and as per the well settled principles of statutory interpretation, the provisions of Motor Vehicles Act, 1988, will apply and the provisions of Indian Succession Act, 1925, will not apply to motor accident claims cases and therefore, Section 306 of the Indian Succession Act, 1925, which provides that all rights to prosecute or special proceeding existing in favour of a person will survive to his executors or administrators except personal injury not causing the death of the party, will not apply to motor accident claims cases and only Section 166 of the Motor Vehicles Act, 1988, will apply to such motor accident claims cases.

Mr. S.S. Bansal, learned Counsel appearing for the respondent No. 3/Insurance Company, on the other hand, submitted that in Umedchand Golcha v. Dayaram and Ors. (supra), the Division Bench, after considering various judgments of the Supreme Court as well as other High Courts at length, has come to a conclusion that so far as the claim for personal injury is concerned, it would abate on the death of original claimant, but not a claim which pertains to the loss to the estate of the injured. He submitted that this view has been taken by the Division Bench in the aforesaid case on the basis of the common law rule "actio personalis moritur cum persona "as well as the principle contained in Section 306 of the Indian Succession Act, 1925. He relied on the provision of Section 1 of the Legal Representatives Suits Act, 1855, which provides that an action may be maintained by the representatives of any person deceased for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate and not for any personal injury suffered by such person during his lifetime. He submitted that the view taken by the Division Bench of this Court in Umedchand Galena v. Dayaram and Ors. (supra), that the claim for personal injury would abate on the death of the original claimant except as regards loss to the estate of the injured is, therefore, a correct view of the law.

Sub-section (1) of Section 166 of the Motor Vehicles Act, 1988, on which Mr. Choubey relies on, is quoted hereinbelow:

Section 166. Application for compensation.--

(1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made--

(a) by the persons who has sustained the inquiry; or

(b) by the owner of the property; or

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

(d) 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:

Provided that where as the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(Emphasis supplied)

A reading of Sub-section (1)(a) of Section 166 of the Motor Vehicles Act, 1988, would show that only a person who has sustained the injury, can file an application for compensation. Further a reading of Sub-section (1)(d) of Section 166 would show that any agent duly authorised by the person injured can also file such application for compensation for injury suffered by such person. Sub-section (1)(c) of Section 166 provides that where death has resulted from the accident, all or any of the legal representatives of the deceased can file an application for compensation and Sub-section (1)(d) of Section 166 provides that a legal representative of the deceased can also file claim where death has resulted from the accident. Thus, in a case of personal injury not resulting in death the legal representative of such person who was injured and who dies subsequently not on account of accident but for some other reason cannot maintain an application for compensation for personal injury sustained in an accident under Sub-section (1) of Section 166 of the Motor Vehicles Act, 1988. Hence, the contention of Mr. Choubey, learned Counsel appearing for the appellants, that u/s 166(1) of the Motor Vehicles Act, 1988, an application for compensation for personal injury can be filed also by the legal representatives of the deceased whose death was not as a result of accident but for some other reason is not correct.

Section 306 of the Indian Succession Act, 1925, on which reliance has been placed by Mr. Bansal, learned Counsel appearing for the respondent No. 3/ Insurance Company, is quoted herein below:

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 deceased, survive to and against his executors or administrators; except cause of action for defamation, assault as defined in the Indian Penal Code, 1860 (45 of 1860) 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.

The aforesaid section inter alia provides that all rights to prosecute any action or special proceeding existing in favour of a person at the time of his death, survive to his executors or administrators except causes of action for personal injuries not causing the death of the party. Thus, u/s 306 of the Indian Succession Act, 1925, the executors or administrators of a deceased will have a right to prosecute or continue any action or special proceeding existing in favour of the deceased at the time of his death, except causes of action for personal injury not causing death of the party. Therefore, where the accident does not cause death of a party but only causes personal injury to him, his executors or administrators will not have a right to prosecute or continue to prosecute an application for compensation for personal injury suffered by the party in a motor accident.

In *Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair*, , the Supreme Court observed that the principle contained in Section 306 of the Indian Succession Act, 1925, will apply not only to executors or administrators but also to other legal representatives. Paragraph 8 of the judgment of the Supreme Court in *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair* (supra), as reported in the AIR, is quoted hereinbelow:

Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.

Hence by virtue of the principle in Section 306 of the Indian Succession Act, 1925, the legal representatives of a deceased, who suffers personal injury in a motor accident and who dies subsequently for some other reason, cannot prosecute or continue to prosecute an application for compensation under Sub-section (1) of Section 166 of the Motor Vehicles Act, 1988.

Section 1 of the Legal Representatives Suits Act, 1855, confers rights on the executors, administrators or representatives of any person deceased to maintain an action for any wrong committed in the lifetime of a deceased person. The said Section 1 of the Legal Representatives Suits Act, 1855, is quoted herein below:

"Section 1. Executors may sue and be sued in certain cases for wrongs committed in lifetime of deceased.-- An action may 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 pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death and the damages when recovered shall be part of the personal estate of such person; and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased for any wrong committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year before

such person's death and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to administer according to the English Law, be payable in like order of administrator as the simple contract debts of such person.

It will be clear from Section 1 of the Legal Representatives Suits Act, 1855, quoted above that the legal representatives of any deceased person can maintain an action for any wrong committed in the lifetime of such deceased person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death and the damages when recovered shall be part of the personal estate of such person. It is by virtue of this provision in Section 1 of the Legal Representatives Suits Act, 1855 that the legal representatives of the deceased person can also maintain or continue to maintain an application for compensation for personal injury suffered in the lifetime of such person in a motor accident which has occasioned pecuniary loss to the estate for which such person might have filed an application for compensation u/s 166(1) of the Motor Vehicles Act, 1988. But where a personal injury suffered by a person during lifetime in a motor accident has not occasioned pecuniary loss to the estate of the such person, the legal representatives of the deceased person cannot maintain or continue to maintain an application for compensation under Sub-section (1) of Section 166 of the Motor Vehicles Act, 1988.

Further, u/s 1 of the Legal Representatives Suits Act, 1855, an application for personal injury suffered by a person during lifetime in a motor accident can be maintained and continued by the representatives of the deceased person for the pecuniary loss occasioned to the estate of the deceased person so long as the accident has been caused within one year before his death. Moreover, the accident may have occasioned pecuniary loss to the estate of a person in many ways and it is for the Tribunal or the Court to decide the loss which has been occasioned to the estate of the person who had suffered personal injury in a motor accident depending on the pleadings and proof before the Court in each case. In Paragraph 21 of the judgment of the Division Bench of this Court in *Umedchand Golcha v. Dayaram and Ors.* (supra), the Division Bench of this Court has held :

Further, the question is which items can form loss to the estate of the deceased. Of course, exhaustive list of these items cannot be given, since it would depend upon pleadings and proof brought before the Court by the claimant/legal representatives. But it can be held that loss of accretion to the estate through savings or otherwise caused on account of accident permanently or temporarily can be worked out on giving facts or assessing the loss to the estate. Further, the existing state of estate may suffer loss by application towards medical expenses, expenditure on diet, expenditure on travelling, expenditure on attendant, expenditure on diet, expenditure on Doctor's fee, reasonable monthly/annual accretion to the estate for certain period etc. The claimant does not keep

separate amount for such unforeseen expenditures during his life-time. His income is at the most divided in three parts, namely, expenditure on himself, expenditure on family and the savings to the estate. Therefore, he has to meet such expenditure from out of his estate. There may be circumstance where it is born by his legal representatives. Therefore, it is held that the legal representatives can ask for loss to the estate of these items by production of satisfactory evidence unless Court is able to draw lifetime conclusion about such expenditures from out of the estate, from the facts and circumstances and on the basis of experience.

In the result, we are of the considered opinion that a claim for personal injury filed u/s 166 of the Motor Vehicles Act, 1988 would abate on the death of the claimant and would not survive to his legal representatives except as regards the claim for pecuniary loss to the estate of the claimant. The matter will now be placed before the Division Bench for assessment of the pecuniary loss caused to the estate of the deceased Pancham Singh on account of the motor accident suffered by him on the basis of pleadings and proof before the Tribunal/Court.