

(2017) 01 CHH CK 0071
In the Chhattisgarh High Court
Case No : 213 of 2014

Tahkan Das Khushlani

APPELLANT

Vs

Abhagwat Prasad

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

[Constitution of India](#), [Article 227](#) - Power of superintendence over all courts by the High Court
[Code of Civil Procedure, 1908](#), [Order 22 Rule 3](#), [Order 43 Rule 1](#), [Order 22](#) -
[Motor Vehicles Act, 1988](#), [Section 169](#), [Section 169](#), [Section 166](#), [Section 166](#), [Section 110-A](#), [Section 110-A](#) - Procedure and powers of Claims Tribunals - Application for compensation

Citation : (2017) 01 CHH CK 0071

Hon'ble Judges : Sanjay K. Agrawal

Bench : Single Bench

Advocate : Sunil Otwani, Somya Rai

Judgement

1. Original claimant - Tahkan Das Khushlani suffered injuries arising out of the use of motor vehicle that led to filing of claim petition being C.T. No. 113/2010 against respondents herein claiming compensation for the injuries suffered by him. During pendency of the claim petition, original claimant - Tahkan Das Khushlani died on 31.03.2012. The petitioner herein namely Santosh Khushlani, son of original claimant- Tahkan Das Khushlani filed an application under Order 22, Rule 3 of the Code of Civil Procedure for substitution along with application for condonation of delay in filing the same on 10.07.2012. 2. The Claims Tribunal, by its order dated 17.01.2013, has rejected the substitution application on the ground that no sufficient cause has been shown in filing the application for substitution of legal heir of original claimant and the claim petition for compensation was dismissed as abated. 3. Feeling aggrieved & dissatisfied with the order of Claims Tribunal, instant writ petition under Article 227 of the

Constitution of India has been filed. 4. Shri Sunil Otwani, learned counsel appearing for the petitioner would submit that by virtue of the provisions contained in Rule 240 of the C.G. Motor Vehicles Rules, 1994 (for short "Rule,1994"), Order 22 of CPC has not been made applicable as the claim application is filed only for grant of compensation and, therefore, applying the provisions of Order 22 of the CPC, application for compensation cannot be rejected as abated. 5. Shri Somya Rai, learned counsel appearing for respondent No. 3 would submit that since the legal representatives of the original claimant/deceased were not brought on record within the period of limitation, as such, it has rightly been rejected by the Claims Tribunal. 6. I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection. 7. Section 169 of the Motor Vehicles Act, 1988 provides in holding any enquiry under Section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. 8. In exercise of rule making power, M.P./C.G. Motor Vehicles Rules, 1994 has framed Rule 240 of Rules, which provides procedure to be followed by Claims Tribunal in holding enquiries, which states as under:- "240. Procedure to be followed by Claims Tribunal in holding enquiries.- Application of certain provisions of Code of Civil Procedure 1908; Save as otherwise provided in the Act or these rules, the following provisions of the First Scheduled to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order 5, Rules 9 to 13 and 15 to 20, Order 9, Order 18, Rules 3 to 10, Order 16, Rules 2 to 21, Order 17, Order 21 and Order 23, Rules 1 to shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto." 9. A careful perusal of Rule 240 of the M.P. Motor Vehicles Rules,1994 would show that the provisions contained in Order 22 of the Code of Civil Procedure is not applicable to the proceedings under Section 166 of the Motor Vehicles Act, 1988. 10. Even otherwise, the question raised in this petition is no longer res integra and stands authoritatively concluded by following decisions of the Madhya Pradesh High Court. 11. Division Bench of the Madhya Pradesh High Court in the matter of Chuarmal & others v. Wali Mohammad & others (1968 JI 1013) have clearly held that provisions relating to abatement contained in Order 22 of the Code of Civil Procedure are not applicable to proceedings under Section 110-A of the Motor Vehicles Act as the proceedings are representative in character & relied upon the judgment of Rajasthan High Court in the matter of State of Rajasthan v. Parwati Devi, 1966 ACJ 123 : AIR 1966 Raj.210 and held as under :- "(9) Admittedly, the provisions relating to abatement contained in Order 22 of the Code of Civil Procedure has no application to these proceedings. That being so, the legal representatives of Smt. Sadoribai can be brought on record at any time during the pendency of the proceedings. Indeed, claims made in such cases are always in a representative character and no question of abatement on account of failure to bring the legal representative on record within the prescribed time can arise. For principle, we may refer to State of Rajasthan (supra). In that case, a widow filed a suit for compensation for the death of her husband caused by injuries sustained in a motor accident. The suit was decreed. The defendant filed

an appeal. During the pendency of the appeal, the widow, who was that only respondent, died. The appellant did not implead the legal representatives in time. It was contended that the appeal had abated. The Division Bench observed:- "The cases to which we have referred above unmistakably yield the conclusion that in a representative suit brought, for example, under Order 1, Rule 8 of the Code of Civil Procedure after complying with the requirements of that provision, the death of any one, or more of the parties to such a suit pending the suit or the appeal, cannot result in the abatement of the suit or the appeal. The principle, which seems to us to have been uniformly accepted in these decisions, is that a suit like this is not brought by or against a person in his personal capacity but is brought by or against him as a representative of a class of persons and even if the representatives or representatives who has or have so brought the suit, or against whom a suit is so brought, happen to die, then the other person or persons whom the deceased represented would still be interested in the litigation in the very nature of things and cannot but be held constructively to be parties to the suit, and in this type of case the question of abatement cannot properly arise. We should further like to point out that the principle which applies to suits brought under O. 1, Rule 8 of the Code of Civil Procedure with the sanction of the Court should be held equally applicable to a suit like the present which has to be brought by a party in a representative capacity according to substantive law. Both classes of suits are equally representative and must fall to be governed by a like principle. In accordance with the legal position, which we have discussed above, suppose the present suit had been brought by not Parwati Devi alone but by her and another, in which case it should have been perfectly proper if on Parwati Devi having died during the pendency of the appeal it were allowed to continue against the surviving respondent. As it has, however, transpired in the case before us, the suit was brought by her alone and, therefore, in order that the appeal may properly be continued, it appears to us to be necessary that some, or all those whom she represented, should be allowed to be brought on the record, for obviously the appeal cannot continue in the absence of any respondent having been brought on the record. As the present suit was brought by Parwati Devi for the benefit of herself and her two sons, Shyam Sunder and Madanlal, and her daughter, Lali, and her father-in-law, Chaturbhuj, and her mother-in-law, Pyari Bai, we consider it safer to order that all those for whose benefit the deceased brought the present suit be allowed to be substituted in her place though, as we have made it abundantly clear, no question of abatement can possibly arise in a case like the present." 12. The aforesaid decision of Chuharmal & others (supra) has been followed with approval by the Madhya Pradesh High Court in the matter of Rameshwari Paliya and another v. Rajesh Kumar Jaiswal and others, (2001) 2 MPJR 51, in which Madhya Pradesh High Court has clearly held that provisions relating to abatement contained in Order 22 of the Code of Civil Procedure is not applicable to the proceedings under Section 166 of the Motor Vehicles Act and held as under:- "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 the 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 Chuharmal 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." 13. In view of aforesaid legal position, it is quite vivid that by virtue of provisions contained in Rule 240 of the Rules, 1994, Order 22 of the CPC is not applicable to the proceedings under Section 166 of the Motor Vehicles Act and I am in respectful agreement with the view expressed by the Madhya Pradesh High Court in the matter of Chuharmal (supra) & Rameshwari Paliya (supra). 14. Accordingly, the writ petition is allowed. Impugned order dated 17.01.2013 is set aside. It is held that sufficient cause has been shown from bringing legal representative of original claimant on record. Now, the Tribunal is directed to permit the petitioner to substitute his name in place of original claimant -Tahkan Das Khushlani and decide the claim petition on merits in accordance with law expeditiously preferably within a period of three months from the date of receipt of certified copy of this order. 15. It is made clear that this Court has not expressed any opinion on merits of the matter. The original application filed by claimant was for personal injuries and he died during pendency of application. The question to what extent the claimant now substituted will be entitled for compensation will be determined in accordance with law and keeping in view the judgment of the Full Bench of M.P. High Court in the matter of Smt. Bhagwati Bai and Anr. v. Bablu and others, AIR 2007 MP 38 16. No order as to cost (s). Writ petition is allowed.