

(1979) 07 MAD CK 0052
In the Madras High Court

Thailammal and Others

APPELLANT

Vs

A.V. Mallayya Pillai and Others

RESPONDENT

Date of Decision : 10-07-1979

Acts Referred:

Succession Act, 1925 — Section 306

Citation : (1980) 93 LW 321 : (1980) 2 MLJ 266

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—One Adaikalam met with an accident on 21st November, 1974. The accident happened when he was riding on a cycle. He was hit by the bus MDY 9618, owned by the first respondent which was insured with the second respondent and driven by a driver named Periannan. The said Adaikalam was admitted in the hospital as an inpatient on 21st November, 1974 and discharged on 25th March, 1975. His left forearm was amputated, right leg bone was broken and he had also other injuries on the right buttock, right cheek and left foot. His cycle was also completely crushed. He filed an application u/s 110-A of the Motor Vehicles Act claiming a total compensation of Rs. 25,000. The break up figures as given in the petition are : Transport expenses from the place of occurrence to the hospital Rs. 600; damages to clothing and cycle Rs. 200; medical expenses Rs. 700; extra nourishment Rs. 1,000; compensation for pain and suffering Rs. 500, compensation for continuing permanent disability and for loss of earning power Rs. 17,000. While the application was pending, sometime in July, 1976, the said Adaikalam died. His wife, son and the daughters filed I.A. No. 75 of 1974, for bringing them on record as legal representatives of the deceased. The Motor Accidents Claims Tribunal dismissed this petition on the ground that on the death of Adaikalam the cause of action to sue does not survive to his legal representatives u/s 306 of the Succession Act and it is a personal action available only to the injured and not to his legal representatives. In this connection the Tribunal relied on a decision of this Court reported in *Kandasanti v. Mariappa Stores* (1973) 86 L.W. 667 : AIR 1974 Mad. 178. That

was also a case where there was an accident in respect of which the injured filed a petition claiming damages in the sum of Rs. 1,000 towards medical expenses, Rs. 4,000 towards loss of professional income Rs. 10,000 for shock, pain and suffering and another sum of Rs. 10,000, for the permanent and partial disability suffered by him on account of the accident. The Tribunal awarded a sum of Rs. 5,000. Against the disallowed claim, the injured filed an appeal and pending the appeal died. When the legal representatives sought to bring themselves on record to continue the proceedings, they were, impleaded subject to the consideration at the time of final disposal, of the question whether the cause of action survived after the death of the injured appellant. Relying on Section 306 of the Indian Succession Act, this Court held that the action does not survive to the legal representatives. This was in the view that in the case of personal injuries not causing death of the party, the right to prosecute does not survive.

2. Section 110-A of the Motor Vehicles Act, so far as it is relevant reads as follows:

Application for compensation.--(i) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made--(a) by the person who has sustained the injury; or (aa) by the, owner of the property; or (b) where death has resulted from the accident (by all or any of the legal representatives) of the deceased; or (c) 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.

It appears to me, by introducing Section 110-A in the statute the Parliament intended not to "restrict the statutory right to claim damages to the injured alone. In the case of claims arising out of motor accidents, Clause (b) provides that the cause of action would survive to the legal representatives where death has resulted from the accident. This was an exception to the general principle "actio personalis moritur-cum-personal". It is true there is a distinction between a case, of death resulting from the accident and a case of other personal injuries not causing the death of the party but the party dying subsequently during the pendency of the proceedings not due to the accident. But the Motor Vehicles Act does not in my opinion, make any distinction so far as the right to claim damages. The claims in all these cases are now statutory rights. Therefore, there appears to be no reason to restrict the right to the injured alone. Anyway that point need not be decided in this case at this stage. C.P. Kandaswamy and Others Vs. Mariappa Stores and Others, , is distinguishable. In that case, as already stated, the claim was for a sum of Rs. 25,000. This was made up of Rs. 1,000 towards medical expenses, Rs. 4,000 towards loss of professional income, Rs. 10,000 for shock, pain and suffering and another sum of Rs. 10,000 for the, permanent partial disability suffered by him on account of the accident. Rs. 5,000 was granted by the Tribunal made up of Rs. 2,000 towards loss of professional income; Rs. 2,000 towards shock, pain and suffering as a result of the injuries sustained by him and Rs. 1,000 for medical expenses and the rest of

the claim was disallowed. It is against that order an appeal was pending. With reference to shock, pain and suffering and loss of professional income, it was held that the cause of action did not survive. As I said I have my own doubts, in view of the present provisions in Motor Vehicles Act, about restricting the survival of the cause action only to the case of death due to accident and not to the case of injury sustained in an accident and the injured dying pending disposal of an application already filed by him. But in this case even that difficulty does not arise as the claim for damages included the value of the cycle which is damage to property. Certainly, that claim relating to value of cycle surviving for the legal representatives is a damage done by any person to the estate of the deceased. Even on the question of recovering the actual expenses incurred by the deceased, I have no doubt that the claim will survive since that amount if it had not been spent might have been available as the estate : of the deceased to be succeeded by his legal representatives. The actual dispute will be only with reference to pain and, suffering and on the* permanent disability and loss of earning claimed in the petition. With reference to these two items, though I have my own doubts, as I have already stated, I am bound by the decision of the Bench reported in C.P. Kandaswamy and Others Vs. Mariappa Stores and Others, , and I do not consider it necessary to refer to a Bench for further consideration. Suffice it to say that the order of the lower Court is not sustainable. The petitioners should have been brought on record since other claims which could survive to the petitioners are also made. Accordingly the civil revision petition is allowed, the petitioners are directed to be impleaded as legal representatives and the Tribunal is directed to go into, the question whether the deceased was entitled for the claims in paras. C. D. E. F. of column 21 of the claim petition. In respect of the other two items of claims also, since I have not given any final opinion, it is open to the Tribunal to consider the question with reference to the law as settled at that time and give a decision on merits. The petitioner will be entitled to his costs. Counsel's fee Rs. 250 payable by the second respondent, insurance company.