

(2012) 09 BOM CK 0189
In the Bombay High Court
Case No : First Appeal No. 1501 of 2008

The New India Assurance Co. Ltd.

APPELLANT

Vs

Sheikh Rizwan Sheikh Rashid, Sheikh Wasim Sheikh Rashid,
Tasleem Bano Sheikh Rashid (Deleted) All legal heirs of
Sheikh Rashid Sheikh Gaffar and Nandkishor Chhaganlal
Agrawal

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Succession Act, 1925 — Section 306

Workmens Compensation Act, 1923 — Section 3(1)(b), 30

Citation : (2013) ACJ 1737 : (2013) 1 ALLMR 586 : (2013) 136 FLR 555 :
(2012) 6 MhLj 652

Hon'ble Judges : M.N. Gilani, J

Bench : Single Bench

Advocate : Gautam Chatterjee, for the Appellant; A.V. Bhide, Advocate for
Respondent nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Gilani, J.—This appeal is u/s 30 of the Workmen's Compensation Act, 1923 (for short the "Act") taking an exception to the judgment and award dated 18.12.2007 passed by Commissioner under Workmen's Compensation Act-Labour Court, Yavatmal in W.C.A. No. 39/2002 whereby the petition for grant of compensation was partly allowed directing the appellant and respondent no. 4 to pay total amount of compensation of Rs. 87,034/- on account of injuries sustained by one Sheikh Rashid (since deceased). Shaikh Rashid, the deceased was working as a driver on Truck No. MH-29/6677 owned by respondent no. 4. On 10.08.2002, the truck met with an accident and in that accident Shaikh Rashid got injured, resulting in permanent disability to the extent of 35%. On 19.09.2002, the deceased filed petition claiming compensation of Rs. 1,74,068/-. On 29.05.2004 i.e. during the pendency of the petition, he died. Hence, his legal heirs-respondent nos. 1 to 3 were brought on record.

2. Mr. Chatterjee, learned counsel for the appellant, raised issue of surviving of cause of action to the heirs of the deceased, who had filed the petition during his lifetime claiming compensation on account of personal injuries sustained by him. According to him, on the touchstone of Section 306 of the Indian Succession Act and particularly illustration-I, the cause of action did not survive to respondent nos. 1 to 3 since there was no nexus between the injuries sustained by the deceased and his death. Second ground of challenge is admissibility of disability certificate.

3. Mr. Bhide, learned counsel for the respondent nos. 1 to 3, had not disputed that the death of the deceased on 29.05.2004 had any nexus with the injuries sustained by him on 10.08.2002 during the course of his employment.

4. The point that requires determination in this appeal is; whether the maxim, *axio personalis moritur cum persona* is applicable to the claims arising under the Workmen's Compensation Act, 1933?

5. Mr. Chatterjee, learned counsel for the appellant, has placed reliance on the decision in the case of Uttam Kumar (Deceased) Vs. Madhav and Another, . In that case, one Uttam Kumar had sustained injuries in an accident involving motor vehicle. He, therefore, filed claim petition, which was partly allowed. Dissatisfied with the judgment and award, he preferred an appeal seeking enhancement of compensation. Pending disposal of the appeal, Uttam Kumar died. In that background, it was held that the cause of action would not survive to the LRs of the deceased. A Full Bench decision of Karnataka High Court in Kannamma Vs. Deputy General Manager, (Karnataka) was relied upon wherein one of the issues was answered thus:

(ii) A claim petition presented u/s 110-A of the Motor Vehicles Act, 1939 by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc. (loss to the estate) can, on such person's death occurring as a result or consequence of bodily injuries sustained in the motor accident, be prosecuted by his/her legal representatives only insofar as the claim for compensation in that claim petition relates to loss to estate of the deceased person due to bodily injuries sustained in the motor accident.

(Emphasis supplied)

It was not the case under Workmen's Compensation Act. Moreover, it was laid down that insofar as the claim for compensation relates to loss of estate of the deceased due to bodily injury sustained in the motor vehicular accident, can survive.

6. In Margarida Gomes and Another Vs. Mackinnor Mackenzie and Co. Pvt. Ltd., similar question was cropped up. Explaining the provision of Section 306 of Indian Succession Act, the Court held that the words "other personal injuries not causing the death of the party" are preceded by the words "defamation, assault

as defined in the Penal Code". The general expression "other personal injuries" must receive restricted meaning as can be gathered from the preceding words and then observed thus:

12. Under the Act, the compensation becomes payable not because of a tort, or wrong doing by the employer. "Liability under the Workmen's Compensation act has no connection with any wrong-doing on the part of the employer. It does not result from any neglect or any default on his part. Indeed, in the case of death, or "serious and permanent disablement", the event may be the consequence of "serious and wilful misconduct on the Art of the workman while the employer is wholly free from blame and yet compensation may be recoverable all the same" (United Collieries case, 1090 AC 383 at p.391). Under the present Act, the liability is negated u/s 3(1) (b) only if the workman has been at the time of the accident under the influence of drink or drug or has disobeyed willfully an express order or an express rule for the purpose of securing safety of workmen or has wilfully removed or disregarded any safety guard or other device which he knew to have been provided for the purpose of safety of workmen. Except in these limited cases, in all other cases of accident, the workman is entitled to compensation. Section 306 of the Succession Act, therefore, has no application in the present case.

The aforesaid view was followed in case of Proprietor, Radhakrishna Estate vs. Smt. Mary; 1995 (7) FLR 211 and decision in the case of Kannamma (supra) was distinguished and held that right of compensation claimed by workman on his death is transmitted to his heirs. Reference can also be made to the decision in case of Aan Singh (D) by LRs. vs. Municipal Corporation of Delhi & ors.; AIR 2007 (NOC) 279 (DEL) . The facts of that case were that the plaintiff was employer of Delhi University. Because of negligence on the part of the hospital and its Doctor, he had suffered permanent disability. He filed the suit for recovery on Doctor, however, died during the pendency of the same. The court held that there cannot be abatement of the suit in question on the ground that had a suit been decided during his lifetime, the amount of compensation would have been added to his estate. In Joti Ram and Others Vs. Chaman Lal and Others, similar view was taken. Although, it was a case relating to compensation under Motor Vehicles Act, relying upon the decision in Hazari and Others Vs. Neki and Others, it is held thus:

Provisions of S.306 of the Act of 1925 not only provide that causes qua property would devolve on the legal heirs of the deceased plaintiff but also saves some of the actions of personal nature except those expressly excluded therein.

Loss of income for the period from the accident to the death of the injured amounts to loss of the estate. What cannot be claimed is loss of income for the period subsequent to the death of the victim.

7. For the reasons aforesaid, it is held that the cause of action survives to respondent nos. 1 to 3.

8. The second point involved is the quantum of compensation vis-?-vis disability certificate.

9. It is the contention of Mr. Chatterjee, learned counsel for the appellant, that the Doctor, who had issued Disability Certificate, has not been examined. It was disputed that on 10.08.2002, the vehicle driven by the deceased met with an accident and in that he had suffered injuries. Shaikh Rizwan, examined on behalf of the claimant, was not at all cross-examined on the point of his father sustaining injuries in the motor vehicular accident occurred on 10.08.2002. The Disability Certificate was tendered by filing application Exh.-81, which was opposed by other side. The learned Commissioner admitted the same and it was marked as Exh.-82. Perusal of Exh.-82 shows that it is signed by three Doctors (Medical Board) consisting of Orthopedist, Civil Surgeon and Resident Medical Officer. In that view of the matter, no fault can be found with the findings reached by the learned Commissioner on the issue of extent of disability having been suffered by the deceased. In the light of the aforesaid facts and circumstances, I do not find any merit in this appeal. The same is, therefore, dismissed. No order as to costs.