
(1992) 02 CAL CK 0036
In the Calcutta High Court
Case No : F.M.A.F. No. 724 of 1990

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Sm. Maheswari Roy and another

RESPONDENT

Date of Decision : 20-02-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 92
Succession Act, 1925 — Section 306

Citation : (1993) ACJ 419 : AIR 1992 Cal 330 : (1992) 1 ILR (Cal) 325

Hon'ble Judges : Bhagabati Prosad Banerji, J; Amal Kanti Bhattacharji, J

Bench : Division Bench

Advocate : Sudhir Ranjan Khastagir and Rathindra Kumar De, for the Appellant;

Judgement

decision Banerjee, J.—This is an appeal filed by the Oriental Insurance Co. Ltd. against the order dated 13th December 1989 passed in M.A.C. Case No. 291 of 1987. By the said order the Motor Accident Claims Tribunal Jalpaiguri allowed the application filed under S. 92A of the Motor Vehicles Act by which the said Tribunal directed the claimant/ opposite party to pay a sum of Rs. 7500/- for the loss of right leg of the victim due to motor accident, inasmuch, as, a question of law has been raised in this appeal. We have decided to dispose of that question of law at the very outset by our order dated 12th August 1981. We have decided to adopt this course of action because of the action that the victim had died and his mother was substituted in place and stead of the deceased victim and if the notice was issued, in that event, the mother of the victim may not be in a position to appear and defend this case, that is why, we appointed A. B. Majumder learned Advocate as Amicus Curiae and we should decide the question first, if necessary issue notice.

2. The fact in short is that Mahesh Roy was a labourer attached to Truck No. NIN 3054. On 9th July, 1987 when he was on the truck and when it was proceeding along National Highway 31, the driver of the truck was driving the truck recklessly and when he tried to overtake another vehicle near Dim Dima Tea

Garden, it dashed against the road side tree and caused an accident. Due to such accident Mahesh Roy received injuries to his right leg and he was removed to Jalpaiguri Sadar Hospital where his leg was amputated. Over the accident a police case was started against the driver of the offending truck. The application under S. 92A of the Motor Vehicles Act was filed by the said Mahesh Roy claiming compensation a sum of Rs. 7500/- only for the loss of his right leg. But during the pendency of the application Mahesh Roy committed suicide out of frustration after he was discharged from the hospital. Thereafter the court below allowed the mother of the deceased Smt. Maheswari Roy to be substituted in place of the original claimant who died bachelor. The ground was taken before the Tribunal below that the proceeding was abated because of the death of Mahesh Roy and as such mother of the deceased Mahesh Roy was not entitled to receive any compensation claiming to be legal heir of her bachelor son who has committed suicide.

3. The Oriental Insurance Co. Ltd. appellant herein filed an application for stay of the operation of the award after preferring an appeal and that the only ground that was placed before us in support of the application for stay of the operation of the award was that Smt. Maheswari Roy widowed mother of Mahesh Roy who was the victim, could be substituted in place and stead of his deceased son Mahesh Roy. The question, therefore is whether after the death of Mahesh Roy on a subsequent death, his legal heir could be substituted and allowed to claim compensation.

4. Mr. Sudhir Ranjan Khastgir learned-Advocate appearing on behalf of the Oriental Insurance Co. Ltd. submitted that on the death of the injured, claim of compensation on account of loss to the estate of injured did not survive to the legal heirs in view of the provisions of S. 306 of the Indian Succession Act. On the other hand, the claim of the claimant before the Tribunal below was that the proceeding has not abated and the claim on account of loss to the estate of injured survived to the legal heirs under S. 306 of the Indian Succession Act, was not a bar for getting substitution and proceeding with the case for the purpose of compensation.

5. S. 92A of the Motor Vehicles Act provides that "where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall or as the case may be, the owners of the vehicles shall jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section. The claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person, quantum of compensation is fixed under that section is Rs. 7,500/-. S. 306 of the Indian Succession Act provides that "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 decrease (death?), survive to and against his executors or administrators, except causes 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 sought could not be enjoyed or if granted, it would be nugatory". The maxim *actio personalis moritur cum persona* embodies within it the English principle that a personal action dies with the plaintiff. The maxim is devoid of any principle of justice, equity and good conscience. Even in England it has been subjected to severe criticism as an unjust maxim, obscure in its origin, inaccurate in its expression and uncertain in its application and often causing grave injustice." The provisions of S. 306 of the Indian Succession Act came up for consideration before the Division Bench in the case of Executive Director of Usha Sewing Machine Works Ltd. and Another Vs. Sm. Sujata Roy and Others, wherein the Division Bench had held that the said maxim is inapplicable in India except to the extent it has been adopted in the statutes. The exceptions to the non-applicability of the maxim are contained in S. 306. The first part of S. 306 clearly provides for the survival of the right to sue or defend in favour of or against the executor or administrators of a deceased party in an action. The second part of S. 306 has put a limitation for the survival of the right to sue or defend by recognising and applying the said maxim only in an action for defamation, assault or other personal injuries not causing the death of the party and in other actions whereafter the death of the party the reliefs prayed could not be enjoyed or granting them would be nugatory. It was held by the Division Bench that the words "other personal injuries not causing the death of the party" in S. 306 relate only to physical or bodily injuries not causing the death of the party.

6. Section 306 of the Indian Succession Act provides power of an executor and administrator in respect of the estate of the deceased. S. 92A provides for statutory relief fixing liability without fault in certain cases. This provision of Chapter VIIA of the Motor Vehicles Act, 1939 in which the provisions of S. 92A falls, has been given overriding effect by S. 92E, wherein it has been provided that, the provisions of this Chapter shall have effect notwithstanding anything contained in any other provisions of this Act or of any other law for the time being in force. The provision of S. 92E of the Motor Vehicles Act totally overrides the provisions of S. 306 of the Indian Succession Act and the liability u/s 92A has been fixed by the Parliament irrespective of any other law for the time being in force in India. Such no fault of liability has been fixed by the Parliament by way of extension of the principle of economic justice which is embodied in the preamble of the Constitution of India. Liability under S. 92-A of the Motor Vehicles Act could not be put to an end because of the death of the victim subsequently or for any other ground whatsoever. The Parliament made it clear that no fault liability could not be taken away by any other provisions of any other act and as such in the facts and circumstances of the case, Section 306 of the Indian Succession Act had no manner of application to a proceeding under Chapter VIIA of the Motor Vehicles Act. The Oriental Insurance Company cannot

be allowed to avoid or evade its liability under S. 92A of the Motor Vehicles Act in the facts and circumstances of the case.

7. Accordingly, we are of the view that the proceeding initiated under Chapter VIIA of the Motor Vehicles Act could not be said to have been abated by virtue of provisions of S. 306 of the Indian Succession Act. It is very unfortunate that on this technical plea which has no substance, the Insurance Company pending lot of money from the funds of the Corporation and preferred this appeal when the liability of the Insurance Company to pay compensation in this case is limited to Rs. 7,500/- public money should not have been wasted in such luxury litigation by the Insurance Company.

8. Accordingly, the appeal is dismissed with costs assessed at 60 g.m. to be paid to the respondent, widowed mother of the victim.