
(2000) 10 MP CK 0046

In the Madhya Pradesh High Court

Case No : M.A. No's. 192 of 1996 and 88 of 1998

Umed Chand Golcha

APPELLANT

Vs

Dayaram and Others

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A, 2
Succession Act, 1925 — Section 306

Citation : (2001) ACJ 966 : (2001) 1 JLJ 365 : (2002) 1 MPLJ 249

Hon'ble Judges : Bhawani Singh, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : P. Diwakar and V.K. Shukla, for the Appellant; N.S. Ruprah and A. Banerjee, for the Respondent

Judgement

Bhawani Singh, C.J.

We propose to decide both the aforesaid appeals [Misc. Appeal No. 192 of 1996, Umed Chand Golcha (dead) through legal heirs v. Dayaram and Misc. Appeal No. 88 of 1998, Sunita v. Pushpa Sharma], since common questions for consideration and decision arise in both of them.

Before advertng to consider the same, it would be desirable to make mention of material facts of the cases one after the other.

Misc. Appeal No. 192 of 1996 is directed against the award dated 21.11.95 passed by the Motor Accidents Claims Tribunal (III), Durg, in Claim Case No. 75 of 1986. The claimant Umed Chand Golcha (dead) was going from Rajnandgaon to Durg on motor cycle of his friend Shikhar Chand Jain on 1.3.1984. The truck bearing registration No. CPR 8964 belonging to Satya Narayan Sharma, driven by Daya-ram and insured with Oriental Fire & Genl. Ins. Co. Ltd. dashed against the said motor cycle. As a result of this accident, the claimant fell down and his right leg was seriously injured, apart from injuries on other parts of the body. He availed treatment at various places, like Durg, Pune, Madras, Visakhapatnam and

Bombay. His claim is that he became permanently disabled in the accident by 40 per cent, therefore, he was entitled to compensation of Rs. 5,74,000 with interest at the rate of 18 per cent per annum.

The owner of the vehicle has denied the allegations raised by the claimant and stated, *inter alia*, that the vehicle was insured. The insurance company stated that the claim was excessive. The contract of insurance was not with Satya Narayan Sharma. Instead, it was with Devendra Singh, the original owner of the vehicle, and the insurance company had not been intimated about the transfer of the vehicle, therefore, the policy issued in favour of Devendra Singh stood lapsed and the contract of insurance ceased to exist. It was not liable to indemnify the transferee of the vehicle. The Tribunal, on consideration of material on record, accepted the allegation of the claimant that the accident had occurred due to rash and negligent driving of the vehicle by the driver. It also found that the vehicle had been transferred by Devendra Singh in favour of Satya Narayan Sharma, but no intimation was given to the insurance company; therefore, it was not responsible to satisfy the award. Consequently, it was to be paid by the owner of the vehicle.

The award was challenged by the claimant on various grounds mentioned in the memo of appeal. It may be pertinent to record that the Full Bench in *National Insurance Company Ltd. Vs. Kansram and Others*, *Kunj Bihari and Others*, *Dashrath and Others*, *Prabhat and Others*, *Ku. Nirmala and Others*, *Leela Bai and Others* and *Dobdhe and Others*, , on reference made by the Division Bench of this court by order dated 23.9.1997 passed in *Umed Chand Golcha v. Dayaram*, M.A. No. 192 of 1996, held that the insurance policy remains effective in respect of third party risks but not in respect of transferee risks, even if there has been absence of application/intimation as stipulated u/s 103A of the Act and law laid down in *Balwant Singh v. Jhannubai* 1980 ACJ 126 (MP) and *Sabir Hussain Vs. Maya Bai and Others*, and similar other decisions, was no more good law. Therefore, the claim of the insurance company that it was not liable to pay compensation awarded by the Tribunal for the reasons that on transfer of vehicle without intimation to it, policy ceased to exist and there was no privity of contract between the company and the transferee, stands rejected.

During the pendency of the appeal, the claimant Umed Chand Golcha died because of personal injuries sustained by him and in his place, his legal representatives have been substituted by the court by order dated 22.11.1999.

Misc. Appeal No. 88 of 1998 (*Sunita v. Pushpa Sharma*), is directed against the award dated 21.10.97 passed by the Motor Accidents Claims Tribunal, Sohagpur, in Claim Case No. 27 of 1992, whereby the claim has been dismissed as abated.

Saligram Deshmukh instituted a claim before the Claims Tribunal for compensation of Rs. 3,30,000 for receiving several non-fatal injuries on his person in the accident caused by public vehicle, driven rashly and negligently by the driver on the date of accident, that took place on 2.3.92 at Pachmari.

However, during the pendency of the claim case, the claimant Saligram Deshmukh died leaving behind Sunita (widow), Manoj (son) and Ratif (son). They sought impleadment in the claim case being legal heirs of Saligram Deshmukh. The application for impleadment has been dismissed by the Claims Tribunal resulting in dismissal of claim petition on the ground that after death of Saligram Deshmukh, the cause of action did not survive to the legal heirs. This conclusion of the Tribunal has been assailed in this appeal.

In the first case, i.e., Misc. Appeal No. 192 of 1996, the claimant died after announcement of the award by the Claims Tribunal and during the pendency of the instant appeal. The claimant has been substituted by the legal heirs at the appellate stage. While in the second case, i.e., Misc. Appeal No. 88 of 1998, an application of legal heirs has been rejected by the Claims Tribunal at the trial stage. Therefore, the question for determination is whether the cause of action survives to legal heirs in a personal injury case, if so to what extent.

We have heard the learned counsel for the parties and perused the record. Mr. P. Diwakar and Mr. V.K. Shukla appearing for the appellant, contended that the cause of action survives to the legal heirs of the deceased claimants; therefore, the claims should be considered on merits nor could the Tribunal dismiss the claim after rejecting the prayer of legal heirs for impleadment in the claim petition. Mr. N.S. Ruprah and Ms. A. Banerjee appearing for the respondents, contended that the claim petitions and the appeals abate on the death of claimants, who had suffered personal injuries in the accident since cause of action did not survive to the legal heirs. Both sides drew our attention to the number of decisions in support of their respective contentions. In *Ramaswamy Naicker Vs. Manickka*, , the plaintiff filed the suit for expenses incurred in prosecuting defendants for defamation. It was dismissed by the lower court. During pendency of the second appeal, the plaintiff died, legal heirs brought petition for impleadment. It was opposed on the ground that cause of action did not survive; therefore, the appeal abated and consequently, the legal heirs could not be brought on record. Considering the question in the context of Section 306 of the Indian Succession Act, the court rejected the contention advanced by the legal heirs that as the estate of the deceased had incurred the loss to the extent of the amount claimed by reasons of the prosecution necessitated by the action of the defendants in having sent such a petition. The court held that the expenses like fee paid to vakil and travelling expenses cannot be said to be losses to the estate of the deceased and must be treated as merely incidence of the main cause of action and not giving rise to a separate head of liability enuring after the death of the party to the legal representative. Similar view has been taken by Madras High Court in *C.P. Kandaswamy v. Mariappa Stores* 1974 ACJ 362 (Madras). The compensation has been claimed on account of personal injuries sustained by the claimant and the Division Bench of Madras High Court held that after death of the injured, the right to sue did not survive.

In *Kongara Narayanamma v. Uppala China Simhachalam* 1975 ACJ 448 (AP), the

court upheld the right of legal representatives of the deceased to carry on the proceedings qua the damages claimed for the loss to the property. The court said that:

When a person sues for compensation in respect of the injuries sustained by him u/s 110-A (1) (a) of the Act, the compensation may be claimed in respect of not only the physical injury but also the mental suffering including any expenses he might have incurred for treatment, etc. He may also claim damages towards loss to the property consequent upon the accident. If the compensation awardable in respect of some of the items can be said to have resulted in loss to the property of the injured person, there is nothing in law or Section 110-A (1) of the Motor Vehicles Act which prohibits a claim for compensation being made in that behalf. In such cases, I am of the opinion that maxim actio personalis moritur cum persona cannot be invoked, if the accident instead of resulting in any injury resulted in the death of a person. Under the law the legal representatives can claim compensation for loss to the estate of the deceased. If an action is initiated by an injured person for compensation in respect of items which involve loss to his property why should it not survive to the legal representatives when he dies during the pendency of an action?

In Joti Ram v. Chaman Lal 1984 ACJ 645 (P&H), the Division Bench of Punjab and Haryana High Court held that the right to sue survives the claim on account of loss to the estate but abated with respect to the personal injuries suffered by the claimant. In Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair 1986 ACJ 440 (SC), the Apex Court said that the right to sue where maxim actio personalis moritur cum persona applies, does not survive to the legal representatives; therefore, they were not entitled to prosecute the claim. However, the position is different where a suit for defamation has resulted in a decree in favour of the plaintiff and cause of action having merged in the decree and the decretal debt forms part of his estate, therefore, the appeal against the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff, which his legal representative is entitled to uphold and defend and as such, is entitled to be substituted in place of deceased plaintiff.

In M. Veerappa Vs. Evelyn Sequeira and Others, , the distinction is drawn between action "founded entirely on torts" and "entirely on contract". In the former case, it would abate while in the latter it would not and survive to legal representatives. If the action is founded partly on contract and partly on torts then it would survive to the extent, it is based on contract, rest would abate. In Maimuna Begum v. Tajul 1988 ACJ 417 (Bombay), the Division Bench of Bombay High Court in paras 10 and 11 said:

(10) The contention of the respondent owner is that cause of action of the deceased Abdul Razzaque for the claim based on physical and mental injuries did not survive to his legal representatives as it was entirely a personal claim which could not survive after his death and the cause of action died with him. Reliance is placed on the old English Common Law maxim actio personalis moritur cum

persona and Section 306 of the Indian Succession Act (for short "the IS Act") which reads thus:

Section 306. 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 decease, 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 causes where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

Illustrations

(i) A collision takes place on a railway in consequence of some neglect or default of an official, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(ii) A sues for divorce. A dies. The cause of action does not survive to his representative.

Against the backdrop of very peculiar set of facts, of this case, we find it wrong and unjust to non-suit the heirs of the deceased on this ground. In the first place the said maxim is criticized even in the country of its origin, as unjust, obscure in its origin, inaccurate in its expression and often resulting in grave injustice. Indian courts have generally taken a view that the maxim should not be applied as a part of our law except of course where specifically engrafted in a statute and that the principles of justice, equity and good conscience should be followed. *Bhupendra Narayan Sinha Vs. Chandramoni Gupta*, . It was anomalous that while action could be maintained by an injured against a wrongdoer for causing injury (and not death), no such action was permissible after his death. This anomaly was sought to be removed in England by the Law Reforms Act and Fatal Accidents Act. Soon thereafter even in India on similar lines the Legal Representatives Suits Act and the Indian Fatal Accidents Act were enacted, as a result certain causes of action under tort were made to survive and be available to the legal heirs. Section 1A of the Indian Fatal Accidents Act created special rights in favour of a class of dependants.

(11) Unending rush of motor vehicles on the road and constant increase of their use as a mode of transport posed a constant threat of death and injury to persons as well as property. The long-drawn and expensive process of a civil suit was considered too inadequate to render quick justice demanded by the situation. A new forum was, therefore, created under the Motor Vehicles Act by inserting Sections 110-A to 110-F. Section 110-A (1) (a) entitles an injured person to make a claim for compensation for injury sustained by him. Injury includes all species of injuries, injury to property not excluding. Newly added Sub-clause (aa) permits claim for damages to the property by the owner. It is thus clear that even the legal representatives can claim damages for loss to the estate

of the deceased. It is difficult to see as to why an action initiated by an injured for damages on account of loss to his property should not be made to survive to his legal representatives on his death pending an action already launched by him.

Further, the court in para 12 said:

(12) Assuming that Section 306 of the IS Act is attracted in the case of legal heirs (and is not confined only to executors or administrators) illustration (i) to the said section gives indication that the provision is not attracted once an action is brought. In the instant case, the death is not only after the action is brought but after an "award" contemplated u/s 110-B is passed. There can be no manner of doubt that even a total rejection of a claim is an "award". The term "award" is not defined under the Motor Vehicles Act but it quite obviously and plainly means a judgment. In the instant case, the award has not resulted into dismissal of a claim. Compensation is awarded under various heads noticed earlier, to the satisfaction of the injured in his lifetime against a wrongdoer. The injured was not satisfied with findings that (i) no vicarious liability arose and (ii) insurer was absolved in terms of the policy of insurance. The injured merely challenged those findings in the present appeal and during its pendency unfortunately he died. The case of *Pulin Beharilal v. Narendra Kumar*, AIR 1971 Tripura 48, has taken a view that Section 306 of the IS Act does not apply once a cause of action has emerged into a decree of court and death of a party will not per se nullify a decree.

Finally, the court in para 13 said:

(13) There is yet another angle to the point. As rightly held in the case *Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others*, , the Motor Vehicles Act is a benevolent legislation which calls for liberal and broad interpretation so that real object underlying Sections 110 to 110-F is achieved. Thus, if any doubt exists on the construction of a statute its benefit must be given to the claimant for whose benefit the law has been made.

In LRs of *Om Prakash: Maya v. Mahendra Pal* 1989 ACJ 1114 (Rajasthan), A.K. Mathur, J., as he then was, held that the legal representatives of the deceased could seek substitution as claimants to pursue the claim petition, since action for loss to estate of the deceased will survive; claims for items like those spent on treatment, medicines, etc. For coming to this conclusion, the judgment of the same court reported in *Sampati Lal v. Hari Singh* 1985 ACJ 539 (Rajasthan), was followed. In *Mangal Dass (deceased by L.Rs.) Vs. S.S. Sandhu and others*, , the court held that the claim for damages on account of loss to the estate of the injured would not abate on his death. In *Narinder Kaur and Others Vs. State of Himachal Pradesh and Others*, , the question was whether the claim for personal injuries suffered by the claimant in the accident and for loss to the estate, abated in toto on the death of injured during the pendency of the claim petition. The Division Bench placing reliance on *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair* 1986 ACJ 440 (SC) and *M. Veerappa Vs. Evelyn Sequeira* and

Others, , held that the claim in respect of loss to the estate survives to the legal representatives being not covered by the exceptions contained in Section 306 of the Indian Succession Act, 1925. The court in para 8 said:

(8) ...The principle of *actio personalis moritur cum persona* relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tortfeasor. In its applicability, the principle stands considerably modified by the provisions of Section 306 of the Indian Succession Act, which clearly lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his death survive except causes of action for defamation, assault and other personal injuries not causing death of the party, etc., which come to an end with the death of injured. The loss to the estate is thus not covered by the exceptions contained in Section 306 of the Indian Succession Act. While taking this view, we are fortified by the decisions of the Apex Court in *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair* 1986 ACJ 440 (SC) and *M. Veerappa Vs. Evelyn Sequeira and Others*, . The claimants as the legal representatives of the original claimant were, as such, entitled to be substituted in his place with a view to continue the proceedings in the case and to have a decision on the claim in respect of the loss caused to the estate of the deceased.

In *Chisalal (deceased by L.R's) Vs. Nihal Singh and Others*, , the single Bench of this court held that the award of compensation made in favour of the injured claimant before his death forms a part of his estate. On his death, during the pendency of the appeal, the legal representatives may seek just determination of the share of liability amongst the respondents. In *Kashi Ram Vs. State of Haryana and Others*, , the court held that there is absence of allegation in the petition about any loss to the estate of the deceased, the legal representative could not claim to be brought on record, since the claim would be confined to injuries suffered by the deceased claimant. The Division Bench of this court in *G.M., Madhya Pradesh State Road Trans. Corpn. and Others Vs. Pushpa Devi and Others*, , held that the claim for injuries may abate, but not the claim which pertains to the loss to the estate of the injured and it survives to the legal representatives. There is another single Bench decision of this court in *Chandrakant Soni Vs. Mukesh Sahu and Others*, , which takes the view that appeal for enhancement of compensation can be pursued by the legal representatives of the deceased claimant. Since this right was available to the claimant, it flows to the legal representatives as well. The learned single Judge appears to have taken this view for reasons recorded in paras 4 and 7 of the judgment, which are as extracted below:

(4) In the matter of *Chuharmal Issardas v, Haji Wall Mohammed* 1968 ACJ 391 (MP), Division Bench of this court held that provisions relating to abatement contained in Order XXII of Civil Procedure Code, 1908, have no application to these proceedings (proceedings in respect of claim preferred by claimant before Motor Accidents Claims Tribunal). The Division Bench of Bombay High Court held

in Maimuna Begum's case 1988 ACJ 417 (Bombay), that the maxim *actio personalis moritur cum persona* cannot bar the right to sue claim by the LRs of the deceased claimant because the maxim has been criticized even in the country of its origin as unjust, obscure in its origin, inaccurate in its expression and often resulting in grave injustice. Indian courts have generally taken a view that the maxim should not be applied as a part of our law except, of course, where specifically engrafted in a statute and that the principles of justice, equity and good conscience should be followed. Punjab and Haryana High Court observed in New Suraj Transport Co.'s case 1972 ACJ 416 (P&H), that a reading of Section 110-A of the Motor Vehicles Act would show that the applications for compensation are filed in a representative capacity. In case any person who has filed the claim dies the proceedings started in a representative capacity do not abate. If the other claimants are already on record, they can continue the proceedings. If the deceased was the sole claimant, his legal representatives or the persons for whose benefit the claim had been filed, could be brought on the record.

(7) The Division Bench of Bombay High Court has discussed the relevancy of maxim *actio personalis moritur cum persona* in Indian society and atmosphere. It has pointed out that even that maxim has been criticized in the country of its origin as unjust, obscure in its origin, inaccurate in its expression and often resulting in grave injustice. It has been pointed out that Indian courts have generally taken the view that maxim should not be applied as a part of our law except, of course, where specifically engrafted in a statute and that the principles of justice, equity and good conscience should be followed. The Bombay High Court has discussed some illustrations relevant to the maxim and has also made reference to Section 306 of Indian Succession Act. In the said judgment, it has been opined that it was anomalous that while action can be maintained by an injured against wrongdoer for causing injury, no such action was permissible after his death. It also expressed the opinion that this anomaly was sought to be removed in England by Law Reforms Act and Fatal Accidents Act and soon thereafter even in India on similar lines the Legal Representatives Suits Act and the Indian Fatal Accidents Act were enacted as a result certain causes of action under the tort were made to survive and be available to the legal heirs. In para 11 of the said judgment, it has been pointed out that because of the unending rush of motor vehicles on the roads and constant increase of their use as mode of transport posed a constant threat of death and injury to persons as well as property and the long drawn and expensive process of civil suit was considered too inadequate to render quick justice demanded by the situation. It was pointed out that, therefore, a new forum was created under the M.V. Act by inserting Sections 110-A to 110-F.

Following the two decisions of Punjab & Haryana and Rajasthan High Courts in Joti Ram v. Chaman Lal 1984 ACJ 645 (P&H) and Sampati Lal v. Hari Singh 1985 ACJ 539 (Rajasthan), the Delhi High Court in V. Mepheron Vs. Shiv Charan Singh, , held in paras 2 and 3:

(2) These objections were contested by the appellant, inter alia, on the ground that so far as the claim on account of reimbursement of expenses on special diet, medicine, conveyance and doctor's fees is concerned no proof was laid before the court. The learned Tribunal still awarded the amounts on presumption. Similarly, general damages were assessed by the court to be Rs. 5,000. This court now in cross-objections cannot enhance damages because the objector has since expired during the pendency of this appeal. The personal damages are not inheritable. Hence, the right to sue for enhanced damages does not survive after the death of the injured. In this regard counsel for the appellant placed reliance on the decision of Rajasthan High Court in Sampati Lal v. Hari Singh 1985 ACJ 539 (Rajasthan), which was also a case under the Motor Vehicles Act. In that case, the claimant died during the pendency of the proceedings. The court opined that the claim on account of personal damages did not survive in view of Section 306 of Indian Succession Act. Only claim relating to loss to the estate did survive. In the present case, admittedly, the death was not due to the accident which was caused on 18.9.1973. The objector died during the pendency of appeal on 17.8.1983. Hence, Mr. Tarun Johri's contention that claim for enhancement of general damages after the death of the objector did not survive appears to be right. As regards other claims regarding medical expenses, expenses on special diet, doctor's fees and conveyance, Mr. Tarun Johri contended even those are also personal in nature, therefore, the objection petition is not maintainable after the death of the injured.

(3) So far as the contention of Mr. Tarun Johri about the claim for damages which was on account of suffering and pain suffered by the deceased, to my mind, it would abate on the death of the injured. But so far as other claims under other heads are concerned those would not come to an end on the death of the objector. The right to sue would survive even on the death of the objector. As a matter of fact claims on account of the special diet, medicine, conveyance, etc., are such which related to loss of property, therefore, right to sue would not abate on the death of the objector. It would survive to his legal heirs as held by the Punjab & Haryana High Court in the case of Joti Ram v. Chaman Lal 1984 ACJ 645 (P&H).

The Division Bench judgment of this court in Kartar Kour and Others Vs. Dayal Singh and Others, , held that if claimant dies due to injuries suffered, legal representatives can claim substitution for continuing the appeal for claiming compensation to the extent of loss to the estate of the deceased claimant. The view taken by S.C. Pandey, J., in Rameshwari Paliya and Another Vs. Rajesh Kumar Jaiswal and Others, , is that the cause of action is indivisible. It is based on personal injuries to the claimant. It cannot be dissected in various facets. Therefore, after death of the claimant, it does not survive to the legal representatives and the contention that what the claimant spent in treating himself on account of injuries suffered by him was a loss to his estate, has been rejected.

The Full Bench judgment of Karna-taka High Court in Kannamma Vs. Deputy General Manager, , held that common law rule action personalis moritur cum persona as embodied in Section 306 of the Indian Succession Act, 1925, applies to India, a claim by a person for compensation for personal injuries caused in a motor accident does not, on that person's death not being the consequence of such injuries, survive to his/her legal representatives. Therefore, injured person's claim for damages under heads recognised by common law and not by statute, does not survive on his death to his/her executors or legal representatives. It also holds that the claim by a person for compensation for personal injuries, be it pending before the Claims Tribunal, be it pending in the first appellate court or be it pending in the second appellate court does not survive on such person's death not caused as a consequence of personal injuries to his legal representatives. However, if such a claim has resulted in award of the Claims Tribunal or decree of the appellate court, cause of action survives to his legal representative on his death, even if such death is not a consequence of personal injuries sustained by him and hence, if such award or decree is disputed in the first appellate court, or the second appellate court, the same could be resisted by the legal representatives of the claimant.

The Motor Vehicles Act, 1939 was enacted to provide for speedy remedy to victims of motor accidents, which are increasing at alarming rate. It provides for establishment of Motor Accidents Claims Tribunal with power to hold enquiry into the claim and make an award determining "amount of compensation which appears to it to be just". The justness of the award is to be determined with reference to the peculiar facts of each case without being confined to any rigid mechanical formula. However, when the court proceeds to make award of compensation in cases which have resulted in a fatal accident, the court is also expected to take into account two relevant Sections 1A and 2 of the Fatal Accidents Act, 1855. Both these sections contemplate a distinct category of compensation. u/s 1A, the compensation is required to be paid to one or more of the relatives of the deceased for loss of their dependency, while u/s 2, the damages are required to be paid to the estate on account of the loss caused to the estate, the compensation may be same or different, depending on the facts of the case. The Motor Vehicles Act, 1939 has been repealed and substituted by Motor Vehicles Act, 1988. It eradicates deficiencies in 1939 Act found on experience and decisions of the courts. However, the fundamental principle for granting just compensation remains unchanged. The compensation can be claimed for the death of a person by his dependants/legal heirs or in the name of executors, administrator or representatives. The claim may include pecuniary loss to the estate of the deceased. In non-fatal case, a person may come forward and claim compensation for personal injuries sustained by him and also loss to the estate.

From the above discussion, it follows that the loss caused to the dependants of the deceased should be assessed on the basis of the value of their dependency, while the loss caused to the estate should be assessed on the basis of accretion

which the deceased could have made to augment his estate or loss caused by application of estate or part thereof for requirements arising out of the accident. The question is what is estate. A person earns for himself and his dependants. He also augments his estate by savings out of his earnings. "Estate" has undoubtedly in law a diversity of meaning and variety of signification. It may mean property of a living man or that of a deceased person, which passes to his administrator, executor and legal heirs. It may be movable and immovable. The amount spent on himself and dependants stands exhausted, while the amount added to the estate augments the same unless it is used for meeting expenditures like medicines, treatment, diet, attendant, transport, doctor's fee, etc., thereby causing pecuniary loss to the estate.

The moot question is whether the common law rule *actio personalis moritur cum persona* relates only to personal bodily injuries and not to the loss caused to the estate of the deceased by tortfeasors. It is found that in its applicability, the principle has been modified significantly by the provision of Section 306 of the Indian Succession Act reading of which demonstrates that cause of action survives to the legal representatives including one relating to the loss to the estate but not for defending assault and other personal injuries not causing death of the party. It may be true that this maxim has been criticised being unjust, obscure in its origin, inaccurate in its expression and often resulting in grave injustice and also in the country of its origin suggesting application of principle of justice, equity and good conscience unless it is specifically engrafted in the statute but it is undeniable that it has taken roots in this country and Section 306 of the Indian Succession Act, 1925, has confined to its application to specific conditions. However, proper balance has to be worked out so that tortfeasors do not thrive at the cost of victim of accident or his legal representatives. Consequently, endeavour should be to minimise the application of this maxim as far as possible and advance the cause of justice.

First situation may be a case where the claimant dies during the trial of his claim petition for cause other than the accident. The question is whether his legal representatives are entitled to be impleaded as claimants in his place and claim the compensation. So far as the claim for personal injury is concerned, it would abate on the death of the original claimant, but not the claim which pertains to loss to the estate of the injured. It survives to the legal representatives. Therefore, in case loss to the estate is already pleaded in the claim petition, legal representatives can be impleaded and seek compensation for loss to the estate. Where it is not so pleaded, they can seek amendment in the claim petition and assert the claim for loss to the estate, of course, their impleadment has to be ordered by the Claims Tribunal. In case, they do not seek amendment of claim petition, in absence of pleadings pointing out loss to the estate of the deceased, the claim petition is liable to be dismissed.

The second situation is where the award in favour of the claimant has been passed and it is challenged in the appellate court. During the pendency of the

appeal, the claimant dies. The claimant had also filed appeal/cross-objection claiming for enhancement. The award of Claims Tribunal is a decree, whether it allows compensation or does not allow the claim petition. Where it is allowed, the amount of decree is accretion to the estate of the deceased. The legal representatives can seek impleadment and defend the decree. But so far as claim for enhancement pertaining to personal injury is concerned, it may not survive to them after the death of the original claimant. Certainly they can pursue the claim for enhancement of claim for loss to the estate depending whether they have pleaded for it in the claim petition otherwise lump sum amount of Rs. 2,500 can be awarded as per Second Schedule appended to Motor Vehicles Act, 1988 read with Section 2 of the Fatal Accidents Act, 1855.

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 the 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 travelling, expenditure on attendant, expenditure on diet, expenditure on doctor's fee, reasonable monthly/annually accretion to the estate for certain period, etc. The claimant does not keep separate amount for such unforeseen expenditures during his lifetime. 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 borne 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 legitimate conclusion about such expenditures from out of the estate, from the facts and circumstances and on the basis of experience.

Therefore, we hold that the maxim *actio personalia moritur cum persona* has application to claim cases under the Motor Vehicles Act, 1988, but its application is restricted to the areas provided in Section 306 of the Indian Succession Act, 1925, and we are in respectful disagreement with the decisions taking contrary view. We also hold that broad liberal interpretation to provisions of the Motor Vehicles Act, 1988, should be given, so that victims of motor accident or their legal representatives do not suffer injustice and avoid wrongdoers thriving at their cost.

Adverting to the facts of two cases before us, we find in Misc. Appeal No. 192 of 1996 that the claimant became permanently disabled to the extent of 40 per cent. He took treatment at Durg, Bombay, Pune, Madras and Visakhapatnam. He has been awarded compensation of Rs. 65,914 including Rs. 15,812.80 towards medical expenses against the claim of Rs. 30,000. It is contended that the

amount awarded towards medical expenses had already been incurred. Amount of Rs. 40,000 more was spent later for treatment at various places. Of course, medical bills/cash memos have not been produced, but for treatment at various places, the claimant would have incurred Rs. 40,000. Naturally, it was loss to the estate in absence of any evidence suggesting any other source for spending. However, we allow medical expenses to the extent of Rs. 15,000 in addition to the amount already awarded. For some period, there is future loss of income which has not been taken into consideration by the Claims Tribunal. Against the claim of Rs. 24,000 an amount of Rs. 2,500 is allowed for loss to the estate. No claim against any other item of expenditure as loss to the estate is established, therefore, enhancement is allowed towards medical expenses and loss to the estate with interest at the rate allowed by the Claims Tribunal.

The claim petition against which Misc. Appeal No. 88 of 1998 is preferred, has been dismissed at the trial stage as abated after the death of claimant for the reasons mentioned in the preceding part of the judgment. The legal representatives could seek impleadment alleging loss to the estate. After impleadment application being allowed, they could seek amendment of the claim petition, if necessary. This has not happened in this case. Therefore, this appeal is allowed. The case is remanded to the Motor Accidents Claims Tribunal, Suhagpur to give opportunity to the legal representatives of the deceased to claim impleadment alleging loss to the estate of the deceased and in the event of the prayer being allowed, consider their prayer for amendment of the claim petition and deal with the same in accordance with law. No other point was raised.

Both the appeals (Misc. Appeal Nos. 192 of 1996 and 88 of 1998) are decided in terms of aforesaid, leaving the parties to bear their own costs.