

(2017) 02 AHC CK 0129

In the Allahabad High Court

Case No : First Appeal From Order No. 1088 of 2011

Virendra Kumar Tiwari

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

Railways Act, 1989 — Section 123, Section 124, Section 124A, Section 125
Succession Act, 1925 — Section 306

Citation : (2017) 2 ACC 652 : (2017) 4 ADJ 656 : (2017) 3 ADJ 528 : (2017) 2 AllWC 2146 : (2017) 2 TAC 16

Hon'ble Judges : Attau Rahman Masoodi, J.

Bench : Single Bench

Advocate : Jaspreet Singh and Janki Saran Pandey, Advocates, for the Appellant; Prasant Kr. Srivastava, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Attau Rahman Masoodi, J.—Statutory rights through the course of procedural laws are transformed into actionable claims and that is how procedure is termed as handmaids of justice. A right without a remedy is virtually no right in the eye of law but a right in each case has to viewed in the light of corresponding duty and social insurance/economic security.

2. The present dispute fallen in the lap of this Court is in the background of a head injury and major fracture that was sustained by the real son of appellant during a rail accident. The injured who was a bachelor succumbed to the said injuries during pendency of claim which was instituted by him through his father as an agent. The claimant died intestate. The appellant being a dependent of the deceased made an application in pending proceedings i.e. case no. OA/II/U/720/10 of 2010 wherein a prayer for substitution of mother (Smt. Sumitra Rani) as well as appellant (father) was made as is evident in Para 6(a) of the application. The application came up for decision before Railway Accident Claims Tribunal (hereinafter referred to as the Tribunal) constituted under Railway

Claims Tribunal Act, 1987 but was rejected on the ground that cause did not survive within the scope of Section 306 of Indian Succession Act as per the maxim "actio personalis moritur cum persona" being it a case of personal injury.

3. For arriving at such a conclusion the Tribunal has referred to the apex court judgement reported in AIR 1967 SC 1124 and 1986 ACJ 440 as well as the judgement reported in AIR 2010 Madras 22 and AIR 1986 Cal. 224 .

Learned counsel for opposite party at the very outset raised a preliminary objection against maintainability of present appeal on the ground that an appeal would not be maintainable at the instance of appellant who is father of the deceased claimant and the claim, even if it is taken to be maintainable, the FAFO ought to have been filed by mother of the deceased claimant being an exclusive legal successor as per the provisions of Hindu Succession Act, 1956. This objection raised by learned counsel for opposite party was scanned in the light of prayer made in the application and referring to Para 6 (a) of the application, it is seen that relief prayed by the revisionist is for impleadment of Smt. Sumitra Rani, mother of the deceased claimant and appellant both. In case impleadment application was found maintainable and allowed, the mother certainly would have been substituted in pending proceedings along with the appellant and there would not have been a resultant defect in the title of FAFO. Regard being had to the objection raised, appellant was permitted to implead Smt. Sumitra Rani, mother of the deceased claimant as a co-appellant in this FAFO filed against the order dated 7.10.2011.

4. In view of above, the preliminary objection raised by learned counsel for opposite party stands rectified.

Now coming to main issue i.e. as to whether right to continue the proceedings instituted under Section 125 of Railways Act, 1989 survives in an injury case after the death of claimant and as to whether the same can be continued by a legal representative of a deceased claimant or not, is the vital question that has cropped up in the present appeal.

5. Sri Jaspreet Singh, learned counsel for the appellant while assailing the impugned judgement has argued that the provisions of Section 306 of Indian Succession Act, 1925 firstly have no application in the present case for the reason that the proceedings before the Tribunal emanate from a self contained code i.e. the Railways Act, 1989 and are regulated under the Railway Claims Tribunal Act, 1987 and the rules framed thereunder and secondly it is well settled that Section 306 will have no application where the liability arises out of a contract. In support of his contentions he cited the following case laws.

1. Madhuben Maheshbhai Patel v. Joseph Francis Mewan 2015 SCC OnLine Guj 5453;

2. Arthamudi Ramu & others v. Union of India, 2008 ACJ 1659;

3. Sri Aan Singh v. Municipal Corporation of Delhi, (2006) 135 DLT 604;

4. Rameshwar Manjhi v. Management of Sangramgarh Colliery & others, AIR 1994 SC 1176;
5. M. Veerappa v. Evelyn Sequeira & others; (1988) 1 SCC 556;
6. Klaus Mittelbachert v. East India Hotels Ltd. & others, AIR 1997 Delhi 201;
7. Smt. Akhtari v. Union of India; 2009 (27) LCD 240; and
8. Union of India v. Prabhakaran vijaya Kumar & others, (2008) 9 SCC 527.

6. Refuting the arguments raised by learned counsel for the appellant, Sri Prashant Kumar Srivastava, learned counsel for the respondent has urged that even if it is assumed that the provisions of Section 306 Indian Succession Act do not apply, yet looking to the mandate of statutory right envisaged under Section 124 read with Section 124 - A of Railways Act, 1989, a claim in respect of a personal injury is available to the injured passenger alone, as such, rule of procedure cannot enlarge the scope of these provisions of Railways Act, 1989 in an injury case and entitle a legal representative to continue the proceedings once the claimant dies. That apart, it is also argued that in a case of personal injury, principle underlying Section 306 of Indian Succession Act would stand attracted in the matter of tortuous liability and, therefore, the Tribunal while rejecting the application has not committed any error of law. Sri Prashant Kumar has cited the following decisions:

1. Krishnakumar G. v. Union of India AIR 1999 Ker 303;
2. Melepurath Sankunni Eshuthassan v. Thekittil Goepalankutty Nair, (1986) 1 SCC 118

7. The maxim quoted above being older than the Constitution of India is bound to be viewed in the light of some significant provisions i.e. Articles 13,14, 19, 21, 25 and 38 of the Constitution of India. Right to life flows to a citizen by birth and being a citizen of a sovereign State, an individual becomes entitled to all the welfare measures that are evolved and adopted by the government towards social insurance. An unemployed citizen has an equal right to life like those who are physically challenged or the people who are otherwise dependent upon the natural resource of a country. This is an inclusive liability which a sovereign state is bound to meet under the welfare measures mechanised from time to time. Dependence of citizens capable as well as incapable is a vital area where laws of social insurance have to be interpreted meaningfully. Hereditary civil rights have transcended in the society through the philosophy of personal laws, feudalism and jurisprudence influenced by natural law theory. The expansion of society under moral theory has lessened burden on the government to satisfy in a dignified manner all basic needs of a citizen whose capabilities of any description are obliged to serve the social order in a sovereign State. The sense of care and service more prevalent in blood relationship, hence the principle of lineal descendance. Dependence unlike lineal descendance is a narrower concept looking to the obligations of State in formation of social insurance and economic

security. In other words, rule of lineal descendance has transcended in the society through complex natural law theory, whereas, principle of dependence is an evolution of welfare State and narrows down the chain of inheritance to effectuate the purpose of law and social order. Capabilities of a citizen not only serve the social order in a sovereign State but they reach to the universal and mystical order. A social order well founded in a sovereign State can alone march towards universal order and beyond. Articles 19, 21 and 25 of the Constitution of India are repository of wide range of freedoms and obligations that are to be balanced by the State.

8. The rule of dependence for the purposes of survival of cause and succession is well defined under Section 123 of Railways Act, 1989, which reads as under:

"123. Definitions. - In this Chapter, unless the context otherwise requires, -

(a) "accident" means an accident of the nature described in section 124;

(b) "dependant" means any of the following relatives of a deceased passenger, namely:-

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;

(iv) the paternal grandparent wholly dependant on the deceased passenger.

(c) "untoward incident" means -

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers."

A plain reading of Section 123 (b) would reveal that the chain of dependence is well defined under the statute which includes parents in the case of death of a bachelor. The chain of dependence is prescribed to serve the purpose of social insurance in a resultant situation arising out of rail accidents conceived under

Section 124 and 124 - A of the Railways Act, 1989. The relevant provisions are reproduced hereunder:

"124. Extent of liability. - When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident. Explanation. - For the purposes of this section "passenger" includes a railway servant on duty."

"124A. Compensation on account of untoward incident. - When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation. - For the purposes of this section, "passenger" includes -

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

The essence of the above quoted provisions is none other than the object of

tinging over an indigent condition of the victim and his dependents both. Isolation and classification of claims by virtue of its nature defeats the very purpose of law and it is for this reason that the claims instituted under Section 125 of the Act are permitted to be regulated in terms of Rule - 26 of the statutory Rules framed under the provisions of Railways Claims Tribunal Act, 1987. The relevant provisions read as under:

"Section 125. Application for compensation. -

(1) An application for compensation under section 124 or section 124A may be made to the Claims Tribunal -

(a) by the person who has sustained the injury or suffered any loss, or

(b) by any agent duly authorised by such person in this behalf, or

(c) where such person is a minor, by his guardian, or

(d) where death has resulted from the accident, or the untoward incident] by any dependant of the deceased or where such a dependant is a minor, by his guardian.

(2) Every application by a dependant for compensation under this section shall be for the benefit of every other dependant."

Rule :- "26. Substitution of legal representatives -

(1) In the case of death of a party during the pendency of the proceedings before Tribunal, the legal representatives of the deceased party may apply within ninety days of the date of such death for being brought on record. (2) Where no application is received from the legal representatives within the period specified in sub rule (1), the proceedings shall abate :

Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased."

A conjunctive reading of Section 125 (1) (a) and (d) makes it abundantly clear that a claim is maintainable at the instance of person who has suffered injury or any person being a dependent who has suffered loss due to injury or death of victim. It is for this reason that all the dependents defined under the Act are entitled to the pecuniary benefit admissible under law by virtue of Section 125 (2). An injury sustained by a victim may equally result into a loss to the dependents of injured, therefore, the meaning of the words "suffered any loss" has to be understood liberally. Reading of Section 125 (1) (a) in a manner stated above would achieve the object and essence of law and such an understanding of statute regulated in terms of Rule - 26 would not do any violence to the Statute but would rather serve the purpose of the Act and its objects. The submission of learned counsel for the respondents that Rule - 26 of the statutory rules widens the scope of Section 124/124 - A beyond its intent is thus, misconceived and deserves rejection.

9. Now coming to the maintainability of the application for substitution of the appellants in O.A./ii/U/720/10, it would be fruitful to refer to the Division Bench judgement rendered by Kerala High Court in the case of Krishnakumar G. v. Union of India rendered on 10.6.2011 in MFA No. 192 of 2010, wherein the following questions were framed by the Court:

"(i) Is the right under Section 124A of the Railways Act one that is personal to the one on whom the right vests and consequently not heritable?

(ii) Cannot the sole legal heir of a decree holder step into his shoes after his death and claim recovery of the amount that has fallen due under Section 124A and which remains unpaid?"

10. The first question framed above was answered by the High Court in affirmative after elaborately discussing the provisions of law and procedure. The right was held to be heritable.

11. This Court does concur with the conclusion but would beg to differ on the aspect of interpretation which the Court has offered to the non-obstante clause inscribed in Section 124 and 124 - A of the Railways Act, 1989.

Now before coming to the interpretation, it is apt to go into the nature of right which in the respectful opinion of "Kerala High Court judgement" is termed to be a heritable right.

12. Right to sue by virtue of Section 306 of the Indian Succession Act, 1925 in respect of demands and rights of action at the time of death of a person survive to and against his executors and administrators except the causes of personal injury not causing death of the party and where relief sought could not be enjoyed or granting it would be nugatory. Section 306 of the Indian Succession Act, 1925 is reproduced below:

"306. Demands and rights of action of or against deceased survive to and against executor or administrator.- 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, 1860 (45 of 1860) 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 granting it would be nugatory.

13. A plain reading of the provision makes it clear that what survives on the death of a person is the right to sue but this right also becomes extinct in the case of personal injury not causing death or where the relief sought cannot be enjoyed or granting it would be nugatory. This provision read with Section 6 (e) of the Transfer of Property Act 1882, where under right to sue is nontransferable, lends complete support to the contention of the respondents to deny the liability and thus it would be right to say that the impugned judgment does not suffer from any error of law.

14. In my humble view, there is a difference between an actionable claim and hereditary right. Hereditary rights flow from an existing immovable or movable property vested in an ancestor, may be a good will too but it is distinct from an actionable claim against the other person or State and may not be available unless the law provides. Death and injury caused to a person in normal course may not be compensable at all but if it is an outcome of a rail accident, it becomes an actionable claim within the framework of relevant statute. The right being a family right, therefore, for the purposes of legal action, it survives and devolves upon the injured or dependents of deceased or the persons who suffer loss. The comprehensive phraseology used in Section 125 (a) as already observed above, does not make any distinction between the two situations once the dependents who are victims of an action or cause stand defined. True that the dependents are defined in the context of death of a passenger but this principle shall hold equally good when the injured dies during pendency of claim.

15. Law of dependence has thus to be given a meaning looking to the vastness of obligations resting upon the State and social order. To make the right heritable would be a far-fetched proposition but devolution of the cause upon dependents defined under Section 123(b) of the Act would be a pragmatic rule that serves the purpose of law. Needless to say that our constitution apart from fundamental rights classifies the legal rights broadly into three categories i.e. civil rights, political rights and economic rights. Right to compensation created under the statute is a fine offshoot of Article 14 read with Article 21 and 38 of the Constitution of India.

16. Once a bread winner dies, family rights commence hence the cause of actionable claim survives.

It is for the above reason that Section 124 and 124 - A of the Railways Act, 1989 inscribe a non-obstante clause so as to oust the application of other inconsistent laws. The submission advanced by learned counsel for the appellant that the Railways Act, 1989 and the Railway Claims Tribunal Act, 1987 read with the Rules framed thereunder is a complete code in itself, looking to the purpose and object of law has merit. The submission put forth deserves acceptance at least to the extent that Section 306 of the Indian Succession Act, 1925 would have restricted application in the matter of accidental cases governed under the Railways Act, 1989. Once it is found that Section 306 of the Indian Succession Act and any other law relating to succession would have no application in the matter of rights governed under the Railways Act, 1989, the alternative submission advanced by learned counsel for the respondents fails and the appeal deserves to be allowed. It may also be clarified that continuity of proceedings through the legal representatives for the benefit of dependents defined under the Act is equally permissible so as to serve the purpose and object of beneficial legislation. In the present case, the dependents themselves have filed the substitution application hence there is no such objection of legal representatives being competent or not. The compensation for injury is quantified as per Rules,

hence this Court need not delve into that aspect at this stage.

17. In view of above, the appeal is allowed and the impugned order dated 7.10.2011 is hereby set aside. Both the appellants are permitted to be impleaded as the applicants in the pending O.A. numbered as OA/II/U/720/10 of 2010 which shall be proceeded with and decided by the Tribunal not later than a period of six months from the date a certified copy of this judgement is filed before the Tribunal. The Tribunal shall also quantify the cost of litigation while awarding compensation to the appellants, if the claim is otherwise found maintainable as per law.