

Joti Ram and others v. Chaman Lal and others (S. P. Goyal, J.)

be the date for which he is served and the Court is satisfied that he was served for that date. As observed earlier, the Rent Controller was never satisfied that respondent No. 2 was served on 23rd February, 1981. If he was satisfied then there was no occasion for adjourning the case for 3rd March, 1981 for service on respondent No. 2. The very fact that the case was adjourned for service for 3rd March, 1981, proved that the respondent was not served for that date. Under the circumstances, the first date of hearing will be 3rd March, 1981 and not 23rd February, 1981 as held by the authorities below. The whole approach of the authorities in this behalf is mis-conceived and is wrong and illegal and thus the finding arrived at is vitiated.

(6) The learned counsel for the petitioner also tried to argue the question of *res judicata* etc. as to the relationship of landlord and tenant between the parties. But in view of the above finding this question does not arise. Consequently the petition succeeds and the orders of the authorities below are set aside and the ejection application is dismissed with no order as to costs.

H. S. B.

Before S. P. Goyal & S. S. Kang, JJ.

JOTI RAM AND OTHERS,—Appellants.

versus

CHAMAN LAL AND OTHERS,—Respondents.

First Appeal from Order No. 536 of 1979.

July 16, 1984.

Indian Succession Act (XXXIX of 1925)—Section 306—Motor Vehicles Act (IV of 1939)—Section 110-A—Accident victim claiming damages under various counts—Such victim dying of other causes during course of trial—Right to continue with the claim petition—Whether survives to the legal representatives of the deceased.

Held, that a reading of section 306 of the Indian Succession Act, 1925 would reveal that action for personal injuries, short of causation, abates with the death of the injured and does not survive to

the legal heirs. The scope of the provisions of the aforesaid section and the maxim "*actio personalis moritur cum persona*" shows that the claim of damages on account of loss to the estate of the injured would not abate on his death and a claim petition under section 110-A of the Motor Vehicles Act, 1939 could be continued by the legal representatives in those cases where the loss has been caused to the estate of the deceased.

(Paras 5 & 6).

(This case was referred by the Single Judge Hon'ble Mr. Justice S. P. Goyal to the Division Bench for decision of an important question of law on 25th September, 1981. The Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice S. S. Kang finally decided the case on 16th July, 1984 and remanding the case to the Tribunal for further proceedings in accordance with law).

First Appeal from the order of the Court of Shri S. D. Bajaj, Motor Accidents Claims Tribunal, Ambala dated the 11th June, 1979 dismissing the claim petition filed by the five legal representatives as well as claim petition filed by the deceased.

Ashok Kumar Aggarwal, Advocate with D. D. Bansal, Advocate, for the Appellant.

V. P. Gandhi, Advocate, for the Respondent.

JUDGMENT

S. P. Goyal, J.

(1) On January 10, 1976 at about 6.30 A.M. Kaviraj Ram Singh while he was going on a bicycle from his clinic to the Yoga Centre in Yamuna Nagar, was knocked down near the Railway Station by truck No. HRA 5129 driven by Gurvender Singh, respondent No. 2, and thereby received serious bodily injuries. He filed a claim on July 16, 1976 for Rs. 50,000 on various counts detailed below:—

1. Rs. 1,000 on account of medical bills ;
2. Rs. 2,000 incurred on special diet during illness.
3. Rs. 3,000 on account of the additional expenditure likely to be incurred to regain health.
4. Rs. 12,000 on account of loss of earnings.

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5. Rs. 3,000 on account of loss to his sons and daughters because of their dependance upon him.
6. Rs. 29,000 for pain and sufferings.

(2) Unfortunately during the trial, he died on September 10, 1978 and his three sons and two daughters applied on November 15, 1978 for being impleaded as claimants. This application was opposed and it was averred that the cause of action being personal to the deceased did not survive after his death. This plea was upheld by the Tribunal relying on a Single Bench decision of this Court in *Calcutta Insurance Ltd. vs. Bhupinder Singh and others*, (1) and the claim petition dismissed,—*vide* order dated June 11, 1979.

(3) Mr. Ashok Aggarwal, learned counsel for the appellants did not seriously dispute that so far as the claim for pains and sufferings was concerned it would abate on the death of the injured. But respecting the claim under other heads, he contended that as the same related to the loss of property, the right to sue would not abate on the death of the injured and would survive to his legal representatives. Though the decision referred to above was distinguishable on facts yet keeping in view the importance of the question I referred the same for authoritative decision by a larger Bench and this is how this reference has come before us.

(4) At the outset we may observe that Mr. V. P. Gandhi, learned counsel appearing for the respondents very fairly and frankly conceded that if any part of the claim relates to the loss which affects the estate of the deceased the cause of action would survive and the heirs of the deceased be entitled to be impleaded as legal representatives and proceed with the petition. All the same we should like to record our reasons and distinguish the cases which were either relied upon by the learned counsel for the respondent or the Tribunal to hold that the right to sue in the present case did not survive after the death of the deceased.

(5) In *Calcutta Insurance Ltd.'s case* (supra) the deceased had claimed the amount of Rs. 20,000 on account of physical and mental pain suffered by him as a result of the injuries which he sustained in the accident. A. D. Koshal, J. (as he then was relying on section 306, Indian Succession Act held that the right to sue did not

survive to the legal heirs, the claim being personal to the deceased. The said section 306 reads as under:—

“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 cases where after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

A bare perusal of the section would reveal that action for personal injuries, short of causing death, abates with the death of the deceased or the injured and does not survive to the legal heirs. As the question before the learned Judge as to whether the claim for physical and mental pain would survive on the death of the injured was directly covered by the provisions of the said section, it was rightly held that same did not survive to the legal heirs. Similarly, in *C. I. Kandaswamy and others v. Mariappa Stores and others*, (2) relied upon by the learned counsel for the respondent, the compensation had been claimed on account of the personal injuries sustained by the claimant and the Division Bench of Madras High Court rightly held that after the death of the injured the right to sue did not survive to the legal representatives.

(6) The question before us came up for direct consideration before A. V. Krishna Rao, J. in *Kongara Narayanamma and others v. Uppala China Simhachalam and others*, (3) who upheld the right of the legal representatives of the deceased to carry on the proceedings qua the damages claimed for the loss to the property of the deceased in the following terms :

“When a person sues for compensation in respect of the injuries sustained by him under section 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

(2) 1974 A. C. J. 362.

(3) 1975 A.C.J. 448.

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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 an 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 *Hazari and others v. Neki (dead) by his legal representatives and others*, (4) while dealing with the question of devolution of the right of pre-emption on the legal representatives of the deceased plaintiff, the Supreme Court explained the scope of the provisions of section 306, Indian Succession Act, 1925 and observed that this section expresses a qualification of the maxim *actio personalis moritur cum persona* to the extent that the section indicates that amongst causes of action which survive are included some actions of a personal nature that is to say personal actions other than those expressly excluded by the section itself. From these observations it is evident that the provisions of the said section 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. Again, in *Girijanandini Devi and others v. Bijendra Narain Choudhary*, (5) the plea that the right of rendition of accounts was a personal claim and did not survive on the death of the plaintiff was rejected and the scope of the maxim, *actio personalis mortur cum persona* was explained thus :

“a claim for rendition of account is not a personal claim. It is not extinguished because the party who claims any

(4) A.I.R. 1968 S.C. 1205.

(5) A.I.R. 1967 S.C. 1124.

account or the party who is called upon to account dies. The maxim '*actio personalis moritur cum persona*' a personal action dies with the person has a limited application. It operates in a limited class of actions *ex delicto* such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages *ex delicto* and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory. Death of the person liable to render an account for the property received by him does not, therefore, affect the liability of his estate."

The scope of the provisions of section 306, Indian Succession Act and the maxim "*actio personalis moritur cum persona*", therefore, appears to be well-settled and the claim of damages on account of loss to the estate of the injured would not abate on his death. Consequently this appeal is allowed with costs and the impugned order reversed. The case would now go back to the Tribunal for further proceedings in accordance with law.

H. S. B.

Before S. P. Goyal & I. S. Tiwana, JJ.

STATE OF PUNJAB AND ANOTHER,—Appellants.

versus

BHAGWANT SINGH,—Respondent.

L.P.A. No. 928 of 1983.

July 19, 1984.

Punjab Urban Estates (Development and Regulation) Act (XXII of 1964)—Section 11-A—Allotment of plots made to a person cancelled without giving hearing to the affected party—Such cancellation—Whether proper—Rule of audi alteram partem—whether can be read into section 11-A(1).