

Before Arun Kumar Tyagi, J.

**KRISHAN LAL DUTTA THROUGH HIS LEGAL
REPRESENTATIVES—Appellant**

versus

GUDDU YADAV AND OTHERS—Respondents

FAO No.2195 of 2005

February 28, 2019

Motor Vehicles Act, 1988—S. 110-A and 166— Indian Succession Act—S. 306.—Death of injured claimant during appeal— Whether claim abates—Legal representatives whether entitled to payment, where death not due to injuries—LRs cannot prosecute for enhancement of compensation; can prosecute for loss of estate—Not covered by exceptions to S. 306 of Indian succession Act.— Death due to injuries—LRs can prosecute as claim in case of death.

Held that, the position of law which emerges from the above quoted judicial pronouncements, may be summarized as under:-

- (i) The principle of *action personalis moritur cum persona* in its applicability 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.
- (ii) Where an injured, who has filed claim petition for award of compensation or appeal for enhancement of compensation awarded limiting his claim to personal injuries, dies during pendency of such petition or appeal due to some other reason and not because of injuries suffered in the motor vehicle accident, his claim for award of compensation or appeal for enhancement of compensation awarded for personal injuries does not survive on his death and his legal representatives would not be entitled to further prosecute the same.
- (iii) Where an injured, who has filed claim petition for award of

compensation or appeal for enhancement of compensation awarded regarding personal injuries as well as loss of estate, dies during pendency of such petition or appeal due to some other reason and not because of injuries suffered in the motor vehicle accident, his claim for award of compensation or appeal for enhancement of compensation for personal injuries abates but his claim for award of compensation or appeal for enhancement of compensation for loss of estate survives and his legal representatives would be entitled to further prosecute the claim petition or appeal regarding the same.

- (iv) Where the death of injured occurs during pendency of the claim petition or appeal as a result or consequence of bodily injuries suffered in the motor vehicle accident, on his death the claim petition or appeal can be prosecuted by his legal representatives as the claim in case of death caused in an accident by the use of motor vehicle.
- (v) If a claim of an injured for compensation for personal injuries has resulted in award the cause of action becomes merged in the award and would survive to his legal representatives on his death even if such death is not the consequence of personal injuries sustained by him in motor vehicle accident and benefit of the awarded amount, which would form part of his estate, will ensure to his legal representatives who would be entitled to uphold and defend the same in case of challenge thereto.

(Para 24)

Sukhpal Singh, Advocate
for the appellant.

R.C. Gupta, Advocate
for respondent no.3-Insurance Company

ARUN KUMAR TYAGI, J.

(1) The injured-claimant had filed the present appeal through his wife as next friend seeking enhancement of the compensation awarded to him by the Motor Accidents Claims Tribunal, Ludhiana (for short 'the Tribunal') in ***MACT Case No.71 of 03.04.2002 titled as Krishan Lal Dutta*** versus ***Guddu Yadav and others*** on account of injuries suffered by him in motor vehicular accident which took place on 13.10.2001.

(2) Claimant-Krishan Lal Dutta filed petition under Section 166

of the Motor Vehicles Act, 1988 (for short 'the M.V.Act') on the averments that he suffered multiple and grievous injuries in motor vehicle accident caused on 13.10.2001 at about 09.00 P.M. in the area of G.T. Road Peeru Banda, New Sabzi Mandi, Ludhiana due to rash and negligent driving by respondent No.1 of Maruti Van bearing registration No.PB-10AK-5256, owned by respondent No.2 and insured with the respondent No.3. FIR was registered regarding the accident in Police Station Sadar, Ludhiana. Due to multiple and grievous injuries suffered on different parts of his body including head injury, he lost his memory to the extent of 80% and remained under treatment in C.M.C. Hospital, Ludhiana and incurred expenses of `6 lacs on his medical treatment. He had undergone neurosurgery twice but had not recovered and is under treatment. While pleading that he was aged about 44 years and was earning `10,000 per month by wholesale/supply of Dhoop and Aggarbatti and working as Press Reporter, the claimant sought award of compensation of `15 lacs with costs and interest against the respondents No.1 to 3.

(3) The claim petition was contested by the respondents. In their joint written statement, respondents No.1 and 2 denied the accident and also their liability to pay the compensation. In its written statement, respondent No.3 took usual preliminary objections as to non-maintainability, non-joinder and mis-joinder of parties, the claimant and the respondent not having valid and effective driving license and breach of the terms and conditions of the insurance policy by the insured.

(4) Issues were framed and the parties were given opportunity to produce their evidence.

(5) On perusal of the material on record, the Tribunal held that the claimants suffered injuries due to accident caused on 13.10.2001 by rash and negligent driving by respondent No.1 of Maruti Van bearing registration No.PB-10AK-5256, owned by respondent No.2 and insured with respondent No.3 and that respondent No.1 had valid and effective driving license at the time of the accident. The Tribunal awarded amount of `2,68,147/- to the claimant towards expenditure incurred on medical treatment, `10,000/- on account of pain and suffering due to 68% permanent disability of lower limb, `5,000/- towards special diet, `2,000/- on account of transportation charges, `20,000/- on account

of loss of future income, `20,000/- on account of loss of amenities of life and directed the respondents No.1 to 3 to pay the total compensation rounded of as `3,25,000/- with costs and interest at the rate of 6% per annum jointly and severally.

(6) Feeling aggrieved, the injured-claimant filed the present appeal for enhanced of the compensation.

(7) During the pendency of the appeal, claimant-Krishan Lal Dutta died on which, vide order dated 06.07.2015, his Legal Representatives were brought on record.

(8) I have heard arguments addressed by learned Counsel for the parties and have gone through the material on record.

(9) Mr. Sukhpal Singh, learned Counsel for the appellant has argued that on death of the injured-claimant during pendency of the appeal, his claim did not abate and his legal representatives are entitled to further prosecute his appeal for enhancement of compensation awarded by the Tribunal.

(10) Mr. Sukhpal Singh, learned Counsel for the appellant has further argued that the Tribunal awarded meager amount under the heads of loss of income during the period of treatment, loss of future income, pain and suffering and loss of amenities of life. Due to head injury the injured- claimant lost his memory and had I.Q. of 75% and suffered from permanent disability of left lower limb to the extent of 68%. The Tribunal did not award just compensation towards loss of future income by applying requisite multiplier to his monthly income. The Tribunal also awarded lesser rate of interest. Therefore, the appeal may be allowed and the compensation awarded may be enhanced. In support of his arguments, learned counsel for the appellant has placed reliance on *Sandeep Khanuja* versus *Atul Dande and another*¹, *Kavita* versus *Deepak and others*², *Yadava Kumar* versus *The Divisional Manager, National Insurance Co.Ltd.*³, *Arvind Kumar Mishra* versus *New India Assurance Co. Ltd. and another*⁴ and *Reshma Kumari and others* versus *Madan Mohan and another*⁵.

¹ (1977) 3 SCC 64 (SC)

² (2012) 8 SCC 604

³ 2010 (4) RCR (Civil) 155

⁴ 2010 (4) RCR (Civil) 917

⁵ 2009 (3) RCR (Civil) 908

(11) Mr. R.C. Gupta, learned Counsel for respondent No.3 has argued that on death of the injured-claimant during pendency of the appeal, his claim abated and his legal representatives are not entitled to payment of any enhanced amount of compensation.

(12) Mr. R.C. Gupta, learned Counsel for respondent No.3 has further argued that the claimant-injured has not produced any cogent and reliable evidence to prove his employment and income, amount of loss of income during treatment, functional permanent disability and consequent loss of future income. The Tribunal has awarded just compensation to the injured-claimant. Therefore, the appeal may be dismissed.

(13) In the present case the injured claimant-Krishan Lal Dutta suffered injuries in motor vehicular accident which took place on 13.10.2001. He filed claim petition for compensation under Section 166 of the M.V. Act through his wife as next friend on 03.04.2002 which was allowed by the Tribunal vide impugned award dated 23.02.2005. The Tribunal held that the claimants suffered injuries due to accident caused on 13.10.2001 by rash and negligent driving by respondent No.1 of Maruti Van bearing registration No.PB-10AK-5256, owned by respondent No.2 and insured with respondent No.3; that respondent No.1 had valid and effective driving license at the time of the accident; that respondents No.1 and 2 driver and owner-insured and respondent No.3-insurance company were jointly and severally liable to pay compensation to the claimant. These findings have not been challenged by the respondents No.1 and 2 or respondent no.3-Insurance Company by filing appeal or cross-objections or even otherwise during arguments. These findings of the Tribunal which are based on proper appreciation of the cogent and reliable evidence on record in this regard do not call for any interference.

(14) The Tribunal awarded amount of `2,68,147/- to the claimant towards expenditure incurred on medical treatment, `10,000/- on account of pain and suffering due to 68% permanent disability of lower limb, `5,000/- towards special diet, `2,000/- on account of transportation, `20,000/- on account of loss of future income, `20,000/- on account of loss of amenities of life and directed the respondents No.1 to 3 to pay the total compensation rounded of as `3,25,000/- with costs and interest at the rate of 6% per annum jointly and severally. Feeling aggrieved the claimant filed the present appeal through his wife

as next friend on 08.04.2005 seeking enhancement of the compensation awarded by the Tribunal. During pendency of the appeal the claimant died on 07.11.2006. Application dated 19.05.2015 registered as CM No.11671-CII-2015 was filed for impleading his widow, son and daughter as his legal representatives which was allowed vide order dated 06.07.2015.

(15) The questions which arise in the present appeal are (i) whether on death of the injured-claimant during pendency of the appeal his claim abated, if so, to what extent and (ii) whether his legal representatives are entitled to payment of any amount, if so, to what amount.

(16) The general rule under the common law that death of either party extinguished any cause of action in tort by one against the other expressed in maxim 'actio personalis cum moritur persona (a personal action dies with the person) has been modified in its application to India by Section 306 of the Indian Succession Act, 1925 which provides 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 (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.”

(17) The question whether the legal representatives could be allowed to continue the application filed under Section 110-A of the Motor Vehicles Act, 1939 by a claimant who died during the pendency of the proceedings was considered by this Court in *Calcutta Insurance Limited* versus *Bhupinder Singh and Others*⁶ and it was held that right to claim compensation for personal injuries died with the death of the injured.

(18) The question as to whether in case of death of claimant during pendency of the proceedings right to sue survives regarding claim for loss of estate to his legal representatives was examined by this

⁶ (1970) 72 P.L.R. 724

Court in *Joti Ram and others* versus *Chaman Lal and others*⁷ and it was held that if the compensation awardable in respect of some of the items can be said to have resulted in the loss of property of the injured person, there is nothing in law or section 110-A(1) of the Motor Vehicles Act, 1939 which prohibits the legal representatives of the deceased to claim compensation, or seek impleadment, if the action has already been initiated by the injured.

(19) In *Melepurath Sankunni Ezhuthassan* versus *Thekittil Geopalankutty Nair*⁸ Hon'ble Supreme Court held that the cause of action for defamation of the injured did not survive in favour of his legal representatives on his death during pendency of the appeal. Hon'ble Supreme Court in para No.7 of its judgments observed as under:-

“Where a suit for defamation is dismissed and the plaintiff has filed an appeal, what the appellant-plaintiff is seeking to enforce in the appeal is his right to sue for damages for defamation and as this right does not survive his death, his legal representative has no right to be brought on the record of the appeal in his place and stead if the appellant dies during the pendency of the appeal. The position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case the cause of action has merged in the decree and the decretal debt forms part of his estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff-respondent which his legal representatives is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent-plaintiff.”

(20) In *M. Veerappa* versus *Evelyn Sequeira and others*⁹ Hon'ble Supreme Court held the suit of the plaintiff against his counsel for damages for negligence to have abated on death of the plaintiff. Hon'ble Supreme Court in its judgment observed as under:-

"The maxim 'actio personalis cum moritur persona' has been applied not only to those cases where a plaintiff dies during the pendency of a suit filed by him for damages for personal

⁷ 1984 ACJ 645

⁸ 1986 ACJ 440 (SC)

⁹ AIR 1988 SC 506

injuries sustained by him but also to cases where a plaintiff dies during the pendency of an appeal to the Appellate Court, be it the First Appellate Court or the Second Appellate Court against the dismissal of the suit by the trial Court and/or the First Appellate Court as the case may be. This is on the footing that by reason of the dismissal of the suit by the trial Court or the First Appellate Court as the case may be, the plaintiff stands relegated to his original position before the trial Court. Vide the decisions in *Punjab Singh* versus *Ramautar Singh* (AIR 1920 Patna 841)(supra), *Irulappa* versus *Madhya* (supra), *Maniramlala Mt. Chattibai* (AIR 1937 Nag 216) (supra), *Baboolal* versus *Ram Lal* (AIR 1952 Nag 408) (supra) and *Melepurath Sankunni Ezhuthassan* versus *Thekittil Geopalankutty Nair*, 1986 ACJ 440 (SC) (supra). In *Palaniappa Chettiar versus Rajah of Ramnad* (AIR 1926 Mad. 243) (supra), and *Motilal* versus *Harnarayan*, AIR 1923 Bombay 408 (supra) it was held that a suit or an action which has abated cannot be continued thereafter even for the limited purpose of recovering the costs suffered by the injured party. The maxim of action personalis cum moritur persona has been held inapplicable only in those cases where the injury caused to the deceased person has tangibly affected his estate or has caused an accretion to the estate of the wrong doer vide *Rustomji Dorabji* versus *W.H. Nurse* (AIR 1921 Mad I)(supra) and *Ratanlal* versus *Baboolal* , AIR 1960 MP 200(supra) as well as in those cases where a suit for damages for defamation, assault or other personal injuries sustained by the plaintiff had resulted in a decree in favour of the plaintiff because in such a case the cause of action becomes merged in the decree and the decretal debt forms part of the plaintiff's estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff which his legal representatives are entitled to uphold and defend [vide *Gopal* versus *Ramchandra* ([1902 ILR (26) Bom 597] (supra) and *Melepurath Sankunni versus Thekittil* (supra)."

(21) In *Harkirat Singh* versus *Inderjit Kaur*¹⁰, it was held that after the death of the injured, right to sue survives to the legal

¹⁰ 2000(1) ACJ 250 (PHHC)

representatives of the deceased in respect of the claim on account of loss to the estate.

(22) In *Gulab Singh (deceased) through LRs* versus *Nahar Singh and others, FAO No.3824 of 2006, decided on 25.05.2017* this Court observed as under:-

“On a consideration of the controversy, it is clear that a claim petition would not abate on the death of the claimant insofar as the claim relates to the pecuniary loss caused to the deceased as a result of the motor accident. If there was any loss to the estate of the deceased, cause of action would survive. If the deceased suffered economic loss also and had initiated action prior to his death, the beneficiaries shall be allowed to recover the same from the persons responsible for causing that loss. Loss to the estate may include loss of earnings of the deceased and loss to the property. On their substitution, the legal representatives shall be permitted to prosecute only that part of the claim of the deceased, which related to the loss to the estate.”

(23) In *Ram Ashari* versus *Himachal Pradesh Road Transport Corporation*¹¹, it was observed as follows:-

“It is well settled law that an action in torts for claim of compensation for damages on account of injuries suffered by an injured is a right personal to the injured. This right cannot be continued by the legal heirs or legal representatives. It is no doubt true that the legal heirs or the legal representatives can continue the proceedings in so far as they relate to the loss to the estate such as medical expenses, amount spent on treatment etc. However, the claim with regard to the pain and suffering, future loss of income and such related matters is an action which is personal to the injured alone and cannot be continued after his death unless it is proved that the death is the result of the injuries suffered in the accident.”

(24) The position of law which emerges from the above quoted judicial pronouncements, may be summarized as under:-

(i) The principle of *action personalis moritur cum persona* in its applicability stands considerably modified by the

¹¹ 2006 ACJ 2433 (H.P High Court)

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.

(ii) Where an injured, who has filed claim petition for award of compensation or appeal for enhancement of compensation awarded limiting his claim to personal injuries, dies during pendency of such petition or appeal due to some other reason and not because of injuries suffered in the motor vehicle accident, his claim for award of compensation or appeal for enhancement of compensation awarded for personal injuries does not survive on his death and his legal representatives would not be entitled to further prosecute the same.

(iii) Where an injured, who has filed claim petition for award of compensation or appeal for enhancement of compensation awarded regarding personal injuries as well as loss of estate, dies during pendency of such petition or appeal due to some other reason and not because of injuries suffered in the motor vehicle accident, his claim for award of compensation or appeal for enhancement of compensation for personal injuries abates but his claim for award of compensation or appeal for enhancement of compensation for loss of estate survives and his legal representatives would be entitled to further prosecute the claim petition or appeal regarding the same.

(iv) Where the death of injured occurs during pendency of the claim petition or appeal as a result or consequence of bodily injuries suffered in the motor vehicle accident, on his death the claim petition or appeal can be prosecuted by his legal representatives as the claim in case of death caused in an accident by the use of motor vehicle.

(v) If a claim of an injured for compensation for personal injuries has resulted in award the cause of action becomes

merged in the award and would survive to his legal representatives on his death even if such death is not the consequence of personal injuries sustained by him in motor vehicle accident and benefit of the awarded amount, which would form part of his estate, will enure to his legal representatives who would be entitled to uphold and defend the same in case of challenge thereto.

(25) In view of the above stated legal position as the claim of injured Krishan Lal Dutta for compensation for personal injuries had resulted in award, the cause of action merged in the award and, therefore, survived to his legal representatives on his death to that extent and benefit of the awarded amount of `3,25,000/- which formed part of his estate enured to his legal representatives who are entitled to payment thereof and also to uphold and defend the award in case of challenge thereto by the respondents.

(26) It is now well settled that in personal injury cases compensation can be awarded under the following heads:-

(1) **Pecuniary damages (Special damages)**

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure;
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising
 - (a) Loss of earning during the period of treatment; and
 - (b) Loss of future earnings on account of permanent disability; and
- (iii) Future medical expenses

(2) **Non-pecuniary damages (General damages)**

- (i) Damages for pain, suffering and trauma as a consequence of the injuries;
- (ii) Loss of amenities (and/or loss of prospects of marriage); and
- (iii) Loss of expectation of life (shortening of normal longevity).

(See *Raj Kumar versus Ajay Kumar and another* (2011) 1

Supreme Court Cases 343 and *R. D. Hattangadi* versus *Pest Control (India) Limited and others* 1995 ACJ (SC) 366).

(27) In view of the legal position referred to in the judgment herein before, the legal representatives of Krishan Lal Dutta are entitled to prosecute the appeal for enhancement of compensation awarded for loss of estate which would include amounts of expenses incurred relating to treatment, hospitalization and medicines, transportation, attendant, special diet, loss of earnings during the period of medical treatment and loss of earnings due to permanent disability till his death which formed part of loss of estate.

(28) The Tribunal awarded amount of `2,68,147/- to the injured-claimant towards expenses incurred on medical treatment. Neither there is any further evidence other than that referred by the Tribunal nor the learned Counsel for the appellant has pointed out any material to show that the injured-claimant had incurred any other amount on his medical treatment. Therefore, legal representatives of the claimant are not entitled to award of any further amount towards his medical treatment. It is common knowledge that in personal injury cases expenses are incurred on transportation, special diet and attendant. The Tribunal awarded amount of `5,000/- towards special diet and `2,000/- towards transportation but the Tribunal did not award any amount towards attendant. In view of the nature of injuries of the injured-claimant and surgeries undergone by him, the amounts awarded towards special diet and transportation cannot be said to be just and adequate and it will be just and proper to award amount of `10,000/- towards special diet, `10,000/- towards transportation and `20,000/- towards attendant.

(29) The Tribunal did not award any amount towards loss of earnings during the period of treatment. Even though the claimant pleaded and PW-1 Shobha Dutta deposed that the injured-claimant was earning `10,000/- per month by wholesale/supply of Dhoop and Aggarbatti and working as Press Reporter but the factum of employment of the injured and payment of salary to him as Press Reporter and salary certificate were not proved by producing the relevant record and examining the concerned officer/official of the employer. No documentary evidence was produced to prove wholesale/supply of Dhoop and Aggarbatti by the injured-claimant. Therefore, the claim as to employment of the injured-claimant as Press

Reporter and carrying on of business of wholesale/supply of Dhoop and Aggarbatti and income of the injured-claimant being `10,000/- per month could not be relied upon. In view of rates of minimum wages of `2,535.65 ps. notified to be payable to skilled workmen during the relevant period, it would be just and proper to hold that the claimant was earning `2,550/- per month at the time of the accident. Since, the injuries of the claimant involved surgeries and recovery had taken a period of about four months, and the claimant must be held to have suffered loss of earnings for four months during the period of treatment. Therefore, the injured-claimant was entitled to award of an amount of (2550×4) `10,200/- towards loss of earnings during the period of treatment.

(30) PW-1 Shobha Dutta testified that the injured-claimant lost memory and was unable to work. The claimant examined PW-9 Dr. Satish Phillip and PW-10 Dr. Krishan Anand Chaudhary to prove permanent disability of the injured-claimant. PW-9 Dr. Satish Phillip testified that Krishan Lal Dutta suffered permanent disability of left lower limb to the extent of 68% and PW-10 Dr. Krishan Anand Chaudhary testified that injured-claimant Krishan Lal Dutta was having 75% IQ level.

(31) In *Raj Kumar versus Ajay Kumar and another*¹² Hon'ble Supreme Court observed as under:-

“We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his

¹² (2011) 1 SCC 343

permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

(32) In the present case, PW-9 Dr. Satish Phillip did not testify about functional permanent disability of the injured-claimant qua his body and PW-10 Dr. Krishan Anand Chaudhary did not testify regarding the injured-claimant having lost memory and being completely unable to work. In view of the medical evidence on record and nature of injuries and proportion to the body, it will be appropriate to determine functional permanent disability of the body of the injured-claimant as 35%. The Tribunal awarded amount of `20,000/- on account of loss of future earnings due to permanent disability without applying the multiplier method. The Tribunal was required to assess the loss of future earnings due to functional permanent disability by applying the multiplier method as observed in *Raj Kumar versus Ajay Kumar and another*¹³. The claimant was aged about 44 years and was having income of `2,550/- per month at the time of the accident to which addition of 25% is required to be made towards future prospects in view of observation in *National Insurance Company Ltd. versus Pranay Sethi and others*¹⁴ which on such addition comes to (2550 + 637) `3,187/-. In view of age of the claimant at the time of accident multiplier of 14 would have been applicable and on application of the multiplier method, proportionate compensation payable to the appellant for loss of future earnings due to functional permanent disability of the body to the extent of 35% comes to ($3187 \times 12 \times 14 = 5,35,416 \times 35\%$) `1,87,395/-. Therefore, in case of his survival the injured-claimant would have been entitled to award of compensation of `1,87,392/- towards loss of future earnings due to 35% functional permanent disability of the body but loss of future earnings due to functional permanent disability of the body being personal to the injured-claimant

¹³ (2011) Supreme Court Cases 343

¹⁴ 2017 (4) R.C.R. (Civil) 1009

abated on his death. However, it may be observed here that the injured-claimant having suffered injuries in motor vehicle accident on 13.10.2001 died on 07.11.2006. The loss of earnings, which the injured-claimant actually suffered after the period of medical treatment and till his death due to 35% functional permanent disability, formed part of his estate and his legal representatives will be entitled to recover the same. Actual loss of income suffered by the injured-claimant due to 35% functional permanent disability of the body comes to (`2550/- X 56 months X 35/100 =) `49,980/- out of which amount of `20,000/- awarded by the Tribunal towards loss of future income would be liable to be deducted.

(33) However, in view of the legal position referred to in the judgment herein before, claim of injured-claimant Krishan Lal Dutta for enhancement of compensation for loss of future earnings due to functional permanent disability of the body which he would have suffered had he survived, future medical treatment, if any, required in case of his survival, pain and sufferings, loss of amenities and loss of expectation of life being personal to him abated on his death during pendency of the appeal. The Tribunal awarded amount of `10,000/- towards pain and suffering and amount of `20,000/- for loss of amenities which could not be said to be just and adequate and in view of the injuries of the deceased and the facts and circumstances of the case, it would have been just and proper to award amount of `20,000/- towards pain and suffering and `30,000/- towards loss of amenities had the injured-claimant survived. As the injuries were not proved to have shortened the longevity of life and resulted in loss of expectation of life, the injured-claimant would not have been entitled to any compensation for the same. Since, claim of injured-claimant Krishan Lal Dutta for enhancement of compensation for loss of future earnings due to functional permanent disability of the body, future medical treatment, if any, required in case of his survival, pain and sufferings, loss of amenities and loss of expectation of life being personal to him abated, the legal representatives of Krishan Lal Dutta are not entitled to award/enhancement of compensation under the above said heads.

(34) The observations in *Sandeep Khanuja versus Atul Dande and another*¹⁵, *Kavita versus Deepak and others*¹⁶, *Yadava Kumar*

¹⁵ (1977) 3 SCC 64 (SC)

versus *The Divisional Manager, National Insurance Co. Ltd.*¹⁷, *Arvind Kumar Mishra* versus *New India Assurance Co. Ltd. and another*¹⁸ and *Reshma Kumari and others* versus *Madan Mohan and another*¹⁹ (relied upon by learned Counsel for the appellant), with which there is no dispute, are not of much help to the legal representatives of the appellant in determination of the quantum of compensation to which they are entitled.

(35) In view of the above discussion, the legal representatives of the claimant are entitled to enhancement of the amounts awarded under the heads of transportation from `2,000/- to `10,000/- and special diet from `5,000/- to `10,000/- and award of compensation of `20,000/- towards attendant, `10,200/- towards loss of earnings during medical treatment and `49,980/- towards loss of earnings due to 35% functional permanent disability of the body after medical treatment till his death (out of which amount of `20,000/- awarded by the Tribunal towards loss of future income would be liable to be deducted) totaling `73,180/- which formed part of loss of his estate besides `3,25,000/- awarded by the Tribunal.

(36) In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the whole amount which is challenged to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

(37) In *Puttamma and others* versus *K.L. Narayana Reddy and another*²⁰, Hon'ble Supreme Court observed in para 60 as under:-

“This Court in *Abati Bezbaruah* versus *Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148* noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just

¹⁶ (2012) 8 SCC 604

¹⁷ 2010 (4) RCR (Civil) 155

¹⁸ 2010 (4) RCR (Civil) 917

¹⁹ 2009 (3) RCR (Civil) 908

²⁰ 2014 (1) R.C.R. (Civil) 443

and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.”

(38) In *Supe Dei and others* versus *National Insurance Company Ltd. and another*²¹, Hon’ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases. In *Sube Singh and another* versus *Shyam Singh (Dead) and others*²² rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon’ble Supreme Court of India to 9% per annum.

(39) In view of the observations of Hon’ble Supreme Court in *Puttamma and others* versus *K.L. Narayana Reddy and another*²³; *Supe Dei and others* versus *National Insurance Company Ltd. and another*²⁴; *Sube Singh and another* versus *Shyam Singh (Dead) and others*²⁵ and lending rate of interest notified by R.B.I., mercantile rate of interest prevalent for loan, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, it will be appropriate to modify interest awarded by the Tribunal to 9% per annum.

(40) It follows from the above discussion that the legal representatives of injured-claimant Krishan Lal Dutta are entitled to payment of compensation of `3,25,000/-awarded by the Tribunal and `73,180/- enhanced by this Court with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization.

(41) In view of the above discussion the appeal is partly allowed with costs in terms of the above-mentioned modifications of the award dated 23.02.2005.

(*Shubreet Kaur*)

²¹ 2009 (4) SCC 513

²² 2018 (2) R.C.R. (Civil) 131 (SC)

²³ 2014 (1) R.C.R. (Civil) 443

²⁴ 2009 (4) SCC 513

²⁵ 2018 (2) R.C.R. (Civil) 131 (SC)