

Sbri Ram Udhar and others v. Shri Hari Chand and Dharam Chand Bhandari, C.J. tenant comes into existence, *Bakhshi Ram alias Bakhsha v. Banta Singh* (1). It may be that the mortgagees intended to secure on the amount lent an income equal to the interest at a certain rate, but as pointed out in *Asa Ram and others v. Kishan Chand and others* (2), they were not precluded from entering into a transaction of this kind.

For these reasons I would uphold the order of the Courts below and dismiss the petition. There will be no order as to costs.

B.R.T.

APPELLATE CIVIL

Before Bishan Narain, J.

REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION, NEW DELHI,—Appellant

versus

DYER MEAKIN BREWERIES, LTD., AND ANOTHER,—
Respondents.

Regular First Appeal from Order No. 144 of 1955.

1957
Oct. 11th

Employees State Insurance Act (XXXIV of 1948)—Sections 61 and 67—Scope of—Employees State Insurance Corporation—Whether entitled to claim indemnity from a person causing the death of an insured person—Fatal Accidents Act (XIII of 1855)—Sections 1 and 2—Scope of—Whether legal representatives of the deceased are entitled to recover damages consequent upon his death by accident.

Held, that section 61 of the Employees State Insurance Act, 1948, is wide enough to prevent a dependant from receiving any benefit similar to “dependants benefit” which he is entitled to receive under any other enactment, e.g., Workmen’s Compensation Act. It is, however, not wide enough to prevent a dependant from recovering damages from a third person who is liable in tort to pay damages for

(1) 1956 P.L.R. 574
(2) A.I.R. 1930 Lah. 386

causing death by his negligence. There is no reason why in such unfortunate circumstances a dependant of the deceased should not be allowed to get duplication of damages, i.e., under the present Act and under Common Law, i.e., in tort.

Held, that section 67 of the Employees State Insurance Act, 1948, in terms applies to cases where the injured person dies on account of the injuries received by the tortious conduct of the defendant. In other words this section applies to cases of damages which can be received or recovered under second proviso to section 2 of the Fatal Accidents Act. It is probably for this reason that section 67 only states that the victim is entitled to recover damages in tort and not that he must be necessarily in a position to do so. The fact that the "dependants benefit" is not payable to the deceased does not affect the position. The dependants are entitled to receive damages under section 1 of the Fatal Accidents Act and this right is independent to the victim's right to recover damages which is enforceable for the benefit of the estate of the deceased under section 2 of the same Act.

Held, that the effect of the provisions of section 1 of the Fatal Accidents Act, 1855, is that the claim which the injured person could have enforced if he had lived is allowed to be enforced by his representatives but the damages recovered under this provision would be considered to be the part of the estate of the deceased. Thus the provisions of the Indian Fatal Accidents Act abolished and abrogated in entirety the maxim of *actio personalis moritur cum persona* to the cases in which the victim dies of the injuries received in an accident.

Held, that when in view of the death the injured person cannot enforce the right vested in him then under section 2 of the 1855 Act, his representatives can enforce the right so vested in the deceased on his behalf and for the benefit of his estate. The claim under section 1 of this Act is independent of the claim under second proviso to section 2 and the beneficiaries under these claims may well be different. Section 1 relates to loss suffered by the dependants and they are entitled to receive damages therefor while section 2 relates to loss to the deceased and the damages so recovered become part of the estate of the deceased from

which persons other than dependants may benefit, e.g., the creditors or legatees of the deceased. The injured person is thus entitled to receive or recover such damages but his right to so recover them is enforced by his representatives.

First Appeal from the order of Shri D. P. Sodhi, Senior Sub-Judge, Ambala, dated the 2nd August, 1955, dismissing the application and leaving the parties to bear their own costs.

HAR PARSHAD, for Appellant.

GOPAL KRISHAN, for Respondent.

JUDGMENT

Bishan Narain, J. The Employees State Insurance Corporation (hereinafter called the Corporation) through its Regional Director has filed this appeal under section 82(2) against the order of the Employees Insurance Court established under the Employees State Insurance Act, 1948 (hereinafter called the Act) whereby the Corporation's application claiming indemnity from the Dyer Meakin Breweries, Limited, under section 67 of the Act has been dismissed.

Surrinder Singh was employed with the Ambala Electric Supply Company, Limited. He was insured under the Act with the Corporation with effect from the 17th May, 1953. This insured employee while proceeding on duty on the 20th December, 1953, was knocked down by a truck belonging to the Dyer Meakin Breweries. At that time it was driven by the Company's employee. As a result of this accident Surrinder Singh died. The Employees Insurance Court ordered the Corporation to pay annas 10 per day to the dependants of the deceased. The Corporation filed an application under section 67 of the Act claiming Rs. 1,366 from the Brewery on the ground that the

fatal accident took place in such circumstances that created a legal liability in the respondents to pay damages. The respondents *inter alia* pleaded that assuming that it was legally liable to pay damages to the dependants of the deceased, the Corporation was not entitled to claim to be indemnified. The Insurance Court has accepted this plea and has rejected the Corporation's claim. The Corporation has filed the present appeal to this Court.

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The Insurance Court has come to the conclusion that when an insured person dies in an accident, then section 67 has no application as it cannot be said that he, as an insured person, is entitled to receive or recover damages under any law from the respondents. The Insurance Court has dealt with various sections of the Act in coming to this conclusion. The correctness and soundness of this conclusion is challenged by the Corporation. To appreciate the arguments of either party it is necessary to describe the general scheme of the Act.

This Act introduces compulsory insurance scheme under which all persons in insurable employment and the employers of such persons pay contribution in consideration for which they or their dependants become entitled in certain specified events to certain benefits. The Act provides for the establishment of the Employees State Insurance Fund which is to be held and administered by the Corporation established under section 3 of the Act for the purposes of the Act (Section 26). All employees in factories or establishments to which the Act applies shall be insured (Section 38), and the contributions to the Fund shall be made by the employers and the employees (Section 39). The Corporation is also authorised to receive grants from Government, public bodies or

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private persons for the Fund [Section 26(2)] Initially the contribution is to be made by the employers on behalf of the employees as well but the employees' share is to be realised from their wages (Section 40). The scale of contribution is dependent on the rate of wages paid to the employees, and the employers' contribution is about double that of the employees (Schedule 1 of the Act). The Fund is to be expended for payment of benefits, etc., and for meeting of its administration expenses (Section 28). Section 46 describes the following five benefits :—

- (1) Sickness benefit;
- (2) Maternity benefit;
- (3) Disablement benefit;
- (4) Dependants' benefit; and
- (5) Medical benefit.

The sickness benefit is claimable by a person who has paid a minimum of 12 contributions which condition may be waived during the first contribution period (Sections 47 and 49). An insured woman is qualified to claim maternity benefit on certain conditions (Section 50). An insured person is entitled to recover compensation as disablement benefit in respect of an employment injury sustained by him (Section 51). Where an insured person dies as a result of employment injury then his dependants as defined in the Act are entitled to receive dependants' benefit (Sections 52 and 53). An insured person or a member of his family (when this benefit is extended to a family) is entitled to receive medical benefit (Section 56). Section 61 prevents a person entitled to any benefit under this Act from obtaining a similar benefit over again under any other enactment. The

Corporation can recover damages from the employer (Section 66) and has a right to be indemnified by some person other than the employees (Section 67) in cases specified in these sections. The Act then makes provisions for the adjudication of disputes and claims but it is not necessary to describe them as they are irrelevant for the purposes of determining the question raised in the present appeal.

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In the present case the claim arises out of an accident and the only relevant provisions are those that relate to disablement and dependants' benefits. The relevant portion of section 53 lays down that where an insured person is entitled to receive compensation from the employer under the Workmen's Compensation Act or damages from a third person in respect of employment injury then such a person is entitled to receive disablement benefit from the Corporation and not from the employer or the other person. If, however, the insured person dies in circumstances mentioned above then the dependants' benefit will be payable by the Corporation but in such a case there is no provision that the dependants cannot recover anything from the employer or the third person. Section 53(v) preserves the employers' liabilities under the Workmen's Compensation Act subject to modifications introduced by this Act. Section 61, however, prevents a person entitled to any benefit under this Act from obtaining a similar benefit under any other enactment. It is to be noted that this section prevents recovery of benefit under any other enactment but not under "any other law". This section is in my opinion wide enough to prevent a dependant from receiving any benefit similar to "dependants benefit" which he is entitled to receive under any other enactment, e.g., Workmen's Compensation Act. It is, however, not wide enough to prevent a dependant from recovering

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damages from a third person who is liable in tort to pay damages for causing death by his negligence. It was argued by the appellants' counsel that there is no reason why in case of death a dependant should be able to recover additional damages. I am unable to see any reason why in such unfortunate circumstances a dependant of the deceased should not be allowed to get duplication of damages, i.e., under the present Act and under common law, i.e. in tort.

This brings me to the provisions which entitle the Corporation to reimburse itself or to receive indemnity in certain cases. These provisions are contained in sections 66 and 67. Section 66 relates to Corporation's right to be reimbursed by the employer or the principal who is liable to pay compensation under section 12 of the Workmen's Compensation Act. In the present case, however, we are not concerned with this provision of law. The present claim arises under section 67 of the Act, which reads—

“Where an insured person is entitled to receive or to recover (but has not received or recovered), whether from his employer or any other person, compensation or damages under any law for the time being in force in respect of any employment injury caused under circumstances creating a legal liability in some person other than the employer or his agent, the Corporation shall be entitled to be indemnified by the person so liable. Provided that the Corporation shall not be entitled to be indemnified by an employer who has paid contributions in respect of the employee sustaining the employment injury as an

employee under this Act, except in cases covered by section 66.”

The respondents' case is this. On the death of an insured person from employment injuries the dependants of the deceased are entitled to get “dependants benefit” (Section 52 of the Act), and the insured person is not entitled to receive in the nature of things any benefit. If the injured person is not entitled to receive any benefit then there can be no right of indemnity which can accrue to the Corporation. The payment to the dependants under section 52 of the Act cannot be indemnified by the person who is liable to pay only to the insured person. In support of this the learned counsel has gone through the whole Act and has pointed out that in this Act it is nowhere laid down that reference to an insured person includes a reference to his dependants. According to the respondents' counsel the Corporation can be indemnified only on payment to an insured person and not to a dependant as the two kinds of payments are distinct under the Act and relate to the different categories of benefits. It follows from this argument that section 67 is applicable only to cases where the insured person receives injuries in circumstances mentioned in the section and not where he succumbs to those injuries.

After a careful consideration I have come to the conclusion that this contention of the respondent-company is not sound. The important words in this section (67) for the present purposes are “Where an insured person is entitled to receive or to recover * * *”. To apply section 67 to this case it is necessary that it should be found that the insured person was entitled to receive or recover damages from the Dyer Meakin Breweries Limited. If so then section 67 applies and the Corporation is entitled to reimbursement otherwise not.

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It must be remembered that in the present case the Dyer Meakin Breweries Limited. are being held liable in tort for causing death of Surrinder Singh. It was laid down in England as far back as 1805 that no suit is maintainable against a person who by his wrongful act, neglect or default has caused the death of another person (*vide Baker v. Bolton* (1)). This conclusion was based on the maxim *actio personalis moritur cum persona*. It is well known that when a person is injured by the negligence or default of another, not only the injured person suffers but also his dependants. If the injuries are not fatal then the injured person can receive or recover damages from the person causing these injuries by his tortious conduct. However, if the injuries prove fatal then this maxim of *actio personalis moritur cum persona* prevented both the injured (because of his death) as well as dependants from recovering these damages. This was obviously very unjust to the victim and his dependants. In England Fatal Accidents Act, 1846, was passed. The scope and effect of this Act was considered by Greer L. J., in *Rose v. Ford* (2). The learned Judge observed—

“That Act provided that the dependants of a person killed by the wrongful act of the defendant could recover for the pecuniary injury they had sustained by reason of the death provided the facts showed that the deceased person if he had lived would have had a good cause of action against the defendant.”

In India the Fatal Accidents Act (XIII of 1855) was passed and its section 1 in substance reproduced the provisions of the English Act with the

(1) (1808) 1 Camp. 493
(2) (1939) 1 K.B. 901

only difference that while in England only executors or administrators of the estate of the deceased could enforce this claim for the benefit of the dependants, in India his representatives could also enforce such a claim. This difference, however, disappeared by the amendment of the English Act in 1864. The Indian Act went further than the English Act. It introduced two provisions in section 2. The second proviso reads—

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“Provided that in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum when recovered shall be deemed part of the assets of the estate of the deceased.”

The effect of this provision of law is that the claim which the injured person could have enforced if he had lived is allowed to be enforced by his representatives but the damages recovered under this provision would be considered to be the part of the estate of the deceased. Thus the provisions of the Indian Fatal Accidents Act abolished and abrogated in entirety the maxim of *actio personalis moritur cum persona* to the case of the type now under consideration. While discussing these two provisions of the Indian Act, Sir Shadi Lal observed in *Secretary of State v. Gokal Chand and others* (1),—

“The law contemplates two sorts of damages; the one is the pecuniary loss to the estate of the deceased resulting from the accident; the other is the pecuniary

(1) (1925) I.L.R. 6. Lah. 451

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loss sustained by the members of his family through his death. The action for the latter is brought by the legal representatives, not for the estate, but as trustees for the relatives beneficially entitled; while the damages for the loss caused to the estate are claimed on behalf of the estate and when recovered form part of the assets of the estate. The loss to the estate had accrued during the lifetime of the deceased and could have been recovered by him."

The second provision of the Indian Act was in substance enacted in England by the Law Reform (Miscellaneous Provisions) Act, 1934. The effect and scope of 1934 enactment was considered in *Rose v. Ford* (1), although the real controversy in that case related to items and assessment of damages which questions do not arise in the present case. Greer L. J. observed :—

"Section I of the Act of 1934 made a very considerable alteration in the law by stating that all causes of action subsisting at the death vested in the deceased should survive for the benefit of the estate. This necessarily means : should survive to be enforced on behalf of the estate by the personal representative of the deceased.

What does survive and becomes enforceable by the personal representative of the deceased is the cause of action as it subsisted at the date of the death in the deceased person. * * * * *
the personal representative can recover the damages which could have

been recovered by the deceased and which were a liability on the wrongdoer at the date of the death."

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This case went up to the House of Lords and was reported in *Rose v. Ford* (1). In this judgment the above dictum of Greer L. J. was approved. It was laid down that the common law doctrine has been altered by statutory provisions and that the right to claim damages for wrongful injuries which vested in the injured person in life passed on his death under the 1934 Act to his personal representatives. Lord Russell of Killowen observed—

"The object of the statute, as appearing from its language, is to put a person who has, by his negligence, caused damage to someone who has subsequently died in the same position as regards liability * * * * as that in which he would have been if the injured person had sued and recovered judgment while still alive * * * * That cause of action was vested in the deceased before and when she died, and, by virtue of the Act of 1934, it survives for the benefit of her estate. It is no new cause of action created by that Act; it is a cause of action existing independently of the Act, which by the Act is preserved from the extinction which the death of the deceased would otherwise have brought about."

Similarly Lord Roche in his speech observed—

"The cause of action is the cause of action not of a stranger to the deceased but

(1) (1937) 3 All. E.R. 359

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of the deceased herself, when alive. As to this cause of action, the statute renders inoperative the maxim *actio personalis moritur cum persona*, and, on her death, this cause of action survived, and could be enforced by the plaintiff."

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It follows that when in view of the death the injured person cannot enforce the right vested in him then under section 2 of the 1855 Act his representatives can enforce the right so vested in the deceased on his behalf and for the benefit of his estate. The claim under section 1 of this Act is independent of the claim under second proviso to section 2 and the beneficiaries under these claims may well be different. Section 1 relates to loss suffered by the dependants and they are entitled to receive damages therefrom while section 2 relates to loss to the deceased and the damages so recovered become part of the estate of the deceased from which persons other than dependants may benefit, e.g., the creditors or legatees of the deceased. In this view it must be held that the injured person is entitled to receive or recover such damages but his right to so recover them is enforced by his representatives.

Thus section 67 of the Employees State Insurance Act, 1948, in terms applies to cases where the injured person dies on account of the injuries received by the tortious conduct of the defendant. In other words this section applies to cases of damages which can be received or recovered under second proviso to section 2 of the Fatal Accidents Act. It is probably for this reason that section 67 only states that the victim is entitled to recover damages in tort and not that he must be necessarily in a position to do so. The fact that the "dependants benefit" is not payable to the deceased does not affect the position. The

dependants are entitled to receive damages under section 1 of the Fatal Accidents Act and this right as I have already stated is independent to the victim's right to recover damages which is enforceable for the benefit of the estate of the deceased under section 2 of the 1855 Act. For all these reasons I am of the opinion that the Corporation is entitled to claim indemnity under section 67 of the Employees State Insurance Act from the Dyer Meakin Breweries Limited, provided other conditions laid down in this section are satisfied.

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It was stated before me in the course of arguments that the respondent-Brewery has paid damages to the dependants of the deceased. Its effect on the Corporation's claim cannot be determined in this appeal as the matter was not argued before me and it is not known when, to whom and under what circumstances this payment has been made. I am not suggesting that these circumstances will necessarily affect the legal position.

The result is that this appeal succeeds and is hereby accepted. There will be no order as to costs. The Employees Insurance Court will now decide the case on the merits.

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Before Chopra and Gosain, JJ.

BALMAKAND,—Appellant.

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PINDI DASS AND OTHERS,—Respondents.

Civil Regular First Appeal No. 219 of 1950.

Hindu Law—Right of the Karta of Joint Hindu Family to sell the property of the joint family—Extent of—Sale, Whether should be for the benefit of the family—Transaction, whether for the benefit of the family—Considerations to determine.

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