

Before : J. V. Gupta, C.J. & R. S. Mongia, J.

M/S BIHARI LAL SHANU RAM,—Petitioner.

versus

BIHARI LAL WADHWA AND ANOTHER,—Respondents.

Civil Revision No. 2415 of 1989.

3rd August, 1990.

Code of Civil Procedure, 1908 (Act V of 1908)—S. 115—Death of Judgment-debtor in accident—Amount of compensation awarded to Legal Representatives as a result of accident—Compensation amount—Whether can be attached in execution.

Held, that the compensation in the hands of the legal heirs of the deceased is not an estate of the deceased, and, therefore, cannot be attached by a decree-holder in execution of a decree against the deceased.

(Para 7)

(This case was referred to a larger Bench by Hon'ble Mr. Justice J. V. Gupta on 15th November, 1989 for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice and Hon'ble Mr. Justice R. S. Mongia (constituted under orders dated 30th November, 1990 of Hon'ble the Acting Chief Justice) has decided the question of law as well as the Revision Petition on 3rd August, 1990).

Petition under Section 115 CPC for revision of the order of the Court of Shri Dharam Pal, HCS, Sub-Judge 1st Class, Kurukshetra dated 8th August, 1989 ordering that the amount attached by the order of his Predecessor stands released and further ordering that the Decree Holder is at liberty to file list of property belonging to the J.D. and to come up on 4th October, 1989 for further proceedings.

Claim : Application for execution.

Claim in Revision : For reversal of the order of the Lower Court.

Jagdish Manchanda, Advocate, for the Petitioner.

Anil Khetrpal, Advocate, for the Respondent.

JUDGMENT

R. S. Mongia, J.

(1) This Civil Revision was heard by learned Single Judge and was referred for a decision by a larger Bench and that is how we are seized of the matter.

(2) The question to be decided in this petition is whether the amount of compensation awarded in favour of legal-representatives of a person, who dies in an accident, could be attached in execution of the decree against the deceased ?

(3) Briefly, the facts of the case are that petitioner M/s Bihari Lal Shannu Ram obtained a money decree for Rs. 5,145.30 against Bihari Lal and Nand Lal, respondents. The said Bihari Lal died in an accident. His legal-representatives filed an application for compensation under the Motor Vehicles Act. The Motor Accidents Claims Tribunal awarded a sum of Rs. 1,06,140 as compensation to the legal heirs of Bihari Lal,—*vide* award' dated 21st October, 1988. In the execution application filed by the decree-holder M/s Bihari Lal Shannu Ram, decretal amount of Rs. 5,145.30 was attached. The legal-representatives of the deceased judgment-debtor Behari Lal raised an objection that the said amount of compensation could not be attached in execution of a decree against deceased Bihari Lal. The learned Tribunal held that the said amount could not be attached. Dissatisfied with that judgment, the petitioner had filed the present revision petition.

(4) The question to be determined is as to whether the compensation to the legal-representatives which is awarded by the Tribunal on the death of a person, can be said to be the estate of the deceased. If the compensation awarded to the legal-representatives is estate or asset of the deceased, then certainly it can be attached by a decree-holder for satisfaction of the decree against the deceased, but if it is not so, then the compensation cannot be attached.

(5) The compensation in the hands of the legal-representatives is not the estate of the asset of the deceased. It is something given by way of compensating to the legal-representatives because of the loss etc. suffered by them on account of the death of the deceased. In order to hold that a particular property properly belonged to the estate of the deceased, it must be seen: (a) that the property must be in existence at any time before the death of the deceased; (b) the deceased must have a beneficial interest, be it in praesenti or contingent, in the property; (c) the deceased must be in possession and control, be it actual, constructive or beneficial, of the property and (d) the deceased must have power to dispose of such property. The

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amount of compensation awarded by the Tribunal is payable to deceased's heirs only and on account of his death. The said amount cannot be said to have been a part of the estate of the deceased, and is not attachable as the asset of the deceased in the hands of the legal representatives. A similar point had arisen before the Madras High Court in *Janki alias Pattammal and others v. Prabath Finance by Partner R. Parbhakaran* (1), and it was held that the compensation in the hands of the legal-heirs of the deceased is not attachable in execution of a decree against the deceased.

(6) The learned counsel for the petitioner relied upon a Division Bench judgment of this Court in *Joti Ram and others v. Chaman Lal and others*, (2) to contend that the compensation in the hands of the legal-representatives of the deceased is liable to be attached in execution of a decree against the deceased. After going through the judgment, we find that the point to be decided in this revision petition was not before the Division Bench in *Joti Ram's case* (supra). What had happened in that case was that one Kaviraj Ram Singh had sustained injuries in an accident and he filed a claim petition before the Accident Claims Tribunal for compensation for the bodily injuries which he had received in the accident. Unfortunately, during the trial, he died and his legal-representatives moved an application for being impleaded as claimants. That application was opposed on the ground that the cause of action being personal to the deceased did not survive after his death. This plea was upheld by the Tribunal and the claim petition was dismissed. The Division Bench while considering the provisions of Section 306 of the Indian Succession Act, held 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. However, the Bench held that if an action is initiated by an injured person for compensation in respect of items which involve loss to his property, to that extent the right to sue would survive to the legal-representatives when he dies during the pendency of an action. Therefore, the claim of damages on account of loss to the estate of the injured would not abate on his death. As stated above, *Joti Ram's case* (supra) is of no assistance to the learned counsel for the petitioner.

(1) 1986 (1) ACJ. 306.

(2) 1984 ACJ. 645.

(7) We are in respectful agreement with the view taken by the Madras High Court in *Janki's case* (supra) and hold that the compensation in the hands of the legal heirs of the deceased is not an estate of the deceased, and, therefore, cannot be attached by a decree-holder in execution of a decree against the deceased.

(8) Consequently, the revision petition fails and is dismissed. However, there will be no order as to costs.

P.C.G.

Before : G. R. Majithia, J.

BHIM SINGH,—Appellant.

versus

STATE OF HARYANA,—Respondent.

Regular Second Appeal No. 1558 of 1978.

3rd September, 1990.

Constitution of India, 1950—Art. 14—Limitation Act (XXXVI of 1963)—Art. 58—Petitioner warned for remaining absent—Subsequent orders for break in service passed after 7 years at his back—Order violative of principles of natural justice and double jeopardy—Setting aside of void order—No limitation is required.

Held, that the order was passed without affording an opportunity of hearing to the petitioner. Even if the period during which the plaintiff had remained absent from duty had to be treated as break in service, this could only be done after giving an opportunity of hearing to the plaintiff and it was all the more necessary when for the lapse he had already been punished. An employee cannot be punished twice over for the same lapse. As observed earlier, the Deputy Commissioner had already directed that the plaintiff should be administered a warning for remaining absent from duty without leave and an entry to that effect be made in the Amalnama. There was absolutely no justification for the Deputy Commissioner to direct that the period for which the plaintiff had remained absent from duty be treated as a break in service after the expiry of more than 7 years. The order was passed in violation of the principles of natural justice and is also bad for the reason that for the same lapse an employee cannot be punished twice over. It is a settled proposition of law that an order passed in violation of principles