

(1989) 08 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 1011 of 1988

Mangal Dass deceased by legal
representatives Satya Devi and
Others

APPELLANT

Vs

S.S. Sandhu and Others

RESPONDENT

Date of Decision: Aug. 31, 1989

Acts Referred:

- Motor Vehicles Act, 1988 - Section 110A, 110A(1)
- Succession Act, 1925 - Section 306

Citation: (1990) ACJ 579

Hon'ble Judges: G.R. Majithia, J

Bench: Single Bench

Advocate: Thakur Kartar Singh, for the Appellant; Maharaj Baksh Singh, for the Respondent

Final Decision: Allowed

Judgement

G.R. Majithia, J.

This appeal is directed against the order of the Motor Accidents Claims Tribunal, whereby he dismissed the claim application.

2. The facts:

Mangal Dass deceased filed an application u/s 110-A of the Motor Vehicles Act (for short "the Act") against the Respondents. He alleged that he received injuries due to rash and negligent driving of the vehicle by Respondent No. 1. During the pendency of the application, the claimant died on February 10, 1987 presumably as a result of the injuries suffered in the accident. The widow and the children of the deceased moved an application for substituting them as Applicant-claimants in place of the deceased. The application was contested and the Tribunal dismissed the application for substitution filed by the legal heirs of the deceased and also the claim

application.

3. It is not clear on what grounds the Tribunal declined the application filed by the legal heirs of the deceased for substituting them as claimants in the claim application. It is also not clear on what basis he held that the right to sue does not survive. A person suing for compensation in respect of the injuries sustained by him u/s 110-A (1) of the Act can claim compensation for physical injury, mental sufferings including any expenses incurred for treatment. He can also claim damages towards loss to property consequent upon the accident. If the compensation is awardable in respect of some of the items resulting in loss to the property of the injured person, there is no bar u/s 110-A (1) of the Act which prohibits a claim for compensation to be made in that behalf.

The 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. 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?

4. Reference can usefully be made to a Bench decision rendered in *Joti Ram v. Chaman Lal* 1984 ACJ 645 (P&H), wherein it was held thus:

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 for damages on account of loss to the estate of the injured would not abate on his death.

5. For the aforesaid reasons, the appeal is allowed. The order of the Motor Accidents Claims Tribunal is set aside. The application moved by the legal representatives of the deceased for bringing them on record is allowed. They are allowed to be brought on record as legal representatives of the deceased claimant. The claim petition will be decided in the light of the aforementioned observations. The order under challenge is set aside. The claim petition will be revived and restored against its original number and will be disposed of on merits keeping in view the observations made above, within three months from the date of the receipt of the order. Costs in appeal will abide by the event.