

## Basant Kaur and Another Vs Gajinder Singh and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** July 19, 1995

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 22 Rule 3

**Citation:** (1995) 111 PLR 505

**Hon'ble Judges:** Ashok Bhan, J

**Bench:** Single Bench

**Advocate:** R.L. Batta and Shikha Roy and Nagesh Sood, for the Appellant; Ravinder Chopra, for the Respondent

**Final Decision:** Allowed

### Judgement

Ashok Bhan, J.

Plaintiff Harjinder Singh alias Goldi (now deceased) and Mohinder Singh both sons of Jawahar Singh filed a suit for

recovery of Rs. 8,00,000/- for injuries caused to them by the defendants on 2.9.1986. Kirpal Singh defendant had been convicted u/s 307, I.P.C.

Gajinder Singh and Kamaljit Singh were acquitted by the Sessions Judge giving them the benefit of doubt. Suit was filed on 31.8.1988. Damages

were claimed on account of medical expenses, for bodily injuries physical and mental torture the details of which are as under :-

(i) Medical expenses. Rs. 1,50,000/-

(ii) Physical injuries & torture Rs. 4,00,000/-

(iii) Mental torture & Pains Rs. 2,00,000/-

(iv) Loss in business and

efficiency of the Plaintiffs. Rs. 50,000/-

Total:- Rs. 8,00,000/-

In the plaint it has been stated that the plaintiffs were unable to do any work as they had become mentally weak and they will have to remain

dependent for whole of their life as all of their works are being looked after by their father Jawahar Singh. issues were framed. Evidence was led

by the plaintiffs.

2. Harjinder Singh alias Goldi died on 11.1.1993 during the pendency of the suit. Basant Kaur widow of Harjinder Singh filed an application on

27.1.1993 under Order 22 Rule 3 C.P.C. for being impleaded as the legal representatives of the deceased (hereinafter referred to as the

petitioners). This application has been rejected by the trial court by the impugned order dated 26.7.1994 on the ground that no cause of action

survives in the petitioners as the right to claim damages for the injuries caused was personal to Harjinder Singh alias Goldi which came to an end

with his death.

3. Notice of motion was issued. Counsel for the parties have been heard. Trial Court has not appreciated the pleadings of the parties properly.

From the reading of the plaint, it is clear that plaintiff Harjinder Singh had suffered loss in business due to his incapacity to the extent of Rs.

50,000/- and Rs. 1,50,000/- spent on medical treatment and other hospital expenses. The injuries caused to deceased-plaintiff Harjinder Singh

tangibly affected his estate as he had suffered loss in his business and has incurred medical expenses which is a loss suffered by the estate of the

deceased. The loss in business and expenses on treatment suffered by the estate of the deceased can be claimed by the legal representatives i.e.

the petitioners. In the plaint, it has been stated that the plaintiff Harjinder Singh had been rendered dependent because of the injuries suffered by

him and that his business had to be looked after by some guardian and at this moment his business was being looked after by his father Jawahar

Singh statements of Harjinder Singh deceased which was recorded by the trial Court prior to his death was read in Court. It has come in his

evidence that the business was being conducted jointly with his father, brother and they had suffered loss in business and their business has been

reduced to more than 50%. He has also stated about the expenses incurred by him on his treatment. Similar is the statement of Mohinder Singh

plaintiff (as P.W.7) and Jawahar Singh (P.W. 8) father of the deceased. Normally speaking in case of personal injury cause of action comes to an

end with the death of the person who had been injured but the maxim "actio personalis cum moritur persona" has been held to be inapplicable in

case where injury caused to the deceased person has tangibly affected his estate or has caused an accretion to the estate of the wrong doer. In the

present case plaintiff had claimed damages for loss to the estate as well because of the injuries. In M. Veerappa Vs. Evelyn Sequeira and Others, ,

it was held by their Lordships 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 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 v. Ramautar

Singh (A.I.R. 1920 Pat 841) (Supra), Irulappa Konar and Others Vs. Madhava Konar (died) and Others, , Maniramlala v. Mt. Chattibai (A.I.R.

1937 Nag 216) (Supra), Baboolal v. Ram Lal (A.I.R. 1952 Nag 408) (Supra) and Melepurath Sankunni Ezhuthassan v. Thekittil Gopalankutty

Nair (Supra). In Palaniappa Chettair Vs. B. Rajarajeswara Sethupathi Pathi alias Muthuramalinga Sethupathi Avergal, Rajah of Ramnal and

Others, and Moti Lal v. Harnarayan (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 actio 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 Vs. W.H. Nurse and Parthasarathi Naidu, and Ratanlal Bhannalal Mahajan Vs. Baboolal Hajarilal

Jain and Others, 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 plaintiffs 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 defended (vide Gopal v. Ramchandra ILR (1902) (26) Bom. 597 (Supra) and

Melepurath Sankunni v. Thekittil (Supra)

4. The Maxim of "actio personalis cum moritur persona" (that the personal right of action dies with the person) is not applicable in the present

case. From the facts and circumstances of the case, it is clear that the right to sue survives to the petitioners who are the legal representatives of the

deceased Harjinder Singh. Accordingly, this revision petition is allowed, the impugned order of the trial Court is set aside and the petitioners are

ordered to be impleaded as legal representatives of Harjinder Singh and permitted to continue with the suit. No costs.