(1995) 07 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4043 of 1994

Basant Kaur and Another		APPELLANT
	Vs	
Gajinder Singh and Others		RESPONDENT

Date of Decision: July 19, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - 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 Appeallate 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.