(2001) 06 P&H CK 0016

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 2375 of 2000

Shiwando Prabhakar		APPELLANT
	Vs	
Sukhwinder Singh alias Chhinda		RESPONDENT

Date of Decision: June 1, 2001

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2002) ACJ 847 : (2001) 4 RCR(Civil) 209

Hon'ble Judges: S.S. Sudhalkar, J; Mehtab Singh Gill, J

Bench: Division Bench

Advocate: Mr. R.C. Dogra and Mr. Sushil Dogra, for the Appellant; Mr. Sandeep Jain and Mr. Deepak Suri, for the Respondent

Final Decision: Allowed

Judgement

S.S. Sudhalkar, J.
This appeal is filed by the heirs of the claimants. The original claimant Vinay Prabhakar had filed M.A.C.T. Case No. 59 of 1994 before the Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal). The claim petition was filed because of the personal injuries received by him, for the compensation thereof. He died during the pendency of the claim petition. The present appellants gave an application for being impleaded as heirs. The said application was dismissed and claim petition was also dismissed. Hence this appeal has been filed by the heirs of the claimants.

2. We have heard the learned Counsel for the parties.

3. Learned counsel for the appellants argued that it cannot be said that the cause of action will not survive after the death of the injured person in the accident. According to him, even if the death of the deceased was not caused because of the injuries, then also the same could survive. Learned counsel for the respondents argued that the cause of

action does not survive and that the application and the claim petition are rightly dismissed.

4. When a person receives injuries in an accident, they can result in various consequences, such as (i) loss of actual income; (ii) expenditure incurred; (iii) future loss of income; (iv) Non-pecuniary amount under the head of pain and sufferings. These are a few illustrations. In the first two cases, the injured spends for the treatment, for the persons helping him when he is incapacitated, he suffers loss of actual income because he is not able to work. Similar is the case when he has to spend the leave from the leave balance which he otherwise would have encashed or otherwise voluntarily enjoyed. This is certainly a loss to the estate and the heirs of the deceased who are affected by the loss to the estate can certainly pursue the claim petition for the same.

5. If the death results as a consequence of the accident, then also, in addition to the loss to the estate, loss of future income and compensation under certain non-picuniary heads can also be awarded. The Tribunal held that the claim petition is not with regard to any damage caused to the estate of the deceased. The finding itself is erroneous. Moreover, the Tribunal should have given the opportunity to the appellants to lead evidence after joining the heirs of the deceased.

6. Learned counsel for the appellants has relied upon Sampati Lal v. Hari Singh and others 1985 ACJ 539. It is a judgment of the Rajasthan High Court wherein it has been held that the claim on account of the loss to estate of the deceased survives. It is also observed that the expenses incurred on the treatment and loss of income on account of the death of amounts to loss to estate while compensation claimed for mental and physical agony is not a loss to the estate. In view of the above, we find that the Tribunal was in error in dismissing the application of the appellants to join them as parties and in dismissing the claim petition, the award as well as the order on the application deserves to be set aside.

As a result of this, this appeal is allowed. The award of the Tribunal as well as the order on the application for joining the appellants as heirs is set aside and the case is remanded to the Tribunal for taking decision in accordance with law after allowing the parties to lead necessary evidence. Parties to appear before the Tribunal on 19.7.2001.

7. Appeal allowed.