
Bhagwatibai (Smt.) and Another Vs Bablu alias Mukund and Others

Miscellaneous Appeal No. 848 of 2003

Court: Madhya Pradesh High Court

Date of Decision: Nov. 4, 2006

Acts Referred:

Legal Representatives Suits Act, 1855 â€” Section 1#Motor Vehicles Act, 1988 â€” Section 165(1), 166, 166(1)#Succession Act, 1925 â€” Section 306

Citation: (2006) 3 JLJ 379 : (2006) 4 MPLJ 579

Hon'ble Judges: A.K. Patnaik, C.J; Subhash Samvatsar, J; A.K. Gohil, J

Bench: Full Bench

Advocate: Devendra Choubey, for the Appellant; S.S. Bansal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Patnaik, C.J.

This is a reference made by the Division Bench of this Court to the Full Bench in a motor accident claims appeal.

The background facts in which the reference has been made are that prior to the accident, Pancham Singh was a driver working in the Madhya

Pradesh State Road Transport Corporation. On 29.9.1998 Pancham Singh, while going towards his house in the noon, was hit by a Bajaj M-80

two wheeler bearing No. MP 07/Y-4003 driven by the Respondent No. 1. owned by the Respondent No. 2 and insured with the Respondent No.

3. Pancham Singh filed a claim case u/s 166 of the Motor Vehicles Act, 1988, on 1.4.1999 before the 1 Additional Motor Accidents Claims

Tribunal, Gwalior, which was subsequently numbered as Claim Case No. 33/2002, alleging that as a result of rash and negligent driving of the said

two wheeler by the Respondent No. 1, he suffered fracture in the knee of the right foot and wrist of the left hand and he was admitted in the

hospital and had to undergo treatment. In the claim petition, Pancham Singh claimed compensation of Rs. 6,50,000/- as per details herein below:

(i) Mental and physical pain during Rs. 1,00,000.00

hospitalization and thereafter

(ii) Permanent disability/deformity Rs. 1,00,000.00

(iii) Loss of longevity of life due to the Rs. 1,00,000.00

injuries sustained in the accident

(iv) Expenses incurred on treatment Rs. 1,00,000.00

medicines, diet and transportation etc.

(v) Mental torture sustained by wife Rs. 50,000.00

and children due to the accident

(iv) Loss of employment and loss of Rs. 2,00,000.00

earning due to the accident.

Total . Rs. 6,50,000.00

During the pendency of the claim petition, Pancham Singh died on 29.5.1999 and the present Appellants, namely the wife and the son of Pancham

Singh, were substituted in place of Pancham Singh in the said claim case. Finally, the Tribunal made an award of only Rs. 10,000/- in favour of the

claimants on 14.8.2003. Aggrieved by the said award, the Appellants have filed this appeal for enhancement.

When the appeal was taken up for hearing by the Division Bench on 7.4.2006, Mr. S.S. Bansal, learned Counsel appearing for the Respondent

No. 2/Insurance Company, cited the judgment of the Division Bench of this Court in Umedchund Golcha v. Dayaram and Ors. 2001 (1) JLJ 365.

in which the Division Bench has held on the basis of the principle contained in Section 306 of the Indian Succession Act, 1925, that on the death of

the claimant who had suffered the personal injury in the accident, the legal representatives of the claimant would be entitled to only loss of estate

and rest of the claims of such person who had suffered injury, shall abate. Mr. Devendra Choubey, learned Counsel appearing for the Appellants-

claimants, on the other hand, submitted that this was not the principle laid down in Section 306 of the Indian Succession Act, 1925, and in any

case, the provision of Section 306 of the Indian Succession Act, 1925, did not apply to a claim for personal injury filed under the Motor

Vehicles Act, 1988.

Considering the far-reaching consequences of the aforesaid judgment of the Division Bench in Umedchund Gotcha v. Dayaram and Ors. (supra)

on claims for compensation for personal injuries on the rights of the legal representatives of the claimant, the Division Bench passed an order on

21.4.2006 referring the following question of law to a Full Bench:

Whether a claim for personal injuries filed u/s 166 of the Motor Vehicles Act, 1988, except as regards the estate of the claimant, would abate on

the death of the claimant or would survive to his legal representatives?

We have heard the learned Counsel for the parties on the aforesaid question of law referred to us.

Mr. Devendra Choubey, learned Counsel appearing for the Appellants, submitted that under Sub-section (1) of Section 166 of the Motor

Vehicles Act, 1988, an application for compensation arising out of an accident involving bodily injury to a person arising out of use of a motor

vehicle, can be filed not only by the person, who had sustained injury, but also by all or any of the legal representatives of the deceased or by any

agent duly authorised by the person injured or all or any of the legal representatives of the deceased. He submitted that therefore, an application for

compensation arising out of an accident involving bodily injury to a person, can also be continued by the legal representative of person who had

suffered bodily injury. He further submitted that once an application is filed by the person who had sustained injury for compensation u/s 166 of the

Motor Vehicles Act, 1988, such an application will not abate on the death of the person who had sustained injury because the provisions of Order

22 of the Code of Civil Procedure, 1908, relating to abatement do not apply to motor accident claim cases as has been held by a Division Bench

of this Court in *Chuharmal and Ors. v. Wall Mohammad and Ors.* 1968 J.L.J. 1013, He submitted that the Motor Vehicles Act, 1988, is a special

Act whereas the Indian Succession Act, 1925 is a general Act and as per the well settled principles of statutory interpretation, the provisions of

Motor Vehicles Act, 1988, will apply and the provisions of Indian Succession Act, 1925, will not apply to motor accident claims cases and

therefore, Section 306 of the Indian Succession Act, 1925, which provides that all rights to prosecute or special proceeding existing in favour of a

person will survive to his executors or administrators except personal injury not causing the death of the party, will not apply to motor accident

claims cases and only Section 166 of the Motor Vehicles Act, 1988, will apply to such motor accident claim cases.

Mr. S.S. Bansal, learned Counsel appearing for the Respondent No. 3 Insurance Company, on the other hand, submitted that in *Umedchand*

Golcha v. Dayaram and Ors. (supra), the Division Bench, after considering various judgments of the Supreme Court as well as other High Courts

at length, has come to a conclusion that so far as the claim for personal injury is concerned, it would abate on the death of original claimant, but not

a claim which pertains to the loss to the estate of the injured. He submitted that this view has been taken by the Division Bench in the aforesaid

case on the basis of the common law rule "*actio personalis moritur cum persona*" as well as the principle contained in Section 306 of the Indian

Succession Act, 1925. He relied on the provision of Section 1 of the Legal Representatives Suits Act, 1855, which provides that an action may be

maintained by the representatives of any person deceased for any wrong committed in the life time of such person, which has occasioned pecuniary

loss to his estate and not for any personal injury suffered by such person during his life time. He submitted that the view taken by the Division

Bench of this Court in Umedchand Golcha v. Dayaram and Ors. (supra), that the claim for personal injury would abate on the death of the original

claimant except as regards loss to the estate of the injured is, therefore, a correct view of the law.

Sub-section (1) of Section 166 of the Motor Vehicles Act, 1988, on which Mr. Choubey relies on, is quoted herein below:

Section 166. Application for compensation. -

(1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made

(a) by the persons who has sustained the injury, or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where as the legal representatives of the deceased have not joined in any such application for compensation, the application shall be

made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be

impleaded as Respondents to the application.

[Emphasis supplied]

A reading of Sub-section (1)(a) of Section 166 of the Motor Vehicles Act, 1988, would show that only a person who has sustained the injury, can

file an application for compensation. Further a reading of Sub-section(1)(d) of Section 166 would show that any agent duly authorised by the

person injured can also file such application for compensation for injury suffered by such person. Sub-section (1)(c) of Section 166 provides that

where death has resulted from the accident, all or any of the legal representatives of the deceased can file an application for compensation and

Sub-section (1)(d) of Section 166 provides that a legal representative of the deceased can also file claim where death has resulted from the

accident. Thus, in a case of personal injury not resulting in death the legal representative of such person who was injured and who died

subsequently not on account of accident but for some other reason cannot maintain an application for compensation for personal injury sustained in

an accident under Sub-section (1) of Section 166 of the Motor Vehicles Act, 1988. Hence, the contention of Mr. Choubey, learned Counsel

appearing for the Appellants, that u/s 166(1) of the Motor Vehicles Act, 1988, an application for compensation for personal injury can be filed also

by the legal representatives of the deceased whose death was not as a result of accident but for some other reason is not correct.

Section 306 of the Indian Succession Act, 1925, on which reliance has been placed by Mr. Bansal, learned Counsel appearing for the Respondent

No. 3 Insurance Company, is quoted herein below:

Section 306. Demands and rights of action of or against deceased survive to and against executor or administrator, -

All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time

of his death survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal

Code, 1860 (45 of 1860) or other personal injuries not causing the death of the party; and except also cases where, after the death of the party,

the relief sought could not be enjoyed or granting it would be nugatory.

The aforesaid section inter alia provides that all rights to prosecute any action or special proceeding existing in favour of a person at the time of his

death, survive to his executors or administrators except causes of action for personal injuries not causing the death of the party. Thus, u/s 306 of

the Indian Succession Act, 1925, the executors or administrators of a deceased will have a right to prosecute or continue any action or special

proceeding existing in favour of the deceased at the time of his death, except causes of action for personal injury not causing death of the party.

Therefore, where the accident does not cause death of a party but only causes personal injury to him, his executors or administrators will not have

a right to prosecute or continue to prosecute an application for compensation for personal injury suffered by the party in a motor accident.

In *Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair*, the Supreme Court observed that the principle contained in Section 306

of the Indian Succession Act, 1925, will apply not only to executors or administrators but also to other legal representatives. Paragraph 8 of the

judgment of the Supreme Court in *Melapurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair* (supra), as reported in the AIR, is quoted

herein below:

Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other

legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies

to executors and administrators will apply to other legal representatives also.

Hence by virtue of the principle in Section 306 of the Indian Succession Act, 1925, the legal representatives of a deceased, who suffers personal

injury in a motor accident and who dies subsequently for some other reason, cannot prosecute or continue to prosecute an application for

compensation under Sub-section (1) of Section 166 of the Motor Vehicles Act, 1988.

Section 1 of the Legal Representatives Suits Act, 1855, confers rights on the executors, administrators or representatives of any person deceased

to maintain an action for any wrong committed in the life time of a deceased person. The said Section 1 of the Legal Representatives Suits Act.

1855. quoted herein below:

Section 1. -- Executors may sue and he sued in certain cases for wrongs committed in lifetime of deceased, -- An action may be maintained by the

executors, administrators or representatives of any person deceased, for any wrong committed in the lifetime of such person, which has occasioned

pecuniary loss to his estate for which wrong an action might have been maintained by such person, so as such wrong shall have been committed

within one year before his death and the damages when recovered shall be part of the personal estate of such person;

and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased for any wrong

committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year

before such person's death and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to

administer according to the English Law, be payable in like order of administrator as the simple contract debts of such person.

It will be clear from Section 1 of the Legal Representatives Suits Act. 1855, quoted above that the legal representatives of any deceased person

can maintain an action for any wrong committed in the lifetime of such deceased person, which has occasioned pecuniary loss to his estate, for

which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death

and the damages when recovered shall be part of the personal estate of such person. It is by virtue of this provision in Section 1 of the Legal

Representatives Suits Act, 1855, that the legal representatives of the deceased person can also maintain or continue to maintain an application for

compensation for personal injury suffered in the lifetime of such person in a motor accident which has occasioned pecuniary loss to the estate for

which such person might have filed an application for compensation u/s 166(1) of the Motor Vehicles Act. 1988. But where a personal injury

suffered by a person during lifetime in a motor accident has not occasioned pecuniary loss to the estate of the such person, the legal representatives

of the deceased person cannot maintain or continue to maintain an application for compensation under Sub-section (1) of Section 166 of the

Motor Vehicles Act. 1988.

Further, u/s 1 of the Legal Representatives Suits Act, 1855. an application for compensation for personal injury suffered by a person during lifetime

in a motor accident can be maintained and continued by the representatives of the deceased person for the pecuniary loss occasioned to the estate

of the deceased person so long as the accident has been caused within one year before his death. Moreover, the accident may have occasioned

pecuniary loss to the estate of a person in many ways and it is for the Tribunal or the Court to decide the loss which has been occasioned to the

estate of the person who had suffered personal injury in a motor accident depending on the pleadings and proof before the Court in each case. In

paragraph 21 of the judgment of the Division Bench of this Court in Umedchand Golcha v. Dayaram and Ors. (supra), the Division Bench of this

Court has held:

Further, the question is which items can form loss to the estate of the deceased. of course, exhaustive list of these items cannot be given, since it

would depend upon pleadings and proof brought before the Court by the claimant/legal representatives. But it can be held that loss of accretion to

the estate through savings or otherwise caused on account of accident permanently or temporarily can be worked out on giving facts or assessing

the loss to the estate. Further, the existing state of estate may suffer loss by application towards medical expenses, expenditure on diet, expenditure

on travelling, expenditure on attendant, expenditure on diet, expenditure on Doctor's fee. reasonable, monthly/annual accretion to the estate for

certain period etc. The claimant does not keep separate amount for such unforeseen expenditures during his lifetime. His income is at the most

divided in three parts, namely, expenditure on himself, expenditure on family and the savings to the estate. Therefore, he has to meet such

expenditure from out of his estate. There may be circumstance where it is born by his legal representatives. Therefore, it is held that the legal

representatives can ask for loss to the estate of these items by production of satisfactory evidence unless Court is able to draw lifetime conclusion

about such expenditures from out of the estate, from the facts and circumstances and on the basis of experience.

In the result, we are of the considered opinion that a claim for personal injury tiled u/s 166 of the Motor Vehicles Act, 1988 would abate on the

death of the claimant and would not survive to his legal representatives except as regards the claim for pecuniary loss to the estate of the claimant.

The matter will now be placed before the Division Bench for assessment of the pecuniary loss caused to the estate of the deceased Pancham Singh

on account of the motor accident suffered by him on the basis of pleadings and proof before the Tribunal/Court.