

**(2013) 08 AP CK 0023**

**Andhra Pradesh High Court**

**Case No:** M.A.C.M.A. No. 1951 of 2012

Reliance General  
Insurance Co. Ltd.

APPELLANT

Vs

B. Mallaiah died per  
LRs., Smt. B.  
Mallamma and 2  
Others

RESPONDENT

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**Date of Decision:** Aug. 28, 2013

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 149(2), 166, 170, 170(b), 173
- Penal Code, 1860 (IPC) - Section 337
- Succession Act, 1925 - Section 306

**Citation:** (2014) 3 ACC 65 : (2014) ACJ 930 : (2013) 6 ALD 125 : (2013) 5 ALT 681 : (2013) 2 AnWR 678

**Hon'ble Judges:** K.G. Shankar, J

**Bench:** Single Bench

**Advocate:** A. Ramakrishna Reddy, for the Appellant; P. Gangarami Reddy for Respondent Nos. 1 to 3, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

K.G. Shankar, J.

The application of maxim actio personalis moritur cum persona and the maintainability of an appeal when permission u/s 170 of the Motor Vehicles Act, 1988 (the Act, for short) is not obtained before the trial court are the questions that arise for consideration in this appeal. The 2nd respondent in M.V.O.P. No. 42 of 2008 on the file of the Judge, Family Court, Secunderabad, preferred this appeal against the petitioners arraying them as respondents 1 to 3 in the appeal and against the 1st respondent arraying him as respondent No. 4 in the appeal. For convenience, the parties are referred to as they are arrayed before the trial court.

2. The 1st petitioner is the injured in this case. On 22-5-2007, he was travelling along with other passengers in an auto bearing registration No. AP 36W 1025 from Baswapur Village towards Koheda Village. By the time the auto reached the outskirts of Venkateshwarlupalli Village, the driver of the auto drove the auto in a rash and negligent manner. The driver of the auto lost control of the auto resulting in the auto turning turtle. The 1st petitioner sustained injuries in the said accident. He was immediately shifted to the local Government Hospital. He was later shifted to Vijaya Laxmi Nursing Home, Malkajgiri, Hyderabad. A case was registered against the driver of the auto u/s 337 IPC. Respondent No. 1 is the owner of the vehicle. The 2nd respondent is the insurer of the vehicle. Claiming that the respondents are jointly and severally liable to satisfy the claim of the 1st petitioner, the present petition was laid u/s 166 of the Act seeking compensation at Rs. 2,00,000/- for the injuries sustained by the 1st petitioner. However, while the proceedings were pending, the 1st petitioner breathed his last. The petitioners 2 and 3, who are the wife and son of the deceased 1st petitioner, were brought on record as legal representatives of the 1st petitioner and were arrayed as petitioners 2 and 3.

3. The 1st respondent remained ex parte. The 2nd respondent-insurer resisted the claim. After recording the evidence of P.Ws.1 to 4 and after the exhibition of Exs. A-1 to A-12, the trial court concluded that the petitioners 2 and 3 were entitled to compensation at Rs. 84,000/-. Accordingly, compensation at Rs. 84,000/- together with interest at 7.5% per annum was awarded from the date of the petition till deposit. Assailing the same, the present appeal is laid.

4. Sri A. Ramakrishna Reddy, learned Standing Counsel for the insurer, primarily made two contentions, viz., that the petition is hit by the maxim *actio personalis moritur cum persona* and that the appeal is maintainable albeit the insurer did not obtain permission of the trial court u/s 170 of the Act.

5. *Actio personalis moritur cum persona* is a common law maxim. It envisages that a personal right of action dies with the person. The common law principle is that where an injury had been caused to any person or damage was caused to his property, for which recovery of damages would have been the remedy, the action extinguishes with the death of the person wronged or that of the wrongdoer, except as regards the pecuniary loss to the estate of the injured vide [Smt. Bhagwati Bai and Another Vs. Bablu @ Mukund and Others](#), . However, the Supreme Court observed in [Official Liquidator, Supreme Bank Ltd. Vs. P.A. Tendolkar \(Dead\) by Lrs. and Others](#), that the maxim had no application to actions based on contracts or where the estate of the tortfeasor had benefited from a wrongdoer.

6. The Fatal Accidents Act, 1976 brought a change in the United Kingdom with reference to the maxim. The principles of award of damages under the Fatal Accidents Act, 1976 are:

(i) In case of death of a person after 1987, the spouse or the parents of the deceased, if the deceased was bachelor minor, can claim a fixed amount of \$ 3,500.

(ii) The dependents of the deceased are entitled to damages proportionate to the loss of dependency to them because of death of the person concerned.

7. In India, Section 306 of the Indian Succession Act, 1925, reads:

306. Demands and rights of action of are 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 decease, 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 enjoyed or granting it would be nugatory.

The expression "other personal injury not causing the death of the party" in distinction to "personal injuries" and death makes it clear that an action for personal injuries after death of the injured does not survive.

8. In the present case, it is not as though the action was instituted by the petitioners 2 and 3 seeking compensation in respect of the injuries sustained by the 1st petitioner and that too after the demise of the 1st petitioner. The petition was laid by the 1st petitioner himself. He sought compensation for the injuries sustained by him. The maxim consequently has no application during the lifetime of the 1st petitioner.

9. When the 1st petitioner died, the petitioners 2 and 3 came on record as the legal representatives of the 1st petitioner. They were continuing the cause of action of the 1st petitioner. The petitioners 2 and 3 were not seeking a relief through a fresh cause of action. I am afraid, when the cause of action was alive during the lifetime of the 1st petitioner, it does not die with the death of the 1st petitioner. Indeed, Section 306 of the Indian Succession Act, 1925 certainly comes into operation leading to abatement of the cause of action on the death of the deceased subject to the condition that the claim was not made by the deceased while he was alive. Section 306 of the Indian Succession Act, 1925 has no application to the case where the death was after the institution of the claim. Consequently, the contention of the learned Standing Counsel for the insurer that the case is hit by the maxim *actio personalis moritur cum persona* and that the claim consequently does not survive on the demise of the 1st petitioner cannot be accepted and is accordingly rejected.

10. The learned counsel for the petitioners contended that this appeal is not maintainable as the 2nd respondent-insurer did not obtain permission before the trial court u/s 170 of the Act, so much so, the insurer cannot maintain an appeal.

11. Admittedly, the insurer did not obtain permission of the trial court u/s 170 of the Act. u/s 170(b) of the Act, if the insured failed to contest the claim, the insurer may be permitted to contest the case on all grounds available to the insured. In the usual course, the insurer files a petition u/s 170 of the Act to permit the insurer to raise all available defences and particularly where the insured remained ex parte. However, in the present case, such a course had not been adopted by the insurer. Consequently, Sri P. Gangarami Reddy, learned counsel for the petitioners, contended that the 2nd respondent-insurer cannot file an appeal as permission u/s 170 of the Act had not been obtained.

12. The learned Standing Counsel for the insurer submitted that where the insured remained ex parte, the insurer was entitled to raise all defences even without permission u/s 170 of the Act. In support of his contention, the learned Standing Counsel for the insurer placed reliance upon an unreported decision in United India Insurance Co. Ltd. v. Ch. Komaraiah (C.M.A. No. 445 of 2000 and Cross-Objections (SR). No. 32182 of 2000, dated 11-4-2008). In that case, a question arose regarding the maintainability of the appeal where the insurer did not obtain permission u/s 170 of the Act before the trial court. This Court observed that where there was patent irregularity in the judgment of the trial court, an appeal would lie even without prior permission u/s 170 of the Act by the insurer before the trial court.

13. In another unreported decision in United India Insurance Co. Ltd. v. Mothe Laxmi (C.M.A. No. 2656 of 2002, dated 12-3-2007), the maintainability of the appeal without an earlier petition u/s 170 of the Act before the trial court was considered. It was observed in that case that where the appellant-insurer was seeking rectification of the mistake committed by the Motor Accident Claims Tribunal, which is a patent mistake, an appeal would lie even without a petition u/s 170 of the Act.

14. Further, in [United India Insurance Company Ltd. Vs. Shila Datta and Others](#), questions whether the insurer can contest a motor accident claim on merits regarding the quantum of compensation payable to the claimants, apart from the grounds mentioned in Section 149(2) of the Motor Vehicles Act, 1988 and whether an insurer can prefer an appeal u/s 173 of the Act against an award passed under the Act and question the quantum of compensation were answered in the positive. It is the contention of the learned Standing Counsel for the insurer that there are patent errors in the award and that the appeal to rectify the same therefore is maintainable. I see no reason to differ with the views expressed by this Court. Whether the decision of the Supreme Court applies to the case or not is a question of fact.

15. As against the claim of compensation for Rs. 2,00,000/-, the trial court awarded compensation at Rs. 84,000/-. An amount of Rs. 5,000/- towards medical expenses, Rs. 10,000/- towards loss of salary, Rs. 54,000/- towards permanent disability, Rs. 10,000/- towards pain and sufferance and Rs. 5,000/- towards extra nourishment, attendant charges, transport charges and damages to the clothes were awarded. The

learned Standing Counsel for the insurer contended that the compensation towards pain and sufferance at Rs. 54,000/- cannot be awarded where the 1st petitioner who sustained injuries in the accident died. It may be recalled that this not a case laid by the dependants of the deceased claiming compensation, inter alia, towards the pain and sufferance for the injuries sustained by the deceased. The injured was alive by the time he made the claim. He sought compensation for pain and sufferance. The petition was maintainable when the 1st petitioner was alive. I am afraid in view of the operation of the doctrine *actio personalis moritur cum persona* read with Section 306 of the Indian Succession Act, 1925 the claim of pain and sufferance cannot be rejected on the ground that the 1st petitioner who sustained injuries is no more. The claim certainly is maintainable by the 1st petitioner and consequently, by the petitioners 2 and 3 on the demise of the 1st petitioner. Where the trial court awarded compensation at Rs. 54,000/- towards pain and sufferance after due consideration, there are no grounds to interfere with the award passed by the trial court. I therefore see no merits in this appeal. This appeal consequently is dismissed. No costs.