

THE HIGH COURT OF TRIPURA
AGARTALA

MAC App. No. 102 of 2011

Appellants:

1. Smti Sikha Debnath,
W/o. Parimal Debnath.

2. Smti. Anna Debnath,
W/o. Shri Nandalal Debnath.

3. Miss Sipan Debnath,
D/o. Parimal Debnath and

4. Master Rajib Debnath,
S/o. Parimal Debnath,

All are resident of Gandhigram, Subhas Colony, P.S-Airport, Dist-West Tripura.
(The Appellant 3 and 4 being minor represent through their natural guardian mother Appellant No.1. Smt. Sikha Debnath).

By Advocate :

Mr. R. G. Chakraborty, Adv.

Respondents :

1. Sri Bhanuram Das,
S/o. Late Kalachand Das,
Resident of M.B. Tilla, Gandhigram, P.S-Airport, Dist.-West Tripura.
(Owner of Mini Bus vehicle bearing registration No. TR-01-A-1275).

2. The Divisional Manager,
The New India Assurance Company Ltd.,
Divisional Office at Mantribari Road,
Agartala, P.S-West Agartala, Dist.-West Tripura.
(Insurer of Mini Bus vehicle bearing registration No. TR-01-A-1275).

By Advocate :

Mr. P. Chakraborty, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **9th October, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal is directed against the judgment dated 22.07.2011 delivered by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in Title Suit (MAC) 428 of 2006 whereby he dismissed the claim of the claimants.

[2] The undisputed facts are that Parimal Debnath, son of the claimant No.2 and the husband and father of the claimants No.1, 3 and 4 was engaged as tailor-Constable in the BSF. He had come on leave to his home state of Tripura. On 23.06.2006 Parimal Debnath was hit by mini bus bearing No. TR-01-A-1275 which was owned by respondent no.1, Sri Bhanuram Das and insured with the New India Assurance Company Ltd. Parimal Debnath was taken immediately to the G. B. P. Hospital, Agartala. Thereafter he was referred to the S.S.K.M Hospital, Kolkata. He was in fact admitted at the National Neuro Science Centre, Kolkata (for short, NNSC, Kolkata) and discharged on 18.07.2006. After being discharged from NNSC, Kolkata he was again admitted in the Frontier Hospital, BSF, South Bengal on 30th August, 2006. Then he was admitted in the Peerless Hospital on 16.09.2006. Again the husband of the claimant no.1 was admitted in NNSC, Kolkata on 10.10.2006 and discharged on 23.11.2006. Then he was again brought to the Frontier Hospital, South Bengal run by the BSF. On 26.11.2006, Parimal was given a bath by his wife with the assistance of one another Constable A. K. Gayan. However, later Parimal was found missing and he has not been traced out till date.

[3] It would be pertinent to mention that initially a petition under Section 166 of the M.V. Act, 1988 claiming compensation was filed by

Parimal Debnath. In the verification of the claim petition it is stated as follows:

"VERIFICATION

I Sri Parimal Debnath do hereby declare that the statement made herein above are true to best of my knowledge and in acknowledgement whereof I have signed t his verification this the 26th day of October 2006 at Court premises, Agartala, West Tripura

**L.T. I of Parimal Debnath
taken by me
(Sikha Debnath)
W/o. Sri Parimal Debnath
at Kolkata. W. B"**

Below this declaration there is no thumb impression of Parimal Debnath but the above words are written i.e. [L.T. I of Parimal Debnath taken by me then signed (signature of Sikha Debnath) W/o. Sri Parimal Debnath at Kolkata. W. B]. The learned Tribunal held that this verification was absolutely false because on 26th October, 2006 Parimal Debnath was admitted to the hospital at Kolkata and could not have been present at Agartala.

[4] In my view this finding of the learned Tribunal is totally incorrect. He has not carefully gone through the claim petition. On each page of the claim petition there is the thumb impression of Parimal Debnath and below those are the words "L.T. I of Parimal Debnath taken by me then signed (signature of Sikha Debnath) W/o. Sri Parimal Debnath at Kolkata. W. B". Even on the last page where the verification is given the thumb impression of Parimal Debnath is there at the top of the page. It is more than obvious that Parimal Debnath had not instructed the counsel. It was the wife of Parimal Debnath who had filed the petition. No doubt proper procedure was not followed by the counsel because a petition under order

XXXII should have been filed praying for permission on behalf of the wife to file the proceeding on behalf of Parimal Debnath. This was not done.

[5] Be that as it may, it cannot be said that Parimal Debnath or his wife made any false statement. The mistake in the verification is that of the counsel and not of the parties. It is the counsel who should have been ensured who has verified the petition and written the name of the person properly. Therefore, it cannot be said that the verification is wrong and I do not agree with the Tribunal as far as this aspect of the matter is concerned.

[6] As pointed out above, Parimal Debnath was missing from the hospital from 26.11.2006 from the morning between about 7.15 to 9.15 hours. He has not been traced out thereafter. The claimants who are the widow, mother and minor children of Parimal Debnath filed an application praying that they be substituted in place of Parimal Debnath and it was stated that they suspected to be died. The learned Tribunal allowed this application. However the learned Tribunal held that the claimants have failed to show that Parimal Debnath has died or that his death has any connection with the injuries received in the accident and therefore, dismissed the claim petition.

[7] I shall first deal with the question as to whether it has been proved that Parimal Debnath went missing or died as a result of the injuries sustained in the accident. The only witness examined was Sikha Debnath. With regard to the disappearance of her husband all that she says is that about 9 am she was informed that her husband was not found on his bed and he was never traced out. There is not a word in her statement that this disappearance of her husband had any direct connection with the accident occurred. No medical evidence has been led to prove that the petitioner

was in such a condition that he was not in control of his senses. In fact there is one document placed on record by the claimants themselves which shows that after the operation was performed upon him, Parimal was independently ambulant meaning thereby that was walking on his own. He was recognizing his wife and children and was accepting food orally. Parimal had been attended to by his wife on 26.11.2006 at about 7-7.15 am. She and one Constable, A. K. Gayan who was deputed to look after Parimal had given him a bath. Thereafter Parimal took breakfast with his wife and children in the female ward of the Frontier Hospital, South West Bengal. Then Parimal was brought back to the male ward. Later he was found missing. In the face of such documents placed on record by the claimants themselves it cannot be said that Parimal was missing due to the injuries received in the accident. To this extent I agree with the learned Tribunal.

[8] The learned Tribunal held that since it was a case of injuries the legal heirs could not be substituted or get any amount for them. This finding of the learned Tribunal was totally wrong.

[9] This Court in MAC Appeal No. 40 of 2004 (***Smt. Jyotsna Biswas and others Vrs. Dr. Subal Debnath and another***) decided on 27th June, 2013 had discussed the entire law on the subject and held as follows:

"The principle of *actio personalis moritur cum persona* is a principle applicable to personal injury cases. The literal meaning of this latin phrase is that an action for personal injuries dies with the person injured. It is contended on behalf of the respondents that the legal representatives cannot be permitted to continue this action on behalf of the deceased and are not entitled to any compensation. On the other hand, on behalf of the legal representatives it is contended that they are entitled to claim the full

compensation payable to the injured who is now dead.

No doubt as per this principle an action for injuries whether physical or otherwise does not survive if the person injured dies. However, Section 306 of the Indian Succession Act saves the right even in such cases to a limited extent. Section 306 of the said Act reads as follows:

'306. Demands and rights of action of, or against decease survive to and against executor or administrator. - All demands whatsoever and all rights to prosecute or defend any action or special proceedings 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, 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.'

A bare perusal of the aforesaid provision shows that all demands and rights whatsoever existing in favour or against a person at the time of his death survive to his executors, administrators and heirs. However, an exception has been carved out, that actions for defamation, assault as defined in I.P.C. or other personal injuries not causing death of a party do not survive. Loss to the estate suffered by his legal heirs is not covered under the exception to this action and therefore any loss to the estate can be recovered by the legal heirs. Section 306 has modified the principle of "*actio personalis moritur cum persona*" to this limited extent and the legal heirs/representatives of injured can continue an action initiated by an injured person in respect to the loss to the estate.

6. A Division Bench of the High Court of Himachal Pradesh in *Narinder Kaur and others vs. State of H.P. and others*, 1991 ACJ 767, held as follows :

'8. We have heard the learned counsel for the parties and gone through the records. The principle of action personalis moritur cum persona relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tortfeasor. In its applicability, the principle stands considerably modified by the provisions of section 306 of the Indian Succession Act, which clearly lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his death survive except causes of action for defamation, assault and other personal injuries not causing death of the

party etc. which come to an end with the death of injured. The loss to the estate is thus not covered by the exceptions contained in section 306 of the Indian Succession Act. While taking this view, we are fortified by the decisions of the Supreme Court in Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair, 1986 ACJ 440 (SC) and M. Veerapa v. Evelyn Sequeira, AIR 1988 SC 506. The claimants as legal representatives of the original claimant were, as such, entitled to be substituted in his place with a view to continue the proceedings in the case and to have a decision on the claim in respect of the loss caused to the estate of the deceased.'

I have taken the same view in *Ram Ashari and others vs. H.R.T.C. and another, IV (2005) ACC 379*, wherein it was held as follows:

'6. It is well settled law that an action in torts for claim of compensation for damages on account of injuries suffered by an injured is a right personal to the injured. This right cannot be continued by the legal heirs or legal representatives. It is no doubt true that the legal heirs or the legal representatives can continue the proceedings in so far as they relate to the loss to the estate such as medical expenses, amount spent on treatment etc. However, the claim with regard to the pain and suffering, future loss of income and such related matters is an action which is personal to the injured alone and cannot be continued after his death unless it is proved that the death is the result of the injuries suffered in the accident.'

A Full Bench of the Madhya Pradesh High Court in *Bhagwati Bai and another vs. Bablu and others, 2007 ACJ 682*, has taken an identical view in the matter. The Full Bench after considering the entire law on the subject held as follows :

'15. In the result, we are of the considered opinion that a claim for personal injury filed under Section 166 of the Motor Vehicle 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

It is therefore obvious that the legal representatives of the deceased can continue the action but only in respect of pecuniary loss to the estate of the claimant."

[10] The question now arises as to what are the pecuniary damages or loss to the estate suffered by the claimants. It was urged that

more than rupees three lakhs had been spent on the treatment of Parimal at Kolkata. From the record I find that in fact the BSF has borne the entire expenses of the treatment even at the private hospital at Kolkata and the BSF paid a total sum of Rs.4,67,316/-. Parimal was also paid his entire salary upto the date when he went missing. Therefore, there is no pecuniary loss in this regard. From the record I find that the only amount of hospitalization which has not been paid is a sum of Rs.4,282/-. There can be some other smaller sums for which records may not have been kept and keeping in view the nature of treatment, I think it would be reasonable to hold that the claimants must have spent Rs.25,000/- for treatment including the treatment at Agartala in addition to what has been spent by the BSF authorities.

[11] The records show that right from the date of accident which is from 25.06.2006 to 26.11.2006 Parimal was in hospital at Kolkata and his wife, relatives and children had to look after him at Kolkata. Though facilities may have been provided by the BSF for their stay etc. but they have, suffered loss on this count. Keeping in view the nature of injuries and the nature of the care required in this case I fix the attendant charges at Rs.500/- per day especially keeping in view the fact that the wife had to go Kolkata from Agartala and for 155 days the attendant charges comes to Rs.77,500/-.

[12] In view of the above discussion, the pecuniary loss to the family is found to be Rs.1,02,500/- which is rounded off to Rs.1,03,000/- and on this amount the claimants shall also be entitled to interest @ 9% per annum from the date of filing of the claim petition till payment of the amount. Therefore, the insurance company is directed to deposit the

aforesaid amount of compensation i.e. Rs.1,03,000/- along with interest thereupon in the Registry of this Court within four months from today.

[13] An objection has been raised that it has not been proved that the Parimal is dead. Now, almost 9(nine) years have expired since the Parimal went missing. The employer has already released his pension and other benefits, therefore, I do not want to enter into this controversy and hold that the claimants are entitled to the pecuniary loss.

[14] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE