

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 900 of 2012

Roop Singh Baghel (since dead) through legal heirs

- a. Smt. Guruwari Baghel W/o Mukund Baghel aged about 55 years.
- b. Mukund Baghel S/o Kamallochan Baghel aged about 60 years, Both are residence at village Maghota P.S. Bhanpuri Tahsil Bastar Distt. Bastar C.G.

---- Appellants

Versus

1. Sanjeev Kumar Sonwani S/o Late Santosh Kumar Sonwani Aged About 23 Years, R/o Halbakachora, P.S. Parpa, Jagdalpur, Distt. Bastar C.G.
2. Tarun Kumar Pandey S/o Devendra Kumar Pandey Aged About 32 Years Village And Post- Mangnar, Tah. Bakawand, Distt. Bastar C.G.
3. The Oriental Insurance Co. Ltd. Branch Office- Jagdalpur, M/s. Laxman Avenue Medical College Road, Jagdalpur, Distt. Bastar C.G.

---- Respondents

For Appellants – Shri P.K. Tulsiyan, Advocate.
For Respondent No.3 - Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

13/10/2015

1. The appeal is against the award dated 7/07/2012 passed in Claim Case No.05/2011 by the First Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur whereby award of Rs.70,000/- was passed in favour of the claimant.
2. Briefly stated facts are that Roop Singh Baghel filed a claim petition on the ground that he was travelling in a motorcycle bearing No. C.G.17 K 8840 as a pillion rider and was going from Jagdalpur to his village Madhota. It was contended that when they reached near village Parchanpal at that time Pickup Van which was coming from Raipur

bearing No.C.G. 04 JA/5902 driven in a rash and negligent manner came to the wrong side and dashed the claimant Roop Singh Baghel. By such accident, Roop Singh Baghel sustained fracture of both legs and he was initially admitted to Maharani Hospital at Jagdalpur and thereafter at MPM Hospital at Jagdalpur. It was contended that claimant Roop Singh Baghel was working in Chattisgarh Police and because of such accident, he became permanently disabled and was not able to discharge his job and on different heads claim for compensation was made.

3. Original non-applicant No.1 driver of the vehicle Sanjeev Kumar Sonwani remained ex-parte. Owner of the vehicle Tarun Kumar Pandey refuted the averments of the claim petition and contended that at the time of accident the driver was having valid and effective licence. It was stated that vehicle was insured with the Oriental Insurance Company Limited original non-applicant No.3 and compensation if any, insurance company was liable to pay the same. The insurance company too denied the averments of the petition and stated that at the time of accident the driver of the offending vehicle did not have the valid and effective licence and therefore there was a breach of policy was committed. He further contended that because of such breach of policy, the insurance company cannot be held liable to make good the payment.

4. Claims tribunal after assessment of the evidence came to a finding that at the relevant time the offending vehicle i.e. Pickup Van was being driven in a rash and negligent manner which caused the accident. There is no appeal to such finding. In absence of any challenge to the same, the said finding of rash and negligent driving by the driver of Pickup Van is affirmed. Learned claims tribunal has awarded the following compensation which is as under:-

S.No.	Head	Amount
1.	For loss of income	Rs.25,000/-
2.	For expenses incurred in treatment	Rs.30,000/-
3.	For physical and mental agony	Rs.5000/-
4.	For Special diet	Rs.5000/-
5.	For transportation	Rs.5000/-
	Total	Rs.70,000/-

5. Being aggrieved by such award, appeal was preferred by Roop Singh Baghel the injured. Claimant preferred the appeal. During the pendency of the appeal, original claimant Roop Singh Baghel died and his legal heirs were brought on record i.e. mother and father. It is not established that death of the original claimant Roop Singh Baghel who was injured in the accident died due to the injuries sustained in the accident. It is not in dispute that legal heirs i.e. mother and father who have been substituted in the appeal were not the injured. Now the question comes for consideration as to whether appeal would abate as the claim was preferred by Roop Singh Baghel deceased for his personal injury in the accident and as to whether legal heirs of the claimant would be entitled to continue the appeal.

6. The expression 'legal representative' has not been defined in the Act. Section 2 (11) of the Code of Civil Procedure, 1908 (V of 1908) defines 'legal representative' as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. The aforesaid definition, no doubt, in terms does not apply to a case before the Claims Tribunal; but it has to be

stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by sections 165 to 175 of the Act, corresponding to section 110 to section 110-F of the Act of 1939. Those provisions are in consonance with the principles of law of Torts that every injury must have a remedy. It is for the Motor Accidents Claims Tribunal to determine the compensation which appears to it to be just as provided in section 168 of the Act corresponding to section 110-B of the Act of 1939 and to specify the person or persons to whom the compensation shall be paid. [(See Gujarat State Road Trans. Corpn., Ahmedabad v. Ramanbhai Prabhatbhai, 1987 ACJ 561 (SC)]

7. In view of the statutory provisions it is clear that the legal representatives of a person who dies in motor accident can claim compensation before the Tribunal by an application under section 166 of the Act. However, the question in the present case is where under clause (a) of sub-section (1) of Section 166 of the Act, an application is filed by an injured who sustained the injuries in a motor accident and dies during the pendency of the application for compensation, whether his legal representative can continue the application to claim compensation and to what extent.”

8. Similar proposition came up for consideration in the case of **Bhagwati Bai and another Vs. Bablu and others** reported in **2007 ACJ**

682. Now Sub section (1) of section 166 of the Motor vehicles Act, 1988 is perused which is quoted herein below.

“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 person 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 all 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.”

9. Reading of sub-section (1) of Section 166 of the Motor vehicles Act, 1988 allows a person to file an application for compensation who sustained the injury. Further Section 306 of the Indian Succession Act, 1925 if is examined which is quoted herein:-

“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 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 be enjoyed or granting it would be nugatory.”

10. Reading of the Section 166 of the Motor Vehicles Act, 1988 and Section 306 of the Indian Succession Act, 1925 would show that all right to prosecute any action 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 death of the party.

11. In the instant, personal injury not resulted in death and 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 an accident.

12. Section 1 of the Legal Representatives Suit Act, 1855, confers rights on the executors, administrators or representatives of any person deceased to maintain an action for any wrong committed in the lifetime of a deceased person. The said section 1 of the Legal Representatives Suits Act, 1855, quoted hereinbelow:

“1.Executors may sue and be 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.

13. Therefore, it will be clear from section-1 of the Legal Representatives Suits Act, 1855 legal heirs of the deceased person can maintain action for wrong committed in the lifetime of such deceased person which amount 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. Therefore, as has been held by the High Court of MP in case of **Bhagwati Bai** (supra) legal representatives of the deceased person can only maintain or continue to maintain an application for compensation for personal injury suffered in the lifetime of such person injured in a motor accident which occasioned pecuniary loss to the estate of such person as such person might have filed an application for compensation under Section 166 (1) of the Motor Vehicles Act, 1988.

14. Therefore, in the result, claim for personal injury filed under Section 166 of the Motor Vehicles, 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.

15. Now turning to the question of loss of estate. Tribunal has awarded Rs.30,000/- for medical expenses, Rs.5000/- for special diet and for travelling expenses Rs.5000/- has been awarded. Records would show that medical bills are exhibited from Ex.P-13 to Ex.P- 107 which amounts to total Rs.49,159/-. Tribunal has awarded only Rs.30,000/- as consolidated sum. In my opinion, such amount of expenses which has been incurred for treatment due to the injury has to be reimbursed and there is no scope to make it consolidated as quantified amount has been

said to have been incurred as expenses as per evidence. Therefore, on the medical head amount of Rs.49,159/- is being awarded which was incurred for medical expenses by the claimant. Further the amount of Rs.5000/- as transportation expenses i.e. loss incurred to estate is maintained. Therefore, total amount comes as under:-

S.No.	Head	Amount
1.	For medical expenses	Rs.49,159/-
2.	For transportation	Rs.5000/-
	Total	Rs.54,159/-

16. Claimants herein shall be entitled to amount of Rs.54,159/-. Amount shall carry interest @ 7% per annum from the date of accident. Therefore, award is modified to the above extent.

17. Accordingly, appeal stands allowed to the above extent.

18.No order as to costs.

Sd/-
(Goutam Bhaduri)
JUDGE