

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 3 OF 2012

Shri Peter Godinho
Son of Xavier Godinho,
53 years of age, married,
businessman,
C/o Greta Batteries, Masjid Building,
Curchorem Goa
represented herein by his attorney and
wife Smt. Greta Godinho
major in age, housewife,
resident of Taki-Xeldem, Goa,
Taluka Quepem. Applicant

V e r s u s

1. Shri Cornelins D'Souza
son of Xavier D'Souza,
major, formerly r/o Diana Vitta,
near Church, Kennigali,
Mangalore, D. K.
and presently at c/o Asis L. Dias
Sirsi, Nilekani,
North Karnataka ... Driver & Owner
2. The Oriental Insurance Co. Ltd.,
City Branch-I, Kulyadi Bldg.,
K. S. Rao Road, Hampankatta,
Mangalore 575001,
Pin 440628... Insurer Respondents

Mr. S. S. Kakodkar, Advocate for the applicant.

None for the respondents though served.

CORAM : K. L. WADANE, J

ORDER RESERVED ON : 07.10.2015

ORDER PRONOUNCED ON : 12.10.2015

ORDER :

Heard Mr. S. S. Kakodkar, learned counsel appearing for the applicant. The respondents though served with the notice remained absent.

2. The brief facts of the case may be stated as follows :

One Peter Godinho, since deceased filed Claim Petition under the provisions of Section 166 of the Motor Vehicles Act and the same was allowed by the Presiding Officer of the Motor Accident Claims Tribunal, South Goa, Margao on 31.10.2006 and the compensation of Rs.25,000/- was awarded to the applicant. Being aggrieved with the quantum of compensation, the applicant preferred an appeal before this Court bearing First Appeal No. 19/2007. There was some delay caused in filing an appeal. Therefore, the applicant moved an application for condonation of delay.

3. During the pendency of the appeal, the applicant expired on 15.09.2009 and the proposed legal representatives have made an application for condonation of delay of 480 days in filing an application for bringing the legal representatives of the deceased applicant on record. When the application for condonation of delay came up for hearing, the proposed legal representatives had also provided the

private paper book on the order of the Court. Upon hearing the proposed legal representatives and the respondents, this Court by order dated 21.10.2011 inter-alia held that " *Considering the provisions of Section 306 of the Indian Succession Act and Section 166(1) of the Motor Vehicles Act, it must be held that on the death of the appellant herein the right to prosecute the appeal does not survive to the applicants herein. In that circumstances, there is no question of condoning the delay in filing the application for bringing the applicants on record to continue the appeal.*" Being aggrieved with the said order, the proposed legal representatives of the deceased have moved this application for review.

4. During the course of the arguments, Mr. S. S. Kakodkar, learned counsel appearing for the applicant has argued that if the claimant/appellant died during the pendency of the appeal, right to sue survive and the legal heirs can continue with the proceedings and claim the compensation to the extent of loss of the estate.

5. I have gone through the order passed by this Court and I find that there is an error apparent on the face of record inasmuch as that upon the death of the applicant, his legal representatives can claim the compensation amongst others for the loss of the estate of the deceased for the following reasons.

6. The Indian Succession Act is not in force in the State of Goa. The Succession in the State of Goa is governed under the Portuguese Civil Code. Therefore, apparently, it is seen that there is an error apparent on the face of record because my learned Predecessor has disposed of the appeal itself based upon the provisions of Section 306 of the Indian Successions Act, 1925. Secondly, the question as to whether the legal heirs were authorised to continue with the proceedings of the appeal was not under consideration and in fact, the question before this Court was whether the delay to be condoned or not. Whether the proposed legal representatives can continue with the appeal or not shall only be considered after the condonation of delay. In cases where there is death relating to the injuries suffered in the accident, then the Claim Petition can be filed by the legal representatives for compensation both for personal injuries and loss of property and in such cases, where the claimant dies during the pendency of the Claim Petition, the legal representatives can prosecute the Claim Petition for compensation on account of loss of estate.

7. Mr. Kakodkar, learned counsel appearing for the applicant has therefore rightly relied upon the observations in the case of **Dr. Skoda Afonso vs Motor Accident Claims Tribunal, Panaji Goa and others**, reported in **1999(2) ALL MR 549** in which it is observed at para 8 thus :

"8. Be that as it may, if the death of the claimant is not on account of the injuries suffered in the accident, then, the cause of action would survive in favour of the legal representatives insofar as loss to the estate is concerned. This proposition is in fact well settled by a number of rulings upon which reliance has been placed by learned Advocate for the petitioners including a Division Bench ruling of this Court in **Maimuna Begum and others Vs. Taju and others** (supra). It is no doubt true that the Division Bench in this ruling was dealing with a situation where the award had already been passed in favour of the claimant and the claimant had filed an appeal seeking enhancement and it is during the pendency of the appeal that the claimant had died. Nevertheless, the principles laid down by the Division Bench are directly attracted to the situation with which we are concerned in this petition. The Division Bench in para 10 of the Judgment has come to the conclusion that even the legal representatives can claim damages for loss to the estate of the deceased and it is difficult to see as to why an action initiated by an injured for damages on account of loss to his property should

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not be made to survive to his legal representatives on his death pending an action already launched by him. Of course, in the said case before the Division Bench, the learned Judges had given additional reason in relation to the situation where award has already been passed and it was pending appeal filed by the claimant for enhancing the claim.”

8. The above observations of the Division Bench of this Court are perfectly applicable to the facts of the present case and, therefore, the review application deserves to be allowed and, accordingly, it is allowed. The order passed by this Court dated 21.10.2011 stands revoked and reviewed. First Appeal No. 19/2007 and MCA No. 512 of 2011 stand restored to the file.

9. In view of the above observations, the application stands disposed of accordingly.

K. L. WADANE, J

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