

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.7092 of 2012

Date of Decision.21.04.2015

New India Assurance Company Limited

.....Petitioner

Versus

Amarjit Kaur and others

.....Respondents

Present: Mr. Vinod Gupta, Advocate
for the petitioner.

Mr. Silvi Katoch, Advocate
for respondent Nos.1 and 3 to 5.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The petitioner is the insurance company which has sought for enforcement of the claim of damages against the owner for breach of terms of policy which has been recorded in the judgment of the Court. When the execution was levied, the owner had already died and the steps were being taken against the legal representatives. The claim of the legal representatives is that the father had died even during the pendency of the proceedings and no steps had been taken for their impleadment. The counsel for the respondent refers to me a decision of the Andhra Pradesh High Court in G. Jayaprakash Vs. The State of Andhra Pradesh and others AIR 1977 Andhra Pradesh 20 considering the effect of not taking steps for impleadment under Order 22 Rule 1 CPC. This judgment does not take into consideration the Punjab and Haryana High Court amendment that allows for either plaintiff or the defendant to take steps to implead

the legal representatives and if steps are not taken and the judgment is delivered, it should be deemed that he was alive on the day when the judgment was delivered.

2. The amendment of Punjab and Haryana High Court made in Order 22 Rule 3 and 4 reads as follows:-

“Rule 3(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist.

Rule 4. (i) In Order 22 in Rule 4, sub-rule (3) shall be substituted as follows:-

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall not abate as against the deceased-defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

(ii) In Order 22 Rule 4 the following shall be inserted as sub-rules (4), (5) and (6) namely:-

(4) If a decree has been passed against a deceased-defendant a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the decree upon such terms as to costs or otherwise as it think fit.

(5) Before setting aside the decree under sub-rule (4), the Court must be satisfied prima facie that had the legal representative been on the record a different result might have been reached in the suit.

(6) The provisions of Section 5 of the Limitation Act, 36 of 1963, shall apply to applications under sub-rule (4).”

3. The provisions of Order 22 Rule 3 in the manner in which the Court prescribes its unamended form that would make invalid a decree against a dead person, cannot apply to Punjab and Haryana where an

amendment is brought to Order 22 Rules 3 and 4 that makes certain presumptions which do not apply in other Courts in its unamended form. I will, therefore, not find any strength in the citation of the Andhra Pradesh High Court in this regard. The counsel also refers me to decisions of the Supreme Court in *Budh Ram and others Vs. Bansi and others* decided on 05.08.2010 and *Shahazada Bi and others Vs. Halimabi (since dead) by her LRs* in Civil Appeal No.5507 of 1999 decided on 30.07.2004. Both these decisions are to the effect that a decree against dead person is invalid. They do not also address the effect of the amended provisions of Order 22 Rule 3 and 4 as brought out by the Punjab and Haryana High Court amendment.

4. The counsel for the respondents states that even the tractor which was involved in the accident had been purchased on loan and the creditor has taken steps for enforcement to the loan and the tractor was sold for enforcement of the decree. If personal liability has been suffered by the respondents' father, the right of recovery for the insurance company will be available only against the estate of the deceased in the hands of the respondents. The sale of the tractor will not absolve the respondents' liability to pay to the extent to which they have benefitted from the deceased's estate.

5. The impugned order is erroneous and it is set aside. The civil revision is allowed with liberty to the insurance company to proceeding against the estate of the deceased in the hands of the respondents in the manner referred to above.

(K. KANNAN)
JUDGE

April 21, 2015
Pankaj*