

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.420 of 2010

JUDGMENT:

Heard arguments of learned counsel for the appellants and respondents.

Learned counsel for the appellants submits that 1st appellant died, during the pendency of the appeal, which is filed for enhancement of compensation. His legal representatives were brought on record as appellants 2 to 5 *vide* order, dated 05.01.2017.

He further submits that the injured has suffered seven grievous injuries, and he lost his vision and the medical officer issued Ex.A6 disability certificate showing that the 1st appellant suffered 60% disability. The profession of the 1st appellant was driving. He cannot drive with loss of 60% vision. Therefore, he suffered 100% functional disability. Hence, he is entitled for full compensation.

He further submits that the 1st appellant-injured has filed the appeal and unfortunately he passed away during the pendency of the appeal and therefore, his legal representatives were brought on record. The Principle of "*action personalis moritur cum persona*" is not applicable in this

case since the cause of action has already stated in this case when the appeal is filed. Since the injured has preferred the appeal during his life time, his legal representatives are entitled to get all the benefits which the injured gets. Reliance has been placed on a decision of this Court in **Nurani Jamal and others v. Naram Srinivasarao and others**)¹ wherein it was held that,

"Therefore, I have no hesitation to hold that in all cases cause of action survives where there is loss to the estate of the plaintiff. I am also fortified in this view by a decision of the Supreme Court reported in Girijanandini v. Bijendra Narain², wherein, the Supreme Court observed as follows (at page 1131):

"The maxim "action personalis moritur cum persona" a personal action dies with the person has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief, granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto, and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory. Death of the person liable to render an

¹ 1993 (1) ALT 686

² AIR 1967 SC 1124

account for property received by him does not therefore affect the liability of his estate".

Bound as I am by this decision, I have no hesitation in holding that the right to sue in this case survives and the legal representatives of the original petitioner are entitled to come on record to prosecute the original petition filed by late Jaheen Jamal alias Rumani.

He also placed reliance on a decision of this Court in ***Kongara Narayanamma and others v Uppala China Simhachalam and others***³ and submits that in a case of death of claimant pending disposal of the compensation application, legal representatives of the deceased can claim compensation for loss of estate of the deceased.

Learned counsel for the appellants mainly submits that the Tribunal has not awarded adequate compensation for the Injuries and disability suffered by the 1st appellant-Injured in the accident.

Learned counsel for the respondents raised two objections for considering this appeal. He submits that the legal representatives i.e., respondents 2 to 5 have not stated anywhere that the deceased died due to the injuries received by him in the accident and therefore, they are not entitled to

³ 1975 ACJ 448

claim any compensation on account of the death of the deceased.

Learned counsel for the appellants submits that the legal representatives of the deceased, who are respondents 2 to 5 are not claiming any compensation on account of the death of the deceased. They are only claiming compensation for the injuries sustained by him in the accident. As the legal representatives of the deceased, they are claiming for enhancement of compensation since the injured died.

Learned counsel for the respondents submits that the legal representatives of the deceased are not entitled for any compensation for the injuries suffered by the deceased during his lifetime. They cannot prosecute the appeal after the death of the deceased as the legal representatives of the deceased. The rights of the injured have not been crystallized in this appeal as he died during the pendency of the appeal. As the legal representatives they cannot prosecute the appeal as no cause of action is surviving after the death of the deceased.

Learned counsel for the respondent relied on the judgment of Karnataka High Court in **HUSSAIN V. IMTIYANKHAN (MFA No.20130 of 2009)**, wherein it is held that,

"8. It may be appropriate to refer to the Judgment of the Full Bench of this Court in the case of Kannamma (*supra*) also.

The principles enunciated in this case are as follows;

(i) The Common Law Rule 'Action personalis mortui cum persona' as embodied in Section 306 of the Succession Act since applies to India, a claim by a person for compensation for personal injuries caused in a motor accident does not, on that person's death not being the consequence of such injuries, survive to his/ her legal representatives;

(ii) Cause or action for personal injuries being founded on tort (motor accident caused by the tortfeasor), injured person's claims for damages under Heads recognized by Common Law and not by Statute, based on such tort and not independently of it, cannot, on such person's death, survive for prosecution by his/her executors as administrators (or legal representatives) since Section 306 of the Succession Act, in express terms, declares that the cause of action in favour of a person for personal injuries (tort) does not survive on such person's death to his/her executors or legal representatives;

(iii) A claim by a person for compensation for personal injuries, be it pending before the Claims Tribunal, be it pending in the first Appellate Court or be it pending in the second Appellate Court, does not survive on such person's death not caused as a consequence of personal injuries, to his legal representatives;

(iv) A claim of a person for compensation for personal injuries if has resulted in award of the Cairns Tribunal or decree of the Appellate Court, survives to his legal representatives on his death, even if such death is not the consequence of personal injuries

sustained by him and hence, if such award or decree is disputed in the first Appellate Court of the second Appellate Court, the same could be resisted by the legal representatives of the claimant.

(v) A person's claim for compensation for personal injuries under the head loss to his/her estate, can, on his/her death as a consequence of such injuries, be prosecuted by his/her legal representatives, If they do not include a claim for compensation under that head, as and when they file a claim petition under Clause (b) of Sub-section(1) of Section 110A of the Act, on the death of the person Injured."

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10. *Therefore, it is to be concluded now that the wife of Hussain Sab, who has come on record does not inherit the right to prosecute the appeal after death of her husband. Although compensation is payable in accordance with 168 of the Motor Vehicles Act, but the award thus made is for the personal injuries sustained by an injured in an accident. Therefore, following the principles laid down in Kannamma's case, it is to be stated that an application under Order XXII Rule 3 CPC cannot be made at all and even if it is allowed inadvertently, yet the legal representative has no right to prosecute the appeal further. This principle is applicable even if an injured dies during the pendency of the claim petition before the Tribunal."*

Learned counsel for the respondents submits that since the rights of the legal representatives of the deceased are not crystallized, they are not entitled to claim any compensation

on account of the injured, who died during the pendency of the appeal preferred by him.

Learned counsel for the appellants submits that the Tribunal has not considered to award compensation under various heads like temporary loss of earnings, transport charges, extra nourishment charges, damages to clothes and medical expenditure. It is the case of the appellants that the claim of Rs.4,00,000/- is towards medical expenditure but the Tribunal has awarded Rs.2,98,000/- without giving any reasons for reducing that amount and requested for awarding the total amount of medical expenditure incurred by the appellants.

Learned counsel for the respondent-Insurance Company is not present. Sri G. Gopalakrishna Murthy is appointed as amicus curiae to assist the Court in the absence of learned counsel for the respondent-Insurance Company.

It is pertinent to note that the Tribunal has not awarded any compensation towards the heads stated above, therefore, the appellants are entitled for the compensation under those heads as they are pecuniary damages for which they are entitled to claim. No doubt, in this case the injured died. He did not die because of the injuries received by him in the accident. The appellants are not claiming any compensation on account of the death of the deceased but they are only

claiming compensation, which the deceased was entitled before the Tribunal. In other words, the appellants as legal representatives of deceased are continuing the litigation as stated by the injured, who died during pendency of the appeal.

Originally the deceased had claimed Rs.10,00,000/- for the injuries sustained by him in the accident but the Tribunal has awarded Rs.6,98,000/-. The deceased having dissatisfied with the award preferred the appeal for awarding of the remaining amount in this appeal. During the pendency of the appeal, deceased-claimant had passed away, and his legal heirs are brought on record to continue the litigation on his behalf.

The injured was said to be a Driver by profession and he was earning Rs.6,000/- per month, as per Ex.A-18 – the salary certificate, filed by the claimants. The Tribunal did not consider Ex.A-18 to award any amount towards temporary loss of earnings to the deceased during the period of treatment undergone by him. Therefore, the injured is entitled for an amount of Rs.18,000/- towards loss of earnings for a period of three (3) months.

As far as transport expenses are concerned, no amount was awarded by the Tribunal and therefore, the amount of Rs.5,000/- is awarded towards transportation and towards

extra nourishment, and towards damages to clothes and attendant charges an amount of Rs.10,000/- is awarded.

As far as the medical bills are concerned, PW-1 produced Ex.A-15 medical bills worth Rs.33,753/-, Ex.A-8 final bill statement worth Rs.2,52,000/- and Ex.A-9 final bill statement worth Rs.3,483/-.

It is submitted by Amicus curiae, on verification of records, that the Tribunal has considered all the medical bills except an amount of Rs.66,854/-, which is shown as medicine details indent No.1228, dated 13-01-2007, as such, it was not included in Ex.A-8 final bill statement, therefore, the Tribunal might not have awarded that amount.

Learned counsel for the appellants submits that the said amount was not included in Ex.A-8 and therefore, sought for grant of that amount towards medical expenditure incurred by appellants. In fact, the appellants are entitled for an amount of Rs.66,854/- towards medical expenditure apart from the amount of Rs.2,98,000/- awarded by the Tribunal, as that amount was not included in the indent No.1228, dated 13-01-2007. In fact, the Tribunal has lost sight of that amount.

In view of the forgoing reasons and on consideration of evidence, the following compensation is awarded as shown in the tabular form:

Sl. No.	Head	Awarded by the Tribunal	Amount enhanced/ awarded
1.	Injuries	Rs.3,00,000/-	-
2.	Medical expenses	Rs.2,98,000/-	Rs.3,64,854/- (Rs.66,854/- enhanced)
3.	Disability	Rs.1,00,000/-	-
4.	Loss of earnings for three months	-	Rs.18,000/-
5.	Transportation charges	-	Rs.5,000/-
6.	Extra nourishment, attendant charges and clothes	-	Rs.10,000/-

In the result, the appeal is partly allowed modifying the award passed by the Tribunal enhancing the compensation from Rs.6,98,000/- to Rs.7,97,854/- with proportionate costs and interest @ 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the enhanced amount within a period of two (2) months from the date of order and on such deposit all the petitioners are permitted to withdraw in equal shares.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

GUDISEVA SHYAM PRASAD, J

March 28, 2017

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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