

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 3824 of 2006 (O&M)
Date of Decision: 25.5.2017

Gulab Singh (deceased) through LRs.

.....Appellant

Versus

Nahar Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. P.R.Yadav, Advocate
for the appellant.

Mr. G.D.Gupta, Advocate
for National Insurance Company-respondent No. 3.

ANITA CHAUDHRY, J
CM-7645-CII-2016

This is an application for permission to prove photocopies of X-ray report dated 2.4.2001 (Annexure A-1) and discharge card dated 5.12.2000 (Annexure A-2) in additional evidence by way of secondary evidence.

The application is allowed and the documents Annexures A-1 and A-2 are marked as Ex. C-1 and Ex. C-2.

FAO-3824-2006

This appeal was filed by the injured-claimant. He died during the pendency of the appeal and his legal heirs have been brought on record.

The claim petition was filed by Gulab Singh through his wife. It was claimed that he met with an accident on 22.11.2000. He was a member of a marriage party and was going from Rewari to village Neemli.

claimant fell out and sustained fracture of the skull. A claim petition was filed under Section 166 of the Motor Vehicles Act. It was claimed that the injured was a Hawker and had a monthly income of Rs. 4,000/- and he had become permanently disabled. The Tribunal held that the accident had occurred on account of negligence of respondent No. 1.

With respect to the injuries, the claimant's wife stepped into the witness box and deposed that her husband sustained fracture of the skull and had lost his memory and had become mentally retarded. The copy of the MLR was introduced in evidence which was marked. The Tribunal noted that the MLR was a certified copy and injury No. 2 referred to defused swelling on the parieto occipital region on the right side and fresh bleeding on the right ear. No name was mentioned in the MLR. It referred to the disability certificate which was tendered in evidence. It did observe that no doctor had been examined to prove it. It noted that the disability was stated to be 83% on account of amputation of the right leg and I.Q. disability. In para 23, it noted that the amputation had taken prior to the accident and did not relate to this accident. Para 23 reads as under:-

“23. The disability certificate Ex. PW1/A has given the disability in cumulative manner, individual or distinct percentage in relation to amputation of leg and I.Q. disability have not been given nor it has so stated by PW-1. Statement of PW-3 and MLR Mark-A clearly shows that the leg of the injured claimant was already amputated prior to the accident. Therefore, percentage given in the disability certificate on account of amputation of leg cannot be related to present accident and cannot be used in favour of the claimant to assess the compensation on account of physical disability. As observed by me, there is no segregation of disability on account of I.Q. disability and no medical evidence has been

adduced by the claimant to enable this court to assess the mental disability of the claimant. So, in these circumstances, the disability certificate cannot be used in favour of the claimant.”

With respect to the income, it was held that there was no evidence. His income was taken to be as that of a labourer and at Rs. 3,000/- per month but since there was no evidence regarding the period of stay in the hospital it was assumed that he would have taken 25-30 days to recover and a month's salary was awarded. The Tribunal awarded total compensation of Rs. 8,000/- with interest.

The paper book of this appeal was burnt. The lower Court record is available. The appellants have also placed on record copy of the documents and the evidence.

The submission on behalf of the appellant was that the leg was amputated before the accident but there was mental disability and that is the reason why the claimant could not step into the witness box. The counsel had referred to the disability certificate and had urged that there is a reference to a letter issued by PGI which speaks about his mental ability. It was urged that no amount for the disability was allowed by the Tribunal as noted in para 23 of the award. It was urged that the appellant had died during the pendency of the appeal. Counsel further urged that there was injury on the head and he had been operated upon and the counsel refers to the documents adduced by way of additional evidence. Counsel had submitted that there is a reference to an operation for Tracheostomy. The counsel submitted that it refers to the operation which was carried for release of the clot in the head. The counsel has further submitted that Ex. C1 would show that the X-ray for the skull had been advised and there was a

fracture of the skull and there was a disability for which the appellant was entitled to compensation.

The submission on the other hand is that the claimant was unable to prove that there was any disability and the letter which is referred to in the disability certificate was kept away from the Court and that letter would have revealed as to whether the Neurosurgeon had referred to any I.Q. disability and the extent thereto and no effort has been made to produce that letter even by way of additional evidence. It was urged that there is no document to show that any operation had been carried out and photocopy of the documents have been submitted by way of additional evidence. It was urged that no bill was made available and the documents which the appellant has now tendered are already available on the record of the Tribunal but were not tendered in evidence. It was urged that consequent upon the death of the injured the right to claim compensation for the disability cannot be granted and the claim cannot be continued by the legal heirs as damages on account of injuries suffered by an injured is a right personal to the injured. It was urged that to prove disability the doctor should have been examined which would have given them the opportunity to test his statement.

The record which has been now made available shows that Gulab Singh was admitted in PGIMS, Rohtak on 22.11.2000 and he was discharged on 5.12.2000. The follow up and discharge card also shows that he was being fed up through Gastrostomy and he was treated conservatively during which a tube was inserted into the windpipe. There is a reference to the review by the Neurosurgeon after a week. There is also a reference to the fact that there was smell of alcohol and Tracheostomy was closed on

4.12.2000 and the condition had improved. There is no reference to any operation for the head. Admittedly, the amputation of the leg was prior to the accident and did not relate to the present accident. The treatment was taken in PGIMS, Rohtak where the treatment is free. The appellant could not prove that there was any disability as no doctor was examined. The question which now needs to be deliberated is as to whether any amount can be allowed to the legal heirs of the injured. Admittedly, the injured did not die on account of the injuries suffered in the accident but due to some other cause. The right to sue can only survive insofar as loss to the estate of the deceased is concerned. The appellants are seeking compensation for the disability. The question has been examined on numerous occasions.

This Court in ***Calcutta Insurance Limited v. Bhupinder Singh and Ors., (1970)72 P.L.R. 724***, examined the question whether the legal representatives could be allowed to continue the application filed by a claimant who had died during the pendency of the proceedings. It was held that right to claim compensation for personal injuries died with the death of the injured. In that case, an application under Section 110-A of the Motor Vehicles Act was filed by Kartar Singh claiming an amount of Rs. 20,000/- on account of physical and mental pain suffered by him as a result of the injuries which he had sustained in a motor accident. After the death of Kartar Singh, his legal representatives filed an application for being brought on the record. The Court noticed that Kartar Singh's demand was limited to compensation for personal injuries, both physical and mental. It held that the right to make the claim was personal to him and died with him and did not survive to anyone. It was for this reason that it was held that the legal representatives were not allowed to pursue the claim. It would be seen that

there was no claim regarding any loss to the estate of the deceased and the entire claim related to physical and mental pain suffered by the injured as a result of the injuries.

In ***Joti and Ors. v. Chaman Lal and Ors., (1984) 86 P.L.R. 723***, this Court had again the occasion to consider a case of abatement. The maxim *actio personalis moritur cum persona* was examined and it was held that the right to sue, after the death of the injured during the pendency of his claim case which included loss of property, survived to the legal representatives in respect of the claim on account of loss of the estate of the deceased. In that case, it was noticed that part of the claim undisputedly related to the loss which affected the estate of the deceased.

In ***S. Muniyappa v. H.L. Narasimhaiah and Ors., 1984 A.C.J. 299*** that was a case where the claimant had sustained injuries and was awarded compensation. He preferred appeal for enhancement of compensation but died during the pendency of his appeal. It was held that the appeal filed by the victim did not survive, however the decree already passed by the trial Court in favour of the injured endured to the benefit of the legal heirs as representing the estate of the deceased and they were entitled to defend it in case that was challenged by the other side by filing an appeal, for the legal heirs have the right to defend the estate of the deceased. But, the appeal filed by the claimant would not survive, for the appeal was instituted by the injured claimant himself for enhancement of compensation and that right died with him.

The Full Bench in ***Kannamma v. Deputy General Manager, (1991)1 A.C.C. 421 (F.B.)***, the Karnataka High Court has taken a view that a pending claim by a person for compensation for personal injuries did not

survive on such person's death not caused as a consequence of personal injuries. If a claim of a person for compensation for personal injuries has resulted in award or a decree, that would survive to his legal representatives on his death even if such death is not the consequence of his personal injuries sustained by him. It was also held that where claim petition is presented by a person sustaining bodily injuries in a motor accident claiming compensation towards expenses, loss of income, etc., it cannot, on such person's death occurring not as a result or consequence of bodily injuries, be prosecuted by his legal representatives. However, where the death occurred as a result or consequence of bodily injuries sustained in the motor accident, the claim petition, on such person's death, can be prosecuted by his legal representatives only insofar as the claim for compensation relates to loss to the estate of the deceased person due to bodily injuries sustained in the motor accident.

On a consideration of the controversy, it is clear that a claim petition would not abate on the death of the claimant insofar as the claim relates to the pecuniary loss caused to the deceased as a result of the motor accident. If there was any loss to the estate of the deceased, cause of action would survive. If the deceased suffered economic loss also and had initiated action prior to his death, the beneficiaries shall be allowed to recover the same from the persons responsible for causing that loss. Loss to the estate may include loss of earnings of the deceased and loss to the property. On their substitution, the legal representatives shall be permitted to prosecute only that part of the claim of the deceased, which related to the loss to the estate.

There is no evidence that the claimant had spent any amount on

his treatment. The claimant was admitted in PGI where the treatment is free of costs. In this appeal, the claimant was seeking compensation for the disability. The disability certificate did refer to a letter of PGI regarding the I.Q. but nothing more. That letter was withheld. The claimant was not produced before the Tribunal to enable it to make an assessment. But it would not matter now as the appellant had died. The disability if any was personal to him and that right came to an end subsequent to his death. There is no evidence to show that there was any loss to the estate. There is no evidence to show any expenditure made for the medical treatment or medicines. Therefore, it is held that the claim does not survive.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

May 25, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes