

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No. 487 of 2016
DATE OF DECISION :- April 11, 2023**

Swaran Kaur through LR

...Petitioner

Versus

Charanjit Singh @ Rinku and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Navjot Singh, Advocate for the petitioner.

Ms. Shazia K. Singh, Advocate for the respondents.

1. Under challenge in this revision petition is an order dated 21.8.2015 passed by Civil Judge (Junior Division), Fatehgarh Sahib vide which in a pending suit titled 'Swaran Kaur versus Charanjit Singh alias Rinku and others' an application dated 4.3.2015 for impleading Lrs of deceased plaintiff Swaran Kaur had been dismissed.

2. Briefly stated the facts of the case are that during pendency of the civil suit in the trial Court plaintiff Swaran Kaur had expired leaving behind her legal heir/son Sahib Singh. An application was filed to implead legal representatives of the deceased. That application was resisted by the

defendants. Vide impugned order the application was dismissed. The operative part of the order is reproduced for ready reference :-

“What now falls for consideration is whether the suit filed by the plaintiff was founded on torts or on contract. The present suit of the plaintiff is wholly founded on torts because it is related to the damages sought for by the plaintiff for alleged loss of money and physical and mental pain and hence the suit is based only on the personal injuries of the plaintiff. Hon’ble Apex Court laid down in the case titled as ‘M.Veerappa Vs. Evelyn Sequeira and other’ AIR 1988 (S.C.) 506 that if the entire suit is founded on torts the suit would undoubtedly abate. The present suit is one for the personal injuries alleged to have been sustained by the plaintiff, the suit abates on her death as per the maxim action personal is cum moritue persona. The Court is further fortified by the law laid down by Hon’ble Punjab and Haryana High Court in the case titled as ‘State of Haryana Vs. Gurcharan Singh Bhutani’ 2011 (1) Law Herald 88.”

3. Feeling aggrieved the legal representative of the plaintiff has approached this Court by way of filing the present revision petition. Notice of such revision petition was given to respondents who have put in appearance through counsel.

4. I have heard learned counsel for the parties besides going through the record.

5. The suit in question was filed by Smt. Swaran Kaur seeking damages on account of murder of her son Daler Singh by defendants

Charanjit Singh etc. In the judgment referred to by counsel for the revision petitioner titled 'Basant Kaur versus Gajinder Singh' 1996 (2) R.R.R. 741 by a single Judge of this Court which is with regard to suit for damages filed by plaintiff on account of injuries caused by defendants on body of plaintiff, medical expenses, mental torture, loss in business and efficiency when the plaintiff had died during pendency of the suit it was observed that the right to sue survives because where injuries caused to the deceased had tangibly affected his estate or has caused an accretion to the estate of the wrong doer. This order of the trial Court dismissing the application for Lrs to be impleaded was not justified and Lrs were ordered to be brought on record.

6. As against that the judgments referred to by learned counsel for the respondents titled 'M.Veerappa Versus Evely Sequeria and others' 1988(1) RLR 218, 'Daljit Singh versus Yogeshwar Prasad' 2006(88) DRJ 698, 'E.I. Ltd. and another versus Klaus Mittelbachert (deceased) through Lrs.' 2002 AIR (Delhi) 124, 'Yapi Kredi Bank (Deutschland) AG versus Ashok K. Chauhan and ors.' 2013(2) BC 460, 'State of Haryana and others versus Gurcharan Singh Bhutani' 2011(1) Land L.R. 181, 'Smt. Sipra Bhowmik and another versus Soumendra Ch. Saha and Ors.' 2013(2) AICJ 282, 'National Insurance Co. Ltd. Versus Sivabakkiyam (Deceased) and others' 2018(2) T.N.M.A.C. 355, 'H.S. Gambhir and anr. Versus Vam Dev Sharda and ors' Law Finder Doc ID # 45936, 'Smt. Ram Ashari and others veresus H.R.T.C. and another' Law Finder Doc ID # 83233, 'A. Nawab John and others versus V.N. Subramaniam' 2012(4) ALL MR 481 are clearly distinguishable due to different facts. In 'M.Veerappa Versus Evely Sequeria and others' (supra) the plaintiff herself had suffered injuries. In that case the suit was founded on torts. In this case Swaran Kaur mother of Daler

Singh who had been murdered had filed the suit seeking compensation for the wrongful act of murder said to have been committed by defendants. Such type of suit is on the similar lines of a claim petition under Section 166 of the Motor Vehicle Act, 1988 wherein legal representatives of victim of a road side accident have a right to file a claim petition and get compensation. The persons who are dependent upon income of the deceased though may not be Class -I legal heirs have got a right to maintain such claim petition and if a claim petition is brought by a victim of road side accident and he dies during pendency of the petition his/her legal representatives have got a right to pursue the claim petition and get compensation. It would be too harsh of a view if the suit is dismissed in such a manner rejecting the application moved by son of deceased plaintiff who is none else but real brother of victim Daler Singh to be brought on record. The judgments referred to by learned counsel for respondents are not applicable due to different facts and circumstances and context in which such observations had been made. With death of Daler Singh pecuniary loss was not only caused to his mother but to other close relatives like brothers, sisters etc. The defendants cannot be allowed to go scot free by default by dismissing the suit in such a manner. Besides facing the criminal action the defendants are certainly liable to pay damages for committing wrongful act of murder of Daler Singh and merely because his mother who is Class-I heir has died during pendency of the suit that does not mean that their liability to pay compensation thus comes to an end. In that way the order passed by the trial Court is perverse and arbitrary and it cannot stand judicial scrutiny. Therefore, the same deserves to be set aside by way of acceptance of revision petition.

7. The revision petition is accordingly allowed. The order under revision is set aside and matter is remanded back to the trial Court with a direction to permit Sahib Singh legal representative of deceased plaintiff to come on record and then proceed further with the suit from the stage when it was ordered to abate vide impugned order. The parties through counsel are directed to appear before the trial Court on 25.4.2023.

(H.S. MADAAN)
JUDGE

April 11, 2023
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No