

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP No. 40 of 2004

1. Smt. Jyotsna Biswas
W/o Late Sadhan Chandra Biswas.
2. Shri Sanjib Biswas.
3. Shri Rajib Biswas.
4. Smti. Ruma Biswas.
5. Smti Sima Biswas.
6. Shri Suman Biswas.
 - Sl. No. 2,3 and 6 are the sons of Late Sadhan Chandra Biswas and Sl. No. 4 and 5 are the daughters of Late Sadhan Chandra Biswas.
 - Sl. No. 5 and 6 being minors are represented by their mother and natural guardian at Sl. No. 1, Smt. Jyotsna Biswas.

All are resident of village- Aralia, North Rishi Para,
P.S.- East Agartala, District- West Tripura.

.... Appellants

– Versus –

1. Dr. Subal Debnath
S/o Debendra Chandra Debnath,
Village - Ashram Chowmuhani,
P.S.- East Agartala, District - West Tripura,
(Owner of TR-01-B-0296 (Maruti Car)
2. The New India Assurance Company Limited
to be represented by The Manager
Kaman Chowmuhani, Agartala Branch,
Agartala, West Tripura - 799001.
(Insurer of vehicle No.TR-01-B-0296,
Policy No.3153060233307,
Insurance Certificate No. 90/037459).

.... Respondents

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. S. Deb, Advocate,
 Mr. M K Roy, Advocate.

For the respondents : Mr. D K Biswas, Advocate,
 Mr. A. Gon Choudhury, Advocate.

Date of hearing and : 27.06.2013.
 delivery of judgment.

Whether fit for reporting: **NO**

JUDGMENT & ORDER (ORAL)

This appeal by the heirs of the original claimant is directed against the order of the learned Motor Accident Claims Tribunal, dated 11th February 2004, whereby he held that the heirs had no right to continue with the petition filed by an injured person.

2. This Court has dealt with this question in detail in MAC Appeal **No.111 of 2011** wherein it held as follows :

“The principle of *actio personalis moritur cum persona* is a principle applicable to personal injury cases. The literal meaning of this latin phrase is that an action for personal injuries dies with the person injured. It is contended on behalf of the respondents that the legal representatives cannot be permitted to continue this action on behalf of the deceased and are not entitled to any compensation. On the other hand, on behalf of the legal representatives it is contended that they are entitled to claim the full compensation payable to the injured who is now dead.

No doubt as per this principle an action for injuries whether physical or otherwise does not survive if the person injured dies. However, Section 306 of the Indian Succession Act saves the right even in such cases to a limited extent. Section 306 of the said Act reads as follows:

‘306. Demands and rights of action of, or against decease survive to and against executor or administrator. - All demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.’

A bare perusal of the aforesaid provision shows that all demands and rights whatsoever existing in favour or against a person at the time of his death survive to his executors, administrators and heirs. However, an exception has been carved out, that actions for defamation, assault as defined in I.P.C. or other personal injuries not causing death of a party do not survive. Loss to the estate suffered by his legal heirs is not covered under the exception to this action and therefore any loss to the estate can be recovered by the legal heirs. Section 306 has modified the principle of “*actio personalis moritur cum persona*” to this limited extent and the legal heirs/representatives of injured can continue an action initiated by an injured person in respect to the loss to the estate.

6. A Division Bench of the High Court of Himachal Pradesh in *Narinder Kaur and others vs. State of H.P. and others*, 1991 ACJ 767, held as follows :

'8. We have heard the learned counsel for the parties and gone through the records. The principle of action personalis moritur cum persona relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tortfeasor. In its applicability, the principle stands considerably modified by the provisions of section 306 of the Indian Succession Act, which clearly lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his death survive except causes of action for defamation, assault and other personal injuries not causing death of the party etc. which come to an end with the death of injured. The loss to the estate is thus not covered by the exceptions contained in section 306 of the Indian Succession Act. While taking this view, we are fortified by the decisions of the Supreme Court in Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair, 1986 ACJ 440 (SC) and M. Veerapa v. Evelyn Sequeira, AIR 1988 SC 506. The claimants as legal representatives of the original claimant were, as such, entitled to be substituted in his place with a view to continue the proceedings in the case and to have a decision on the claim in respect of the loss caused to the estate of the deceased.'

I have taken the same view in *Ram Ashari and others vs. H.R.T.C. and another*, IV (2005) ACC 379, wherein it was held as follows:

'6. It is well settled law that an action in torts for claim of compensation for damages on account of injuries

suffered by an injured is a right personal to the injured. This right cannot be continued by the legal heirs or legal representatives. It is no doubt true that the legal heirs or the legal representatives can continue the proceedings in so far as they relate to the loss to the estate such as medical expenses, amount spent on treatment etc. However, the claim with regard to the pain and suffering, future loss of income and such related matters is an action which is personal to the injured alone and cannot be continued after his death unless it is proved that the death is the result of the injuries suffered in the accident.'

A Full Bench of the Madhya Pradesh High Court in *Bhagwati Bai and another vs. Bablu and others, 2007 ACJ 682*, has taken an identical view in the matter. The Full Bench after considering the entire law on the subject held as follows :

'15. In the result, we are of the considered opinion that a claim for personal injury filed under Section 166 of the Motor Vehicle Act, 1988 would abate on the death of the claimant and would not survive to his legal representatives except as regards the claim for pecuniary loss to the estate of the claimant

It is therefore obvious that the legal representatives of the deceased can continue the action but only in respect of pecuniary loss to the estate of the claimant."

3. Following the aforesaid enunciation of case the present appeal has to be allowed. In the present case, it is not possible to assess the damages which were in the nature of loss to the estate since no evidence has been led. Therefore, the impugned order,

dated 11th February, 2004, is set aside and the matter is remanded to the learned Motor Accident Claims Tribunal, who shall permit the parties to lead evidence and thereafter decide what is the quantum of the compensation, if any, to which the claimants are entitled to.

4. The parties are directed to appear before the learned Motor Accident Claims Tribunal, Court No.3, West Tripura, Agartala, on 18th July, 2013. The lower court records be sent back so as to reach well before the next date.

CHIEF JUSTICE