

(7) For the reasons recorded above this appeal fails and the same is dismissed, but there is no order as to costs. The appellants are directed to remove the *malba*, if any, from the land in dispute within three months from today.

K. S. K.

REVISIONAL CIVIL

Before A. D. Koshal, J.

CALCUTTA INSURANCE, LTD.,—Petitioner.

versus.

BHUPINDER SINGH, ETC.,—Respondents.

C. R. No. 230 of 1970.

May 5, 1970.

Motor Vehicles Act (IV of 1939)—Section 110-A—Indian Succession Act (XXXIX of 1925)—Section 306—Claim for compensation under section 110-A for personal injury—Claimant dying during the pendency of the application—Heirs of the deceased claimant—Whether entitled to prosecute the application.

Held, that where an application is filed under section 110-A of Motor Vehicles Act, by a person claiming compensation not on account of the death of another but for injuries to himself, in such a case the right to prosecute the action must be regarded as a personal one which does not survive on the death of the applicant to his heirs by virtue of the rule expressed in the maxim *actio personalis moritur cum persona* which stands adopted by the legislature in section 306 of the Indian Succession Act. This section leaves no room for doubt that cases of personal injury not resulting in the death of the person injured give rise only to a personal action which the executors or administrators of that person are not entitled to continue on his demise. (Para 3).

Petition under article 227 of the Constitution of India read with section 115 C.P.C. for revision of the order of Shri Pritam Singh Pattar, Motor Accident Claims Tribunal, Amritsar dated 29th January, 1970, accepting the application of Bhupinder Singh and Harinder Kaur and ordering to be brought on the file as legal representatives of the petitioner Kartar Singh deceased.

V. P. GANDHI, ADVOCATE, for the petitioner.

G. S. VIRK, ADVOCATE, for respondent Nos. 3 & 4.

JUDGMENT

KOSHAL, J.—This is a petition for revision of the order dated the 29th of January, 1970, of Shri Pritam Singh Pattar, Motor Accident Claims Tribunal, Amritsar, directing that the son (respondent No. 1) and daughter (respondent No. 2) of Shri Kartar Singh, who had filed before him an application under section 110-A of the Motor Vehicles Act (hereinafter referred to as the Act) claiming an amount of Rs. 20,000 from respondents Nos. 3 and 4 as well as the petitioner before me on account of physical and mental pain suffered by him (Kartar Singh) as a result of the injuries which he sustained in an accident on the 21st of May, 1967 at about 6.30 p.m., be brought on the record as his (Kartar Singh's) legal representatives after his death. Respondent No. 3 is the proprietor and respondent No. 4 the driver of truck No. PNQ-2195 which was involved in the accident while the petitioner is the Insurance Company with which the truck was under insurance on the said date.

(2) Kartar Singh above mentioned died on the 16th October, 1969, while his application under section 110-A of the Act was pending with the Tribunal, who accepted the prayer of respondents Nos. 1 and 2 to be allowed to continue the application as his legal representatives. Reliance in this connection was placed by the Tribunal on *Chuhar Mal Ishar Das v. Haji Wali Mohd. and others* (1), in which it was held that Order 22 of the Code of Civil Procedure did not apply to an application under section 110-A of the Act, that such an application did not abate on the death of one of its makers and that an application of that type was of a "representative character."

(3) Learned counsel for the petitioner does not dispute the proposition that Order 22 of the Code of Civil Procedure does not govern applications envisaged by section 110-A of the Act. His contention, however, is that there is no question of such an application being of a "representative character" if it is made by a person on account of injuries not resulting in his death. After hearing him I am of the opinion that this contention merits acceptance and that *Chuhar Mal's case* (1) (*supra*) does not apply to the facts with which we are here concerned. In that case the

(1) 1968 Accident claims Journal 391.

father of a person who had died in an accident had made an application under section 110-A of the Act claiming compensation for himself as also on behalf of his wife (the mother of the deceased). The mother died during the pendency of the proceedings and it was held that there was no question of abatement of the cause as a result of her death. With great respect I must say that the case was correctly decided inasmuch as the claim was for compensation in respect of the injury suffered by the estate of the deceased and not by any one personally and that is not the case here. Here the action was brought by a person claiming compensation not on account of the death of another but for injuries to himself and in such a case the right to prosecute the action must be regarded as a personal one which does not survive on the death of the applicant to his heirs by virtue of the rule expressed in the maxim *actio personalis moritur cum persona* which stands adopted by the legislature in section 306 of the Indian Succession Act. That section states—

“All demands whatsoever and all rights to prosecute or defend any action or special proceeding 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.”

This section leaves no room for doubt that cases of personal injury not resulting in the death of the person injured give rise only to a personal action which the executors or administrators of that person are not entitled to continue on his demise. Application of the principle is also brought out in illustration (i) to the section just above mentioned. The illustration reads :

“A collision takes place on a railway in consequence of some neglect or default of an official, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.”

(4) Although section 306 speaks of rights to prosecute or defend any action surviving to the executors or administrators,

M/s. Mulkh Raj Krishan Kumar & Co. v. The State of Punjab, etc.
(B. R. Tuli, J.)

still it indicates the limits within which the maxim *actio personalis moritur cum persona* is to be confined and, as laid down in *Ratanlal Bhannalal Mahajan v. Baboolal Hajarilal Jain and others* (2), there is no reason why the maxim should be limited in its application to the case of executors or administrators who might be administering the estate for the general body of heirs or legatees and not the heirs themselves. This was also the view taken by a Division Bench of the Patna High Court in *Jogindra Kaur and others v. Jagdish Singh and others* (3), in which it was held that a claim in appeal for enhancement of damages allowed for personal injury by the trial Court would not survive to the legal representatives of a plaintiff who died during the pendency of his appeal. The principle is fully applicable to the case before the Tribunal in which Kartar Singh's demand was limited to compensation for personal injuries, both physical and mental. The right to make the claim being personal to him died with him on the principle above enunciated and cannot be said to have survived to anyone.

(5) For the reasons stated I accept the petition, set aside the order of the Tribunal and declare that the action brought by Kartar Singh before the Tribunal abated with his death so that respondents Nos. 1 and 2 had no right to continue the same thereafter. The Tribunal shall deal with the action accordingly. No order as to costs.

K. S. K.

FULL BENCH:

Before R. S. Narula, H. R. Sodhi and B. R. Tuli, JJ.

M/S. MULKH RAJ KRISHAN KUMAR & CO.,—Petitioners.

versus.

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 480 of 1970.

December 21, 1971.

Punjab Excise Act (I of 1914)—Section 36—Proceedings for cancellation of liquor licence—Nature of—Whether administrative or quasi-judicial—Rules of natural justice—Whether to be followed.

(2) A.I.R. 1960 M.P. 200.

(3) A.I.R. 1964 Patna 548