

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP. 432/2009

Date of Decision : NOVEMBER 04, 2009

BAJAJ ALLIANZ GENERAL
INSURANCE CO. LTD. Appellant
Through : Mr. Atul Nanda, Adv.

versus

KAMLA BIST & ORS. Respondents
Through : Mr. Arun Mohan, amicus
curiae.

CM Nos.12670-71/2009

1. Allowed, subject to just exceptions.
2. CMs stand disposed of.

**MAC.APP.No.432/2009, CM No.12672/2009 and CM
No.12669/2009**

1. Issue notice to the respondents as well as learned counsel for the respondents who appeared before the learned Tribunal by

ordinary process, registered A.D. post as well as be given 'Dasti', returnable on 7th December, 2009.

2. The LCR be requisitioned before the next date of hearing.

3. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.7,30,680/- has been awarded to claimants/respondents No.1 to 5.

4. The accident dated 27th May, 2002 resulted in grievous injuries to Hikmat Singh who filed the claim petition before the learned Tribunal. Hikmat Singh expired on 29th August, 2006 during the pendency of the claim petition whereupon his legal representatives, namely, respondents No.1 to 5 were substituted in his place and they continued the claim petition.

5. The learned counsel for the appellant submits that the claim petition abated on 29th August, 2006 upon the death of Hikmat Singh and the right to sue did not survive in favour of claimants/respondents No.1 to 5.

6. Mr. Arun Mohan, Senior Advocate was appointed as amicus curiae to assist this Court vide order dated 9th September, 2009. The learned amicus curiae refers to 178th Report of the Law Commission in which the Law Commission has recommended the amendment to Section 306 of the Indian Succession Act, 1925 as well as Section 166 of the Motor Vehicles Act, 1988 to provide for initiation/continuation of proceedings by the legal representatives of the injured person upon his death. The Law Commission has referred to Full Bench judgment of Karnataka High Court in the case of **Kannamma Vs. Dy. General Manager ILR 1990 Karn. 4300 (FB)** in which the Full Bench recommended that the provisions of Section 306 of the Indian Succession Act, 1925 and of Section 110A of the Motor Vehicles Act, 1939 be amended so as to permit the survival of the right of the injured person to seek compensation to his legal representatives, irrespective of whether the cause of death was

relatable to the accident or not.

In the subsequent, Single Bench judgment of Karnataka High Court in the case of **Baburao Sataba Manabutaker vs. Doreswamy (MFA 4072/1998 dated 4.9.2001)** lamented delay in amending the law and pointed out that the delay in amendment is causing grave injustice.

7. The Law Commission made the following recommendations:-

“We shall, therefore, deal with these amendments seriatum:

(A) Section 306 of the Indian Succession Act, 1925 and illustration (i) below the section:-

Section 306 of the Indian Succession Act, 1925 states MAC.APP. that among certain other rights, the right of the injured person to seek damages is personal to him and will not survive to his legal representatives. This position so far as accident compensation is concerned, is no longer acceptable in today's social jurisprudence.

In fact, such a provision has been given up in England as far back as in 1934. Indian courts have also felt that this provision in Section 306 which does not conform to today's standards of justice and has to be deleted. We are also of the view that this provision is too anachronistic to be allowed to continue in the statute book.

Section 306 as it now stands reads as follows; in so far as it is relevant for the present purpose:

"Section 306: All demands whatsoever and all rights to prosecute any action or special proceeding existing in favour of a person at the time of his decease, survive to 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."

There is an illustration below Section 306 and it reads as follows:

"Illustrations (i): 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.”

We are of the view that the underlined words in Section 306,

namely,

(a) “assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party” shall be omitted.

(b) illustration (i) shall be omitted.

(B) Section 166 of the Motor Vehicles Act, 1988: Amendment to provide for initiation/continuation of a proceeding under the Act by the legal representatives of an injured person upon his death even if the death has no relation or nexus with the accident:

The existing provisions of Section 166 of the Motor Vehicles Act, 1988 are as follows in so far as they are relevant:

“Section 166: An application for compensation arising out of an accident of the nature specified in sub section (1) of Section 165 may be made-

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.”

Sub section (2) and (3) of Section 166 deal with the form, the time limit for filing the application and sub section (4) requires the police officer to file a copy of the report before the Claim’s Tribunal. The Tribunal may, if it thinks necessary so to do, treat the report as if it were an application for compensation under the Act.

In the light of what we have said earlier, we propose insertion of a new sub section (5) in Section 166 as follows:

“(5) Notwithstanding anything in this Act or any law for the time being in force, the right of a person to claim compensation for injury in an accident shall upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable or had any nexus with the injury, or not.

Provided that in cases where the cause of death is not relatable or has no nexus with the injury, the compensation shall be restricted to the period between the date of injury and the date of death of the person injured.”

(C) Section 110A of the Motor Vehicles Act, 1939 (as applied to pending proceedings in Tribunal or Courts: Transitory provision to be made to provide for initiation/continuation of a proceeding under the Act by the legal representative of the injured person upon his death, even if the death has no relation or nexus with the accident:

The Motor vehicles Act, 1939 has been repealed by the Motor Vehicles Act, 1988 but it is possible that several proceedings initiated under that Act may still be pending either before the Motor Accident Claims Tribunal or at the appellate stage. Such proceedings are obviously saved under Section 217(2) of the Motor Vehicles Act, 1988.

By way of abundant caution and with a view to cover such pending cases we recommend the following provision to be made.

"Section 217A – Certain pending proceedings relating to compensation under the Motor Vehicles Act, 1939 not to abate:

"Notwithstanding anything contained in the Motor Vehicles Act, 1939 or any law for the time being in force, in respect of claims for compensation under the said Motor Vehicles Act, 1939 which are pending at any stage, at the date of commencement of this Act in any Tribunal or Court, the right of an injured person to claim compensation shall upon the death

of the injured person survive to his legal representatives, irrespective of whether the cause of death was relatable or had any nexus with the injury or not,

Provided that in cases where the cause of death is not relatable or has no nexus with the injury, the compensation shall be restricted for the period between the date of injury and the date of death of the person injured."

8. The Government is still to act on the recommendation of 178th Report of Law Commission and the position continues as it is which is causing grave injustice to the victims of the road accident.
9. Since the Government has now appointed a Committee to review the entire Motor Vehicles Act, the copy of this order be sent to the Secretary, Ministry of Road Transport and Highways. The copy of this order be also sent to Mr. S. Sunder, Chairman of the Expert Committee appointed by Ministry of Road Transport and Highways to consider the recommendations of the Law Commission.
10. Subject to the deposit of Rs.1,00,000/- by the appellant with

the Registrar General of this Court within 30 days, the execution of the impugned award shall remain stayed.

11. Upon the aforesaid deposit being made, the Registrar General is directed to keep the said amount as well as the statutory amount of Rs.25,000/- in fixed deposit initially for a period of six months to be renewed till further order.

12. Copy of this order be given 'Dasti' to learned counsel for the parties under signatures of Court Master.

J.R. MIDHA, J

NOVEMBER 04, 2009