



HARYANA STATE LAW COMMISSION

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EIGHTH REPORT

Recommendation to Amend Section 306 of The Indian Succession Act, 1925

Government of Haryana

HARYANA STATE LAW COMMISSION

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02 December, 2022

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Succession Act, 1925**

The general saying is that personal right of action dies with the death of a person. This general principle of law in relation to damages in actions surviving death is derived from the maxim “*actio personalis moritur cum persona*” which was formulated in England in 1459 (which means a personal right of action dies with the person). It operates to bar survival of causes of action for or against the deceased’s estate. The operation of this principle is sought to be limited by Section 306 of the Indian Succession Act, 1925.

2. Section 306 of the Indian Succession Act, 1925 reads as follows:

“306. Demands and rights of action of or against deceased survive to and against executor or administrator. - “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 (45 of 1860), 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.”

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.

(ii) A sues for divorce. A dies. The cause of action does not survive to his representative”.

3. Though Sec. 306 of the Act is placed under the heading executors and administrators, the principle underlying the said section has been extended to action in torts initiated by representatives of the estate of the

deceased. Under Sec.306, the survival of the cause of action for or against the estate of the deceased is subject to certain exclusions incorporated therein. The exclusions are: (i) “Defamation, (ii) Assault as defined in the Indian Penal Code or other personal injuries not causing the death of the party (iii) cases where, after the death of the party the relief sought can not be enjoyed or granting it would be nugatory etc.

4. The position of law in such cases has undergone a change by the enactment of the Fatal Accidents Act, 1855 as well as provisions of Motor Vehicles Act, 1988 regarding grant of compensation to victims of motor vehicle accidents. By reason of the change in the legal position in respect of death/injuries caused as a result of any criminal attack on a person, compensation is recoverable from the perpetrators of the crime under Sec. 357 of the Cr. Procedure Code, 1973. The law relating to assessment of the compensation payable to the Legal Representatives of the victim of the attack is clearly laid down by judgments of Apex Court especially in the decisions reported in *General Manager, KSRTC Vs. Susamma Thomas’s case AIR 1994 SC 1631*. Concept of no fault liability also has been introduced in the Motor Vehicles Act, 1988 as an ameliorative measure. Sweeping changes have been brought about by legislation affecting

the principles of Section 306 of the Indian Succession Act, 1925. However, on the basis of the principle of Section 306 of the Indian Succession Act, 1925, the full Bench of the High Court of Karnataka, in ***Kannamma Vs. Deputy General Manager, KSRTC.***, reported in **ILR 1990 Kar.4300**, has held that claim for compensation for bodily injuries sustained by a person who dies on account of a cause other than the injuries sustained by him, claim for compensation under the heading of pain and suffering, cannot be sustained and that the LRs would be entitled to compensation only for loss to the estate.

5. Being enacted in 1925, the Indian Succession Act, 1925, could not have contemplated the subsequent change in the legal position, inter-alia enunciated in Susamma Thomas's case, reads thus:

The rule in common law in Baker v. Bolton and Ors. enunciated by Lord Ellenborough was that "In a Civil Court, the death of a human being could not be complained of as an injury;". Indeed, the maxim actio personalis moritur cum personal, had the effect that all actions in tort, with very few exceptions, also became extinguished with that person. Great changes were brought about by the Fatal Accidents Act, 1846 (now Fatal Accidents Act, 1976) and the

Law Reforms (Miscellaneous Provisions) Act, 1934. Under the statute, as indeed under the Indians Statute as well, there are two separate and distinct causes of action, which are maintainable in consequence of a person's death. There were the dependent's claim for the financial loss suffered and a claim for injury, loss or damage, which the deceased would have had, had he lived, and which survives for the benefit of his estate.

6. In England, the operation of the maxim was found to be outdated, unduly constricting, particularly in preventing a living claimant from obtaining compensation merely because the defendant had died, however large his estate, and in preventing the estate of a deceased potential claimant from recovering compensation from a defendant for what represented a pecuniary loss to that deceased and therefore a loss to his estate. In the year 1934, the British Government enacted the Law Reforms (Miscellaneous Provisions) Act and has brought into force the survival of all causes of action subsisting against or vesting in him shall survive against, or as the case may be, for the benefit of the estate. To the similar effect Kerala Torts (Miscellaneous Provisions) Act, 1976 has been enacted.

7. Exception was created in an action for defamation on the ground that the claim involved non-pecuniary loss to the person defamed and that, therefore, there was no good reason why the deceased's estate should recover non-pecuniary loss. On this basis, most of the claims survive in favour of the legal representatives of the claimant other than non-pecuniary loss and exemplary damages. In England, the law was further modified by the Law Reforms (Miscellaneous Provisions Act, 1970). In India, the legal position so far as recovery for claims for damages in torts vesting in the legal representatives has been affirmed by the Supreme Court in *General Manager, Kerala S.R.T.C v/s Susamma Thomas* (AIR 1994 SC 1631).
8. The Code of Criminal Procedure 1973, has been amended by enacting Sec. 357 inter-alia, empowering the Court to award compensation even in cases where right to sue for compensation in Civil Court exists. Thus, even in respect of personal injuries sustained in a crime under the Indian Penal Code compensation is claimable by the injured victim. As noticed in the Fatal Accidents Act, 1855 and in *Susamma Thomas's* case, compensation is admissible in torts. By reason of the legal position as stated above, even for injuries sustained by reason of criminal offence defined in Indian

Penal Code, compensation is now recoverable.

9. So far as the legal position relating to grant of non-pecuniary damages in an action initiated by the Legal Representatives of a deceased is concerned, it cannot be granted to them by reason of the same being rendered nugatory in cases such as defamation. Likewise, compensation for loss of future earnings or exemplary damages are not also grantable as earnings by the deceased would terminate on his death.
10. In these circumstances, the deletion of the portion of Sec. 306 of the Indian Succession Act, 1925 would enable the Legal Representatives to recover both pecuniary damages for pain and suffering as well as compensation under the head “Loss to the estate.”
11. Why should the defendant benefit by the death of the claimant is not easy to understand. There is no reason why all the pecuniary damages that could be granted to the deceased, had he been alive, should not be granted to his Legal Representatives by reason of it being the part of the estate of the deceased. The amendment proposed below would eliminate this unfair consequence.
12. The exception against the survival of the cause of action of S. 306 which requires deletion and the portion requiring deletion, reads as follows:

“and” “Except causes of action for defamation,

assault, as defined in the Indian Penal Code (45 of 1860), or other personal injuries not causing the death of the party;”

RECOMMENDATIONS

13. For the reasons stated above, the Commission recommends amendment of Section 306 of the Indian Succession Act, 1925 as follows:

Delete the following portion of Section 306 :

“assault”, as defined in the Indian Penal Code (45 of 1860) or other personal injuries not causing the death of the party”

Delete the following portions in the illustrations: -

Illustration (i) to Section 306 shall be deleted and in illustration (ii) figure (ii) shall be deleted.

14. After amendment, Section 306 would read as follows:

“306. Demands and rights of action of or against deceased survive to and against executor or administrator. - “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, and except “also” cases, where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

Illustrations:

A sues for divorce. A dies. The cause of action does not survive to his/her representative”.

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NOTE:

Enactment of the Indian Succession Act, 1925 falls under Entry 5 of Concurrent List III of Schedule VII to the Constitution of India. Therefore, Parliament as well as the State Legislature have concurrent power to enact laws relating to succession. In such a situation, Article 254 of the Constitution comes into play. It provides that where the law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for consideration of the President and has received his assent shall prevail in that State. It is therefore clear that the amendments proposed in this report can be passed by the Haryana State Legislature and reserved for consideration of the President. After receipt of the assent of the President, the amendments as proposed in this report would come into operation in the State of Haryana. Haryana Legislature is therefore competent to amend section 306 of the Indian Succession Act, 1925.

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