



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. OF 2026

[Arising out of Special Leave Petition (Civil) Nos. 33646 – 33647 of
2018]

Kumud Lall

.....Appellant

VERSUS

**Suresh Chandra Roy (Dead)
Through LRs and Others**

.....Respondents

WITH

CIVIL APPEAL NOS. OF 2026

[Arising out of Special Leave Petition (Civil) Nos. 33648 – 33649 of
2018]

Amit Kumar

.....Appellant

VERSUS

**Suresh Chandra Roy (Dead)
Through LRs and Others**

.....Respondents

J U D G M E N T

J.K. Maheshwari J.

1. Leave granted.
2. The present appeals arise out of the challenge preferred by the legal heirs¹ of the alleged medically negligent doctor (deceased now), to the order² passed by the National Consumer Dispute Redressal Commission, New Delhi (in short '**NCDRC**'), thereby allowing the application filed by the complainant (deceased now) seeking substitution of the legal heirs of the doctor, pending revision and directing them to be brought on record. On filing review, it was also dismissed³ observing that the legal heirs shall be liable to satisfy the decretal amount to the extent payable from the estate left behind, on conclusion of the proceedings. Hence, the instant appeals to assail the orders passed in main case and review.

BRIEF FACTS

¹ Wife and son.

² 26.05.2010 (**Impugned Order I**) in M.A. No. 1214 of 2009 (**Application for substitution**) in Revision Petition No. 432 of 2006.

³ *vide* order dated 24.05.2018 (**Impugned Order II**) passed in M.A. No. 324 of 2011 (**Review**) in Revision Petition No. 432 of 2006 and R.A. No. 70 of 2011 (**Review**) in Revision Petition No. 432 of 2006

3. The case as set up by the complainant before District Forum, Munger, Bihar (in short '**District Forum**') was that he consulted Dr. P.B. Lall (deceased) at his private clinic on 10.02.1990 due to complain of severe pain by his wife in her right eye. On examination, Dr. Lall advised immediate operation, which was done on 11.02.1990. However, the pain reoccurred on 16.03.1990 and she was taken back to Dr. Lall. Despite further treatment, there was no relief. The complainant consulted with other doctors at Bhagalpur and Aligarh, but having no respite, he consulted Dr. B. Sridhar at Shankar Netralaya, Madras. As alleged, he informed that his wife had already lost vision of right eye due to wrong treatment and operation, which can further affect the vision in her left eye. On advice of surgery of his wife's left eye, she was operated on 05.05.1994. Consequently, the complainant had to visit Madras multiple times, and the treatment of his wife with local doctor continued till 05.08.1997.

4. The consumer complaint under the Consumer Protection Act, 1986 (in short '**1986 Act**') was filed on 13.08.1997 against Dr. Lall for alleged deficiency in service, claiming compensation as follows

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- a. *Operation charges and clinic charges, medicine etc. paid to the opp. party at Munger.* Rs. 5000/-
 - b. *Doctor's fee at Bhagalpur, Munger, two operation charges at Madras, expenditure, train fare, fooding, lodging, medicine etc. at Aligarh and Madras correspondence* Rs. 75,000/-
 - c. *Compensation for damage for loss of eyes* Rs. 3,50,000/-
 - d. *Mental agony and harassment* Rs. 20,000/-
- Rs, 4,50,000/-

5. The District Forum *vide* order dated 05.11.2003 partly allowed the complaint holding the doctor negligent for deficiency in service and held him liable to pay compensation of Rs. 2,00,000/- for loss of vision. In addition, Rs. 35,000/- for expenditure and treatment, and Rs. 25,000/- for mental agony, making total Rs. 2,60,000/- be paid within 3 months.

6. Being aggrieved, complainant and Dr. Lall both approached State Consumer Disputes Redressal Commission, Patna, Bihar (in short '**SCDRC**') filing Appeal Nos. 598 of 2003 and 607 of 2003 respectively. Both the appeals were decided *vide* common order on 02.12.2005, and the appeal filed by the complainant was

dismissed, while the appeal of Dr. Lall was allowed, setting aside the order of District Forum. The SCDRC noted that the loss of vision of the wife of complainant was due to glaucoma and not curable even after the surgery was done desperately by Dr. Lall with intent to relieve her from pain. The surgery performed was acceptable under the medical ethics and with the best of the abilities by Dr. Lall. The complainant has not produced any report from any expert of medical board or any expert to show that in doing surgery Dr. Lall was negligent. In absence of expert evidence to substantiate the allegation of medical negligence leading to loss of vision, holding the doctor guilty for the same is not sustainable.

7. Dissatisfied, the complainant preferred Revision Petition No. 432 of 2006 before NCDRC assailing the order of SCDRC, pending which, Dr. Lall passed away on 04.08.2009. The complainant filed M.A. No. 1214 of 2009 for substitution of legal heirs (wife and son) in the revision petition, which was allowed by NCDRC on 26.05.2010 (Impugned Order I), substituting the appellants herein as legal heirs. On notice, both wife and son filed applications⁴

⁴ MA No. 324 of 2011 (by wife) and R.A. No. 70 of 2011 (by son).

under Order XXII⁵ Rule 1⁶ and 4⁷ read with Section 151⁸ of Code of Civil Procedure (in short '**CPC**') and Section 22⁹ of 1986 Act, praying to drop their names from the proceedings, to dismiss the recall by the order dated 26.05.2010. It was said, since Dr. Lall had succeeded in the appeal before SCDRC, and died during the pendency of the revision, no subsisting decree existed on the date of his death, hence, the proceedings would stand abated. Further, the applicants were never served with any notice at any stage before joining them as party to the revision petition. In the meantime, the original complainant also died on 16.01.2014 and her legal heirs were substituted.

8. NCDRC *vide* order dated 24.05.2018 (Impugned Order II) dismissed both the applications and posted the matter for final hearing on 20.09.2018. Aggrieved by the said order, the present appeals have been filed wherein after issuing notice, stay on further proceeding was granted on 18.12.2019. Having regard to the nature of the controversy, this Court by order dated 13.01.2026 appointed Mr. Raghenth Basant, learned senior

⁵ Death, Marriage and Insolvency of Parties.

⁶ No abatement by party's death if right to sue survives.

⁷ Procedure in case of death of one of several defendants or of sole defendant.

⁸ Saving of inherent powers of Court.

⁹ Power of and procedure applicable to the National Commission.

counsel and Mr. Varun Kapoor, learned counsel as *amicus curiae* to assist the Court, on the issue as involved.

SUBMISSION OF THE APPELLANTS

9. Ms. Sarvshree, learned counsel appearing on behalf of the appellants submits that the alleged incident of medical negligence is of 11.02.1990, though the complaint was filed on 13.08.1997, almost a delay of 7 ½ years. There is no proximity between the date of alleged incident and the date of filing complaint. The complainant took his wife to multiple other doctors for treatment but of no avail. Dr. Lall had unblemished record and was a specialist having MBBS (Pat), M.S. (Eye), M.S. (ENT), DO (London) degrees, were qualified and well respected.

10. Learned counsel further submits that the complaint was dismissed by SCDRC and during pendency of revision Dr. Lall passed away. Therefore, on the date of death of Dr. Lall, no formal decree of any forum/Commission exist against him. In such eventuality, the proceedings ought to have been closed as abated, and for alleged negligence of deceased, no right to sue survive against the legal representatives. Nonetheless no loss to estate is claimed by an enrichment of estate of Dr. Lall LRs, and hence cannot be substituted. Therefore, in absence of decree, recording

finding of personal injury due to medical negligence, no proceedings can continue against the legal heirs of the doctors in view of Section 306¹⁰ of the Indian Succession Act, 1925 (in short '**1925 Act**').

11. It is also urged, in the 1986 Act, opposite party has not been defined and in case of death of opposite party rendered service in person, his/her legal heirs cannot be substituted for any negligent act of individual Doctor. To buttress the submissions, reliance has been placed on ***Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair***¹¹, ***M. Veerappa Vs. Evelyn Sequeira***¹², ***Balbir Singh Makol Vs. Chairman, M/s Gangaram Hospital and Others***¹³, ***Neeraj Amarnath Dora Vs. Nandan Hospital and Others***¹⁴, ***G. Jayaprakash Vs. State of Andhra Pradesh***.¹⁵

SUBMISSION OF THE RESPONDENTS

¹⁰ Demands and rights of action of or against deceased survive to and against executor or administrator.

¹¹ (1986) 1 SCC 118

¹² (1988) 1 SCC 556

¹³ 2001 (1) CPR 45 (NC)

¹⁴ II 2011 CPJ 171 (NC)

¹⁵ AIR 1977 (AP) 20

12. Mr. Umesh Sinha, learned counsel appearing for respondents vehemently argued and said the provisions of CPC are applicable to 1986 Act, and in terms of Order XXII Rule 4, even if sole defendant dies, his legal heirs ought to be substituted when right to sue survive. He submits that, the legal heirs of Dr. Lall inherited his estate and in case, liability, if any, is fixated for his negligence, it may be recoverable to such extent from his estate. The legal heirs of Dr. Lall stepped into his shoes by virtue of Section 2(11) of CPC, which defines 'legal representative' a person in law who represents the estate of the deceased.

13. He further submits that Section 13(7) of the 1986 Act provides for applicability of Order XXII where the complainant or the opposite party dies. Rule 4 of Order XXII prescribe the procedure on death of one of several defendants or of sole defendant, hence, NCDRC was right in continuing the proceeding, substituting the legal heirs of Dr. Lall.

14. Countering the applicability of Section 306 of 1925 Act, it is submitted that maxim '*actio personalis monitor cum persona*' (*a personal action dies with the person*) has been stated to be

‘unworkable’ in today’s social jurisprudence as per 178th Report¹⁶ of the Law Commission of India and recommended for the amendment. Same view has been subscribed in the 8th report¹⁷ of the Haryana Law Commission. He further submits that no fault is attributable to him in the present case, as he has been pursuing the case diligently. At this stage, merely pecuniary claim survives, which can be satisfied from the estate of the opposite party, in case, the claim is decided in his favour. It is said, the application seeking substitution has rightly been allowed, otherwise, it would be amounting to reject the claim at the threshold at revisional stage without touching the merit.

SUBMISSION OF INTERVENOR

15. Mr. Shyam Padman, learned senior counsel, representing Indian Medical Association, Kerala State Branch, submitted that the 1986 Act does not provide any definition of ‘opposite party’, indicating a conscious legislative intent to survive any claim or to continue such claim against the estate of the opposite party after death. The procedure to follow is provided in Section 13(7) of the

¹⁶ December, 2001.

¹⁷ 02.12.2022

1986 Act or Section 38¹⁸(12) of the Consumer Protection Act, 2019 (in short '**2019 Act**'), which refers the procedure of Order XXII of CPC. Since both the Acts are silent on the issue of abatement and nor do they override Section 306 of 1925 Act, therefore entire domain is governed by Order XXII of CPC read with substantive law on the issue.

16. It is submitted Section 306 of 1925 Act is subject to qualify that such proceedings may continue against the executor or administrator where the right to sue survives. In case, the proceedings do not reach to a final conclusion, no liability can be said to be crystallized against the opposite party and if party dies in absence, no transmissible obligations persist.

SUBMISSION OF AMICUS CURIAE

17. Mr. Raghenth Basant, learned senior counsel, and assisted by Mr. Varun Kumar Kapoor, learned counsel, appearing as amicus submitted that Section 13(7) of 1986 Act addresses the contingency where either party to a pending proceeding dies and provides, the matter be dealt in accordance with Order XXII of CPC. In the present case, the opposite party had succeeded in

¹⁸ Procedure on admission of complaint.

appeal, the question remains as to whether on his death during pendency of revision, the right to sue survives or not. To ascertain, substantive law has to be looked into vis-à-vis the general principle under Section 306 of 1925 Act.

18. He submits that, Section 306 of 1925 Act carves out an exception to the transmissibility of right to sue or to be sued, to the executors or administrators of deceased party. The exception being '*personal injuries not causing death of the party*', applies to claims, not resulting in death, implying such personal cause of action do not survive and end with the death of the person.

19. Supplementing the arguments of the respondents, he drew our attention to the 178th report of the Law Commission of India, 8th report of the Haryana Law Commission, Kerala Torts (Miscellaneous Provisions) Act, 1976¹⁹ and practices of other common law countries who have dispensed with the application of maxim '*actio personalis moritur cum persona*'.

20. Lastly, placing emphasis on the legislative intent underlying Section 13(7) of 1986 Act read with Order XXII of the CPC, he submits that if the principle laid down in *Balbir Singh Makol*

¹⁹ which allows all causes of action to continue except defamation, seduction or adultery.

(supra) is applied, it would result in material inconsistency. According to him, the right to sue would not survive if the opposite party dies during the pendency of the complaint, yet it would survive where the death occurs during the pendency of an appeal against a decree passed against the opposite party.

21. Learned amicus has also suggested possible interpretations, whether or not the right to sue survives on death of the complainant or opposite party (medical professional/doctor). The suggested interpretations are for convenience as quoted –

On death of complainant

Interpretation A – *All claims shall survive on death of complainant because of 1986 Act and 2019 Act being subsequent and special laws, they shall govern the field.*

- The 1986 Act defines the word complainant to include consumer's legal heirs and the definition given under Section 2(5)(v) makes it clear that upon death of original consumer, the LR's can step into his shoes, meaning thereby, the claim can continue through LR's and is not meant to extinguish, reflecting conscious legislative intent.

- Similar is the situation in the subsequent 2019 Act, where similar definition has been provided under Section 2(5)(vi) and once again Parliament has recognized the right of the consumer to seek redressal of his claim after his death through LR's.

Interpretation B – *Only claims amounting to ‘loss to estate’ can survive.*

- Personal injury stipulated under Section 306 of 1925 mistakenly assumes to cover all tortious acts and negligence where direct injury is suffered.
- Loss to the estate following such injury ought to be extricated from the ambit personal injury, since any such loss to the estate from an actionable wrong does not partake the character of personal injury. For eg. – In motor accident cases, award under tab for loss of future income, medical expenses etc. are exclusive to personal injury. Hence, such claims can be protected from the rigor of Section 306 of 1925 Act.

On death of opposite party (medical professional/doctor)

Interpretation A – *If ‘loss to estate’ is not reckoned as a claim for ‘personal injury’, at least this claim can survive even on the doctor’s death, against his estate.*

- Claim for loss of estate stand on a different footing from personal injury. Such claim represents quantifiable economic loss and does not fall within exception enumerated in Section 306 of 1925 Act.
- The Parliament did not provide for mandatory abatement of proceedings in case of death of opposite party. Had it been the intention, it would have provided an express provision in the 1986 Act or the 2019 Act. Rather, Order XXII of CPC has been made applicable to ensure proceedings are continued in such cases.

Interpretation B – *Even a claim for ‘personal injury’ could be sustainable against the estate of the deceased doctor.*

- a. *An interpretation that avoids anomalous or irrational consequences is to be preferred.*
- Any construction that would permit consumer to establish negligence and recover secondary loss as a consequence thereof, though bar him from recovering the primary loss because of injury suffered due to same, would lead to a situation where principal wrong itself is rendered illegally irrelevant solely because the wrongdoer has died.

- Such interpretation of the maxim '*actio personalis moritur cum persona*' defeats the very purpose of 1986 Act/2019 Act, which is a beneficial legislation.
 - This anomaly has been criticized by the Law Commission of India in its 178th Report, deprecating the mechanical application of this maxim being inconsistent with the modern social jurisprudence and also by the Haryana Law Commission in its 8th Report.
- b. Comparative common law as a persuasive interpretative tool.*
- The maxim finds statutory expression in Section 306 of Indian Succession Act, 1925 and is a doctrine of common-law origin traceable to English Law.
 - United Kingdom by enacting Law Reform (Miscellaneous Provisions) Act, 1934, abrogated the principle that personal causes of action perish with the person. Other jurisdictions have followed.
- c. Section 13(7) of 1986 Act and Section 38(12) of the 2019 Act will not be rendered otiose.*
- The above interpretations do not violence the text of Section 13(7) of 1986 Act and 38(12) of 2019 Act, which mandate

recourse to Order XXII of CPC in case of death of a party including opposite party.

- What is urged is a relief specific inquiry into survivability, fully consistent with the aforesaid Order, not confined to monetary compensation, but also include directions for performance of specific obligations including removal of defects or any other acts incapable of being carried out after death of opposite party.

Suggestions

On death of the opposite party (medical professional/doctor)

- Upon the death of the medical professional, claims for compensation arising out of medical negligence, including claims for person Upon the death of the medical professional, claims for compensation arising out of medical negligence, including claims for personal injury suffered by a consumer, ought to survive against the estate of the deceased. The Consumer Protection Act, being a special, beneficial and subsequent legislation, must govern the field in preference to the general provisions of the Indian Succession Act, 1925.*
- In the alternative, even if claims for personal injury are not held to survive in their entirety, claims for loss to estate of the*

complainant must, in any event, be held maintainable against the estate of the deceased doctor. Loss to estate constitutes a distinct and independent head of claim, representing compensatory civil liability rather than a personal cause of action, and therefore survives even on a strict construction of Section 306 of the Indian Succession Act, 1925. al injury suffered by a consumer, ought to survive against the estate of the deceased. The Consumer Protection Act, being a special, beneficial and subsequent legislation, must govern the field in preference to the general provisions of the Indian Succession Act, 1925.

On death of the consumer/complainant

- a. All claims maintainable under the Consumer Protection Act, including claims involving personal injury, may be permitted to survive at the instance of the legal representatives. Such survivability flows from the inclusive definition of 'complainant' under the Consumer Protection Act and the legislative intent to treat consumer grievances as statutory rights rather than purely personal torts. The Consumer Protection Act, being a special and subsequent legislation, must govern the field in preference to the general provisions of the Indian Succession Act, 1925. Concerns*

of unjust enrichment by the kin of the deceased consumer/complainant can be adequately addressed through moderation of quantum, particularly in respect of non-pecuniary heads, consistent with the principle of just compensation.

b. In the alternative, and at the very least, claims representing loss to estate, such as medical expenses incurred, loss of income during the lifetime of the consumer, or other pecuniary loss, must necessarily survive. Even on a restrictive application of Section 306 of the Indian Succession Act, 1925 such claims do not fall within the exception relating to personal injury and are transmissible to the legal representatives.

ANALYSIS AND FINDINGS

22. We have heard the learned counsel for the parties, the intervenor, and learned *amicus curiae* at considerable length. It is an exceptional case indeed in the sense that in spite of the best assistance of the *amicus*, this Court had to indulge in legal research to dredge out older statutory provisions which may seek to answer this issue. However, the law seems to have been lost to the pages of history due to less tort actions being litigated in India. In posterity, this case may be lesson to the students and

stakeholders, to have a strong emphasis on legal history and jurisprudence.

23. Upon a careful consideration of the submissions advanced, the material placed on record, and the applicable legal framework, the question that arises for our consideration is –

“Whether, upon death of the doctor during pendency of proceedings at appellate stage, the legal heirs can be impleaded and held liable for the alleged act of medical negligence of the deceased doctor? If yes, to what extent?”

24. Aforesaid question assumes importance as the implication of the holdings in this case also applies to numerous types of tortious claims, including personal injuries which does not amount to death, including motor vehicle accidents, and other industrial accidents. In this context, we only state the principle of law as applicable, without considering any additional policy consideration which may be relevant to be considered elsewhere under different enactments.

25. Before we advert to the merits of the submissions, it is necessary to first understand the legal landscape. At the outset it becomes imperative to refer to common law maxim ‘*actio personalis moritur cum persona*’, which translates to ‘a personal

right of action dies with the person'. This maxim was entrenched in the common law at least since 15th century. Percy H. Winfield²⁰ has written greatly about the evolution of this principle in common law as having dark corners.

26. English law, in light of societal changes, identified early on the need and necessity to create exceptions. In ***Hamby v. Trott***²¹, a simple case wherein defendant had wrongfully converted and used the Plaintiff's sheep (a tort of conversion/trespass), while deciding the liability of defendant's executor/estate, Lord Mansfield observed –

"...The maxim, actio personalis moritur cum persona, upon which the objection is founded, not being generally true, and much less universally so, leaves the law undefined as to the kind of personal actions which die with the person, or survive against the executor.....

..... Here therefore is a fundamental distinction. If it is a sort of injury by which the offender acquires no gain to himself at the expense of the sufferer, as beating or imprisoning a man, &c. there, the person injured has only a reparation for the delictum in damages to be assessed by a jury. But where, besides the crime, property is acquired which benefits the testator, there an action for the value of the property shall survive against the executor. As for instance, the executor shall not be chargeable for the injury done by his testator in cutting down another man's trees, but for the benefit arising to his testator for the value or sale of the trees he shall.

²⁰ Percy H. Winfield, 'Death as Affecting Liability in Tort', Columbia Law Review, Vol. 29, No. 3 (Mar., 1929), pp. 239-254]

²¹ 1776 1 COWP 371

So far as the tort itself goes, an executor shall not be liable; and therefore it is, that all public and all private crimes die with the offender, and the executor is not chargeable; but so far as the act of the offender is beneficial, his assets ought to be answerable; and his executor therefore shall be charged.....

(emphasis supplied)

This case clearly demarcated that death although ends personal liability for torts, however, any advantage gained by the defendant therein is answerable by the successor interest in the property.

27. The maxim which means ‘*a personal claim dies with the person*’ was a general rule applicable to torts and prevents representatives of the deceased from suing in his right for the suffering and pecuniary loss caused to the deceased during his lifetime by reason of the injury of which the deceased ultimately died. The result was that the person who caused the death of other cannot be sued in tort, though if death had not been caused but only injury had been caused, the injured would be entitled to sue and recover damages for the tortious act.

28. An Act of 1330 (4 Ed. III, c. 7) as amended by an Act of 1351-1352 (25 Ed. III, st. 5, c. 5.), enabled the personal representatives to sue for any injury done to the personal estate of one since deceased. The Civil Procedure Act, 1833, filled up most of the gaps

left by the Act of 1330, at any rate so far as injuries to property were concerned. Its' provisions on this point were embodied under the Administration of Estates Act, 1925. Under the aforesaid enactment, the personal representatives could maintain for any injury committed to the real estate of the deceased, within six months before his death, any action which the deceased himself could have maintained, but the action had to be brought within one year after his death. Further, an action might be maintained against the personal representative of a deceased person for any wrong committed by the deceased within six months before his death, to another person's real or personal property, but the action had to be brought within six months after the personal representative had taken out representation.²² Various other enactments have created exceptions, which are Fatal Accidents Act, 1864, Employer's Liability Act (43 and 44 Vict., c.42), Workman's Compensation Act, 1897 (60 and 61 Vic., c.37), Workman's Compensation Act, 1906 (6 Edw. VII, C. 58).

29. The position at one point in England was '*it was cheaper to kill than to maim or cripple*'. The above unsatisfactory state of law

²² P H Winfield, Recent Legislation on the English Law of Tort, 1936 14-8 *Canadian Bar Review* 639;

in England was overcome by the passing of the Fatal Accidents Act, 1846, which is commonly known as Lord Campbell's Act and English Law Reform (Miscellaneous Provisions) Act 1935.

30. First set of statutory exception was carved under Fatal Accidents Act, 1846 (Lord Campbell Act). The English enactment, was adopted into India in 1855, giving a 'right to sue' to certain relative consequent upon the death of another as the result of a tort, providing the deceased would have been able to sue in person had he survived. This act survives in India even today, albeit in limited context wherein the right to sue for Plaintiff is preserved through statutory exceptions, when fatal accidents occur.

31. In ***Phillips v. Homfray***²³, Lord Bowen who delivered the judgment of Lord Justice Cotton and himself deals fully with the application of the maxim and its limitations. He observes as thus (at page 454) –

“The only case in which, apart from the question of breach of contract express or implied, a remedy for a wrongful act can be pursued against the estate of a deceased person who has done the act, appears to be those in which property or the proceeds or value of property belonging to another have been appropriated by a deceased person and added to his own estate or moneys.”

²³ (1883) 24 Ch.D., 439

32. Further under English law, second set of exception for other tortious claims other than fatal accidents were created with the introduction of the English Law Reform (Miscellaneous Provisions) Act 1935, which allowed actions to be brought on behalf of a deceased plaintiff or against the estate of a deceased defendant. It may be beneficial herein to note certain provisions of the English Law Reform (Miscellaneous Provisions) Act 1935. Section 1(1) of the aforesaid Act, states as under-

“1. Effect of death on certain causes of action.

(1) Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate. Provided that this subsection shall not apply to causes of action for defamation.

1A) The right of a person to claim under section 1A of the Fatal Accidents Act 1976 (bereavement) shall not survive for the benefit of his estate on his death.】

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

[(a) shall not include—

(i) any exemplary damages;

(ii) any damages for loss of income in respect of any period after that person’s death;】

(b).

(c) Where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3).

(4) *Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.*

(5) *The rights conferred by this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Fatal Accidents Acts 1846 to 1908, and so much of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Acts as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.*

(6) *In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.*

The position of the earlier quoted maxim in England is presently largely academic, since the question of survival of cause of action is almost entirely governed by statute. Under Section 1(1) of the above enactment, all such cause of action, including an entirely ‘personal’ ones such as claim for damages for pain and suffering, survive in favor or against deceased person’s estate provided they are vested in it at the time of death. As apparent from the reading of the above provision, there are four statutory

exceptions: the estate cannot sue for damages for defamation, bereavement, prospective income which the deceased would have earned after his death, or for any sum by way of punitive damages. For the present purpose, we may not be required to go much into the English law.

33. However, India took a different turn in this regard. We will come back to adumbrating the Indian substantive law after referring to the procedural law involved in this issue and how the same has to be interpreted supporting the substantive law as it exists presently.

34. In the present case, the proceedings were initiated under the 1986 Act, which was in operation on the date of death of opposite party – Dr. Lall, who passed away on 04.08.2009. There is no gainsaying that the nature of proceedings initiated against Dr. Lall is a tortious claim for negligence by a doctor in treating a patient. The 1986 Act does not define ‘opposite party’, however Section 13 deals with the ‘procedure on the receipt of complaint’. As the Marginal note suggests, Section 13 prescribes procedural prescriptions. Sub-section (7) thereof caters to the exigencies in case where death of the consumer/complainant or the opposite

party takes places. The said Section is relevant and hence reproduced below for ready reference –

“13. Procedure on receipt of complaint

(1) *The District Forum shall, on receipt of a complaint, if it relates to any goods –*

(a) *refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;*

(b) *where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);*

xx xx xx

(7) *In the **event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply** subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as case may be.)”*

35. Bare reading of sub-section (7) reveals that in event of death of either consumer/complainant or the opposite party, Order XXII of the First Schedule to CPC shall apply. Order XXII of CPC deals with ‘Death, Marriage and Insolvency of Parties’, rules whereof, in

particular Rule 2, 4 and 11 are relevant and are reproduced hereinunder –

“2. Procedure where one of several plaintiffs or defendants dies and right to sue survives —

Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

xx xx xx

4. Procedure in case of death of one of several defendants or of sole defendant —

(1) *Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone or a **sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendants to be made a party and shall proceed with the suit.***

(2) *Any person so made a party may make **any defence appropriate** to his character as legal representative of the deceased defendant.*

(3) *Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.*

(4) *The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.*

(5) Where—

- (a) *the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and*
- (b) *the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,*

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.]

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11. Application of Order to appeals —

In the application of this Order to appeals, so far as may be, the word “Plaintiff” shall be held to include an appellant, the word “defendant” a respondent, and the word “suit” an appeal.”

36. Rule 2 deals with a situation where one of the several plaintiffs or defendants dies and the right to sue survives to the remaining plaintiffs or against the surviving defendants alone. In such a case, no substitution of legal representatives is necessary, and the suit continues at the instance of or against the surviving parties. There is no abatement of the suit falling under this Rule.

37. On the other hand, Rule 4 addresses the situation where the sole defendant, or one of several defendants, dies and the right to

sue survives only against the deceased defendant and not against the surviving defendants alone. In such a case, the suit cannot proceed against a dead person. Therefore, in terms of this Rule, the legal representatives of the deceased defendant must be brought on record, which must be effected through an application made in that behalf within the prescribed limitation. Upon such application being allowed and the legal representatives being impleaded, the Court shall proceed with the suit as if the legal representatives had originally been parties. However, if no such application is made within the limitation period, the suit abates as against the deceased defendant.

38. Rule 11 makes it clear that Order XXII is applicable to appeals also.

39. Thus, the position which emerges on combined reading of Rule 2 and Rule 4 is that the continuation of a suit/proceedings upon the death of a party fundamentally depends on whether the right to sue survives or not. When we speak of 'right to sue/cause of action' we speak of substantive law, as opposed to procedural aspects.

40. On a comparative reading of 1986 Act with 2019 Act, it is worthwhile to state that the procedure prescribed under Section

13(7) of the 1986 Act has been continued under Section 38(12) of the 2019 Act. Insofar as ‘complainant’ is concerned, as per Section 2(b)(v) of the 1986 Act, a ‘complainant’ means his legal heir or legal representative in case of his death. Similarly, in 2019 Act, the same definition has been carried under Section 2(5)(vi) of complainant. By expressly providing for legal representative for complainant/consumer, the legislative intent is clear, i.e., the claim of the complainant shall not automatically perish upon his death and shall survive through his legal heirs.

41. Classic definition of ‘cause of action’ is given by Brett J in **Cooke v Gill**²⁴, as ‘*every fact which is material to be proved to entitle the plaintiff to succeed*’, and by Diplock LJ in **Letang v Cooper**²⁵, as ‘*simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person*’. ‘Right to sue’ ordinarily means the right to seek relief by means of legal proceedings. The right accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means²⁶. In **Indian Evangelical Lutheran Church**

²⁴ (1873) LR 8 CP 107 – Pg. 116.

²⁵ [1965] 1 QB 232 – Pg. 242- 243.

²⁶ State of Punjab Vs. Gurdev Singh, (1991) 4 SCC 1

Trust Association vs. Sri Bala & Co.²⁷, this Court observed that

—

*“9.8Thus, “right to sue” means the right to seek relief by means of legal procedure when the person suing has a substantive and exclusive right to the claim asserted by him and there is an invasion of it or a threat of invasion. When the right to sue accrues, depends, to a large extent on the facts and circumstances of a particular case keeping in view the relief sought. It accrues only when a cause of action arises and for a cause of action to arise, it must be clear that the averments in the plaint, if found correct, should lead to a successful issue. **The use of the phrase “right to sue” is synonymous with the phrase “cause of action” and would be in consonance when one uses the word “arises” or “accrues” with it.***

(emphasis supplied)

42. Cause of action means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.²⁸

43. In the said context, to ascertain whether right to sue survives in favour of legal representatives of complainant or opposite party, in cases of medical negligence, we need to adumbrate the substantive law as it exists in India and its legal history.

²⁷ 2025 INSC 42

²⁸ **Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives**, (2020) 7 SCC 366, (Para 24)

44. For torts/accidents which caused death, the Indian Fatal Accidents Act (XIII of 1855) followed the above English Act of 1846. Under Section 1-A of the Fatal Accidents Act, a new right is created in favour of certain dependants who are named therein, to maintain an action or suit for damages in respect of the death of a person. The dependants for whose benefit an action can be maintained under Section 1-A of the Act are the wife, husband, parents (which term includes not only father and mother but also grandfather and grandmother) and child (which term includes not only son and daughter but also grandson and grand-daughter and step-son and step-daughter). For those torts and liabilities which did not cause death, however the plaintiff passed away independently, the Legal Representatives' Suits Act of 1855 was passed. It may not be out of context to note that the Indian Fatal Accidents Act and the Legal Representatives' Suits Act of 1855 came into force on one and the same date, viz., 27th March, 1855.

45. The Legal Representatives' Suits Act enacted in India in the year 1855 (Act XII of 1855), is in existence as to this date. It is absolutely necessary to have a look at provisions of this Act –

***“1. Executors may sue and be sued in certain cases for wrongs committed in lifetime of deceased.*”**

*An action may be maintained by the executors, administrators or representatives of any person deceased, for any wrong committed in the time of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death ^{1***}; and the damages, when recovered, shall be part of the personal estate of such person;*

*and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased for any wrong committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death ^{2***} and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to administer according to the English law, be payable in like order of administration as the simple contract debts of such person.*

2. Death of either party not to abate suit. Proviso. —

No action commenced under the provisions of this Act shall abate by reason of the death of either party, but the same may be continued by or against the executors, administrators or representatives of the party deceased: Provided that, in any case in which any such action shall be continued against the executors, administrators or representatives of a deceased party, such executors, administrators or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them.

These provisions are applicable to institution of suits filed under the aforesaid enactment, by legal representatives etc., after the death of a person. It is clear that only suits for damages concerning pecuniary loss of estate can be maintained by legal representative, for any wrong committed by him within one year

before the death of such person. Before the enactment of the Legal Representatives' Suits Act, such right to loss of estate died with the wronged and the same did not survive to the executors, administrators or representatives of the deceased. After the passing of the said Act, the executors or administrators or representatives of the deceased, as the case may be, can maintain a suit for loss of estate of the deceased. However, death of defendant/tortfeasor has been dealt differently, wherein any action or claim is maintainable against the legal representative, provided the wrong is committed within one year before the death.

46. The remedy provided under the Legal Representatives' Suits Act 1855 is, however, confined to suits brought subsequent to the death of the person, and did not enable suits brought by him to be continued after his death. In ***Haridas Ramdas v. Ramdas Mathuradas***²⁹, the plaintiffs therein sued to recover damages for wrongful arrest and malicious prosecution. The defendant died pending suit and the plaintiff sought to continue the suit against the executors of the deceased or his legal representatives. The objection taken was that the suit abated. It was held by Haridas and Parsens, JJ., that Legal Representatives' Suits Act, 1855 did

²⁹ (1889) I.L.R., 13 Bom., 677

not apply as it related only to suits brought against the heirs of a deceased person for wrongs committed by him in his lifetime.

47. Though the legislature went much further than the English Act of 1833 when it enacted Clause (2) of Section 1 of Legal Representatives' Suits Act, 1855 and gave a fresh right of suit, it confined demands and rights to prosecute or defend suits or special proceedings by executors or administrators in the Succession Act of 1865 to suits other than personal injuries not causing the death of the party, and also cases where the death of the party rendered the granting of any relief useless. As the Succession Act did not apply to Hindus, Muhammadans or Buddhists, a similar provision was also enacted in the Probate and Administration Act 1881, in particular Section 89, which runs as follows –

“All demands whatever and all rights to prosecute or defend any suit or other 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 when after the death of the party the relief sought could not be enjoyed or granting it would be nugatory.”

48. As noted above, Section 306 of 1925 Act, is not a new provision and has been in the statute books of India under

different legislation at least since 1865 (See Indian Succession Act, 1865, Section 268 later under Section 89 of Probate and Administration Act of 1881 (applicable to Hindus, Buddhists etc.)). These earlier enactments were consolidated during colonial period and 1925 Act was enacted, which is applicable herein. Presently, Section 306 of 1925 Act can be profitably referred herein –

“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, 1860 (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.”*

The aforesaid section *inter-alia* provides that all rights to prosecute any action or special proceeding existing in favour of a person at the time of his death, survive to his executors or administrators except cause of action for personal injuries not

causing death of the party. Thus, under Section 306, the executor/administrator of a deceased will have a right to prosecute or continue any action or special proceeding existing in favour of the deceased at the time of his death, except causes of action for personal injury not causing death of an party.

49. While commenting on Section 268 of Indian Succession Act, 1865 which is similar to Section 306 of 1925 Act, Whitley Stokes, observed in his commentary³⁰ as under-

“This is nearly the English law as to personal injuries. But the Indian Act goes further. By English law actions founded on what are technically called wrongs to the freehold do not survive except in the cases mentioned in 3 & 4 Will. IV, c. 42, s. 2 — Act XII of 1855, sec. 1, Wm. Exor. 707. But it is clear that this section extends to such injuries, and that an executor or administrator may, for example, bring a suit for diverting a watercourse, obstructing lights or cutting down trees in the lifetime of his testator or intestate.

*Personal injuries not causing the death of the party. — If they do cause his death, where the deceased could have maintained the action, if alive, a suit for damages may be brought under Act No. XII of 1855 (“An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong”). This Act is the English Statute 9 & 10 Vic., cap. 93 (Lord Campbell’s Act), with the additional provision that in any such suit **“the executor, administrator or representative of the deceased may insert a claim for, and recover any pecuniary loss to the estate of the deceased caused by the wrongful act, neglect or default; which sum, when***

³⁰ Whitley Stokes, Commentary on Indian Succession Act, 1865, R. C. Lepage and Co., pg. 170.

recovered, shall be deemed part of the assets of the deceased.” See Acts XII and XIII of 1855 in the Appendix.”

(emphasis supplied)

50. On the similar lines, Mahendra Chandra Majumdar, interprets Section 268 of Indian Succession Act in his commentary³¹ in the following manner –

“5. Except causes of action for defamation, & c. – It will appear from the above that an executor or administrator can maintain an action in his representative character only in cases where the estate of the deceased suffers any loss on account of the wrongful act committed by another during his lifetime. Therefore, where the wrong or injury is merely a personal one, as in the case of defamation or assault, &c., and no pecuniary loss has been occasioned to the estate of the deceased, no action is maintainable after the death of such deceased. In such cases, the rule of law, embodied in the maxim **Actio personalis moritur cum persona** (a personal right of action dies with the person) shall evidently apply, subject to the modifications effected by the above-mentioned Acts. This rule is, that, if any injury is done by one person either to the person or property of another for which damages only is recoverable in satisfaction, the action dies with the person by whom the wrong is committed. Thus, an action for deceit will not lie against the representatives of a person who has fraudulently induced another to take shares in a company [Peek v. Gurney L. R. 6 H. L. 377] or even to purchase shares from the deceased himself [Re Duncan; Tervy v. Sweeting, (1899) 1 Ch. 387].

“Executors and administrators are the representatives of the temporal property, that is, the debts and goods of the deceased but not of their wrongs, except where those wrongs operate to the temporal injury of their personal estate” [Lord Ellenborough in Chamberlain v. Williamson, 2 M. 408. But this rule “was never extended to such personal actions as were founded upon any obligation contract, debt,

³¹ **Mahendra Chandra Majumdar**, M. Krishnamachariar (eds.), The Indian Succession Act (Act X of 1865) with elaborated notes and commentaries, p. 909-910.

covenant or any other duty to be performed; for, there, the action survived.” [Davies v. Hood 88 L. J. 19]. ...”

51. Coming back to Section 306 of the 1925 Act, the fundamental principle enshrined under the above provision is that all rights and liabilities to maintain a suit succeed the death of a person and can be foisted on his successors. To this rule, exceptions are carved out namely, cause of action for defamation, assault and other personal injuries not causing death; or cause of action wherein relief cannot be enjoyed by the deceased or is nugatory. What requires our attention is the first set of exceptions, which needs to be interpreted herein.

52. While interpreting *mutatis mutandis* exception provided under Section 89 of Probate and Administration Act, 1881, a full bench of the Madras High Court in ***Rustomji Dorabji vs W.H. Nurse***.³², held that –

“16. It cannot be said that when the legislature enacted the Succession Act of 1865 or the Probate and Administration Act of 1881 it had not before it the earlier enactment, Act XII of 1855. Though there was no exception as regards causes of action in Section 1, Clause 2, of the Act of 1855 which would cover suits excepted by the Acts of 1865 and 1881 it was thought necessary to make some exceptions in the latter Acts. It would be unreasonable to suppose that the legislature out of the large number of personal injuries actionable in law made a random selection of defamation on the one side and assault and other

³² AIR 1921 Mad 1

physical injuries not resulting in death on the other, and left several personal wrongs more serious than simple assault unprovided for. If the words “other personal injuries not causing the death of the party” be read ejusdem generis only with assault the executors or administrators of a person who wrongfully restrains another (without assaulting him) for a few minutes would be liable to be proceeded against in the suit while those of one who committed grievous bodily harm not severe enough to cause death would escape. It should be remembered that assault as defined in the Indian Penal Code includes the most trivial forms of personal violence and no reasonable explanation can be given for the legislature picking out some offences and excluding others, some of which are of a serious nature. It would have been easy to use the word physical injuries instead of the word personal injuries or to add the word “and” before assault, if only acts of personal violence were intended to be excluded.

17. The words “personal injuries” represent a classification well known to law and in ordinary legal phraseology are not confined, to merely physical injuries. Blackstone in dealing with private wrongs observes:

Personal acts are such whereby a man claims a debt or personal duty or damages in lieu thereof and likewise whereby a man claims a satisfaction in damages for some injury done to his person or property. The former are said to be founded on contracts and the latter upon torts or wrongs. Of the former nature are all actions upon debt or promises; of the latter all actions for trespass, nuisances, assaults, defamatory words and the like.

18. He then proceeds to deal with injuries which affect the personal security of individuals and divides them into injuries against their lives, their limbs, their bodies, their health or their reputation, and in the last class includes both defamation, and malicious prosecution (Bk. III, Clause 8). He divides all injuries into injuries without force or violence, as slander, and others coupled with force or violence, as batteries. As pointed out by Pollock and Maitland in the History of the English Law and by Street in his work on the Foundations of Legal Liability (Volume 1, page 327) malicious prosecution was regarded only as an aggravated form of defamation.

19. Bearing in mind this classification and having regard to the fact that in the English Civil Procedure Act of 1883 the remedy was confined to injuries to the real or personal estate of the deceased and not to purely personal wrongs as understood in English Jurisprudence, and that the same limitation is placed by Section 1, Clause 1, of Act XII of 1855, and the anomalies that would result if the legislature picked out arbitrarily some personal wrongs and excluded them and desired to include at the same time wrongs of a much less serious character, I think the intention of the legislature in 1865 and 1881, when the Succession and the Probate and Administration Acts were passed, was to assimilate the law in India as far as possible to what it was in England and to exclude from the operation of Sections 268 of the Succession Act and 89 of the Probate and Administration Act suits which by the law as administered in England would fall under the maxim actio personalis moritur cum persona. If the words were simply "all personal injuries not causing the death of the party" and omitted defamation or assault, it may be argued that personal meant only physical and that causes of action for defamation and other similar injuries survived. The legislature took two types of personal injuries, one physical and the other not, and used them by way of illustration of what it meant to exclude. In this view, the words "other personal injuries not causing the death of the party" must be read with "defamation" and "assault".

(Emphasis supplied)

From the above it is clear that the exceptions adumbrated have to be taken as species mentioned therein.

53. In **Melepurth Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair**³³, this Court while interpreting Section 306 of 1925 Act, held as under –

“7. Where a suit for defamation is dismissed and the plaintiff has filed an appeal, what the appellant-plaintiff is seeking to enforce in the appeal is his right to sue for damages for defamation and as this right does not survive his death, his legal representative has no right to be brought on the record of the appeal in his place and stead if the appellant dies during the pendency of the appeal. The position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case the cause of action has merged in the decree and the decretal debt forms part of his estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff respondent which his legal representative is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent plaintiff.

8. Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.

9. The position, therefore, is that had the appellant died during the pendency of his suit, the suit would have abated. Had he died during the pendency of the appeal filed by him in the district court, the appeal would have equally abated because his suit had been dismissed by the trial court. Had he, however, died during the pendency of the second appeal filed by the respondent in the High Court, the appeal would not have abated because he had succeeded in the first appeal and his suit had been decreed. As however, the High Court allowed the second appeal and dismissed the suit, the present appeal by special leave must abate because

³³ (1986) 1 SCC 118

what the appellant was seeking in this appeal was to enforce his right to sue for damages for defamation. This right did not survive his death and accordingly the appeal abated automatically on his death and his legal representatives acquired no right in law to be brought on the record in his place and stead.

We must note that this Court was confined with the question of defamation, which usually is a personal action and does not give rise to claims based on pecuniary damages to estate of the deceased. As a caveat, this Court has to be cognizant of a situation wherein monetary loss may occur to estate from an reputational loss. Therefore, the ratio in the above case has to be narrowly confined to cases of purely personal claims arising out of defamation which abates on the death in terms of Section 306 of the Indian Succession Act, 1925.

54. In ***M Veerappa v. Evelyn Sequeira***³⁴, this Court was concerned with a suit to seek damages for professional negligence against a lawyer for filing a Special Leave Petition with considerable delay. It is during the pendency of the suit that the original plaintiff passed away. The defendant therein opposed the suit on the maxim *actio personalis cum moritur persona*. While

³⁴ (1988) 1 SCC 556

dismissing the appeal of the plaintiff therein, it was observed as under –

“10. *The maxim “actio personalis cum moritur persona” has been applied not only to those cases where a plaintiff dies during the pendency of a suit filed by him for damages for personal injuries sustained by him but also to cases where a plaintiff dies during the pendency of an appeal to the appellate court, be it the first appellate court or the second appellate court against the dismissal of the suit by the trial court and/or the first appellate court as the case may be. This is on the footing that by reason of the dismissal of the suit by the trial court or the first appellate court as the case may be, the plaintiff stands relegated to his original position before the trial court. Vide the decisions in Punjab Singh v. Ramautar Singh [AIR 1920 Pat 841 : (1919) 4 Pat LJ 676], Irulappa v. Madhava [(1916) 31 MLJ 772] Maniramlala v. Chattibai [AIR 1937 Nag 216 : ILR 1938 Nag 280] , Baboolal v. Ramlal [AIR 1952 Nag 408] and Melepurath Shankunni Ezhuthassan v. Thekittil Geopalankutty [(1986) 1 SCC 118 : AIR 1986 SC 411] . In Palaniappa Chettiar v. Rajah of Ramnad [ILR 49 Mad 208], and Motilal v. Harnarayan [AIR 1923 Bom 408 : 25 Bom LR 435 : ILR 47 Bom 716] it was held that a suit or an action which has abated cannot be continued thereafter even for the limited purpose of recovering the costs suffered by the injured party. The maxim of actio personalis cum moritur persona has been held inapplicable only in those cases where the injury caused to the deceased person has tangibly affected his estate or has caused an accretion to the estate of the wrong-doer vide Rustomji Dorabji v. W.H. Nurse [ILR 44 Mad 357] and Ratanlal v. Baboolal [AIR 1960 MP 200] as well as in those cases where a suit for damages for defamation, assault or other personal injuries sustained by the plaintiff had resulted in a decree in favour of the plaintiff because in such a case the cause of action becomes merged in the decree and the decretal debt forms part of the plaintiff's estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff which his legal representatives are entitled to uphold and defend*

(vide *Gopal v. Ramchandra* [ILR 26 Bom 597] and *Melepurath Sankunni v. Thekittil* [(1986) 1 SCC 118 : AIR 1986 SC 411]).

11. Though Section 306 speaks only for executors and administrators and **Order 22 of Rule 3 Civil Procedure Code sets out the rights of legal representatives to continue the proceedings instituted earlier by a deceased plaintiff if the right to sue survives, the courts have taken the view that the legal representatives stand on par with executors and administrators regarding their right to seek impleadment in order to continue the suit.** We may in this connection only quote the following passage occurring in *Melepurath Sankunni* case [(1986) 1 SCC 118 : AIR 1986 SC 411] : (SCC p. 121, para 8)

“Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.”

12. Thus it may be seen that there is unanimity of view among many High Courts in the country regarding the interpretation to be given to the words “other personal injuries not causing the death of the party” occurring in Section 306 of the Indian Succession Act and that the contrary view taken by the Calcutta and Rangoon High Courts in the solitary cases referred to above has not commended itself for acceptance to any of the other High Courts. The preponderant view taken by several High Courts has found acceptance with this Court in its decision in *Melepurath Sankunni Ezhuthassan* case [AIR 1951 Mad 733] . It is on account of these factors we have expressed our disapproval at the outset itself of the view taken by the High Court in this case.

55. In light of the law laid down above, exceptions intended under Section 306 of 1925 Act are meant to restrain the ambit of the

enacting clause to particular cases. It is true that there is a possibility to adopt two interpretations when it comes to the 1st exception. As alluded by the learned amicus, first interpretation could bar all cause of action relatable to personal injury irrespective of claim being personal or against the estate of the deceased. Second interpretation could mean that only cause of action relatable to claims for personal injury are barred and any claim against the property/estate of the deceased may continue. We are of the opinion that later interpretation is to be preferred over the former for the reason that exceptions have to be strictly interpreted. The scope of exception cannot be allowed to chew the enabling provision which sets the tone for liabilities to be carried by legal representatives for a deceased person. Additionally, the development of common law also points towards distinction in cause of action which are personal as against estate claims. Even in India, aforesaid interpretation is to be favored as per the *ratio* in ***Evelyn Sequeira*** (supra). Moreover, the parties have not been able to provide any reason as to why distinct claims against the estate needs to be barred under 1st exception to Section 306 of 1925 Act.

56. Therefore, the ‘right to sue/cause of action’ mentioned under Order XXII Rule 2 and 4 have to be located under substantive law

to be found in Section 306 of 1925 Act. The extent of survival of right/cause depends on the facts and remedy sought in the suit. A suit can be filed for seeking damages *ex delicto* or/and claim from estate or property of the defendant. For example, a claim for trespass can be an unliquidated damage for trespass *per se*, however, this can be coupled with conversion of a property such as taking away trees on plaintiff land. It is the nature of the claim that determines the cause of action and its survival.

57. Viewed differently, the answer can be traced in the definition of legal representative provided under Section 2(11) of the CPC, wherein the legal representative represents only the estate of the deceased. His representation cannot be extended to the personal rights which have extinguished with the death of his predecessor. Now the same position is also confirmed by the suits instituted under Legal Representatives Suits Act, 1855, wherein suits can only be instituted for cause concerning the pecuniary interest of the estate of deceased and nothing more. When this is the situation for instituting a suit, a higher right or a different standard cannot be set for substituting a legal representative during an appeal process. The procedural law under CPC, 1986 Act, 2019 Act and

substantive law under 1925 Act or Legal representatives' Suits Act, 1855 has to be harmoniously construed.

58. It was also argued that the 1986 Act and 2019 Act, being a welfare legislation, needs to be interpreted broadly to continue the cause of action of personal claims. The purpose of the legislation was to protect the consumer and ensure that proper services are provided by professionals. Although, the argument looks enticing, we need to interpret the law based on the statutory language. Section 13 (7) of the 1986 left this aspect to be governed by Order XXII of CPC and did not create any such right to continue. Any interpretation to militate against the same, would be against the statutory intention. In any case, we are unable to locate a substantive provision within 1986 enactment or 2019 enactment to allow continuation of such personal claims.

59. From the above, it is clear that the exceptions provided under Section 306 of 1925 Act have to be limited to those espousing personal cause which do not continue once the plaintiff dies, such as personal claims arising *ex delicto* like defamation, personal injury etc., however, any claim on pecuniary interest of the deceased estate continues. In order to explain the classification of

rights, jurisprudentially, Salmond classified proprietary rights and personal rights as under³⁵ –

“Proprietary and personal rights. Another important distinction is that between proprietary and personal rights. The aggregate of a man’s proprietary rights constitutes his estate, his assets, or his property in one of the many senses of that most equivocal or legal term. The sum total of a man’s personal rights, on the other hand, constitutes his status or personal condition, as opposed to his estate. If he owns land, or chattels, or patent rights, or the goodwill of a business, or shares in a company, or if debts are owing to him, all these are rights pertain to his estate. But if he is a free man and a citizen, a husband and a father, the rights which he has as such pertain to his status or standing in the law.”

60. This Court in **Vinayak Purshottam Dube Vs. Jayashree Padamkar Bhat**³⁶, while deciding the liability of legal heirs of the deceased opposite party-developer to provide completion certificate, conveyance deed etc., to the complainant in addition to the monetary payment arising out of a development agreement, made the following classification between proprietary and personal rights –

	<i>Proprietary rights</i>	<i>Personal rights</i>
1.	<i>Proprietary rights mean a person's right in relation to his own property.</i>	<i>Personal rights are rights arising out of any</i>

³⁵ P.J. Fitzgerald, Salmond on Jurisprudence, p. 238 (Universal Law Publishing Co. Pvt. Ltd., 12th Edn., 1966)

³⁶ (2024) 9 SCC 398

	<i>Proprietary rights have some economic or monetary value.</i>	<i>contractual obligation or rights that relate to status.</i>
2.	<i>Proprietary rights are valuable.</i>	<i>Personal rights are not valuable in monetary terms.</i>
3.	<i>Proprietary rights are not residual in character.</i>	<i>Personal rights are the residuary rights which remain after proprietary rights have been subtracted.</i>
4.	<i>Proprietary rights are transferable.</i>	<i>Personal rights are not transferable.</i>
5.	<i>Proprietary rights are the elements of wealth for man.</i>	<i>Personal rights are merely elements of his well-being.</i>
6.	<i>Proprietary rights possess not merely judicial but also economic importance.</i>	<i>Personal rights possess merely judicial importance.</i>

In the light of the above, it is clear that in distinction to an individual's personal right which is attached to his status, the proprietary right relates to his estate. On the other hand, personal right or claim usually includes damages for loss of reputation, pain, and suffering, etc.

61. A contrary interpretation wherein any claim (inclusive of personal and proprietary claim) concerning defamation, assault, and other personal injuries not causing the death of the party, being barred under Section 306 of 1925 Act, would entail different

standards being adopted for institution of suits under Legal Representative's Suits Act, 1855 and continuation of pre-existing suit. The law has to be read harmoniously. There is no logical or legal reasoning which can support a contrary interpretation to not allow estate claims with respect to the categories of exceptions identified above.

62. It needs to be cleared that suppose a decree stands during an appeal process in favor of the plaintiff and the defendant dies, then the entire claim is maintainable in appeal. As the decretal amount has to be satisfied from the estate of the deceased, then the legal representatives/executors/Administrator of the deceased defendant may have to prosecute the appeal. However, in case the plaintiff does not have a decree on the date of his death, then right to continue necessarily have to be determined in terms of Section 306 of 1925 Act.

63. We may note that this Court herein is only answering the question on interpretation of the applicable law and not expounding on the normative requirement as to whether the policy adopted by the law applicable is correct or there is a need to change. English law appears to have gone further to preserve tortious liabilities of the deceased defendant. To this count, even

judgments and Haryana Law Commission have also taken a view to recommend amendments. We feel that it is appropriate to engage policy experts to debate the need and necessity of expanding scope of Section 306 of 1925 Act. The policy consideration is best left to the Law Commission to see whether there is a need to have a re-look at these provisions for future.

64. What falls from the above discussion are as under –

- i. The common law maxim '*actio personalis moritur cum persona*' in India has been statutorily modified by various statutory instruments such as Fatal Accidents' Act of 1855, Legal representatives' Suits Act of 1855, Indian Succession Act of 1925, etc.;
- ii. That the legal representative of the deceased can institute a fresh suit or be sued afresh in terms Legal Representatives Suits Act, 1855 or in terms of Section 306 of Indian Succession Act, 1925;
- iii. Continuation of suit by or against the legal representative of the deceased has to be in terms of Section 306 of Indian Succession Act, 1925 (substantive law);

- iv. Procedural prescription under Order XXII of CPC, concerning substitution of legal representative of the deceased party should be harmoniously construed with Section 306 of Indian Succession Act.
- v. The continuation of 'right to sue' under Order XXII Rule 2 read with Rule 4 is to be seen on the date of death.
- vi. Generally, all rights and liabilities to maintain a suit are carried to the legal representative under Section 306 of Indian Succession Act, 1925. However, when adjudicating claims under 1st exception to Section 306 of the Indian Succession Act, 1925, personal injury claims abate, while claims for or against the estate of the deceased survive.

65. Having understood the law, suppose, a doctor/opposite party in a consumer complaint involving allegations of medical negligence meets an unfortunate demise during the pendency of complaint. As such, the question of medical negligence remains undecided due to unproven allegations. Likewise, if such demise takes place at the appellate stage³⁷, the issue of medical negligence

³⁷ Inclusive of revisional stage.

already stands adjudicated, either in favour of or against the doctor by the lower forum. There might be concurrent findings qua medical negligence or conflicting decisions or reversal at the appellate stage. Ultimately, as on the date of the doctor's demise, only two situations can arise, i.e., either an enforceable decree exists against him, or the consumer complaint against him stands dismissed. Therefore, what becomes essential at the relevant stage is to see, whether any enforceable decree against the doctor existed as on the date of the death of his doctor.

66. Before we part, a reference needs to be made to five judge bench judgment of NCDRC in **Balbir Singh Makol Vs. Chairman, Sir Ganga Ram Hospital and Others**³⁸, wherein while dealing with the issue regarding payment of compensation concerning medical negligence by the alleged negligent doctor who had died during pendency of complaint, it was observed as thus –

“10. *In the complaint the main allegation of negligence is against Dr. Makhani who performed the operation at Sir Ganga Ram Hospital who was the Doctor-in-charge in the said case. Before the case could reach its culmination the said Doctor, i.e. Dr. Makahni, died. Thus, the allegations could neither be rebutted nor could he have an opportunity to defend himself. In a tort of medical negligence, the cause of action is personal against the person who has been negligent in discharging his duties and that the cause of action does not survive against his estate or the Legal*

³⁸ 2001 (1) CPR 45

Representatives. However, in case the trial had been completed and a decree/judgment had been passed against the said deceased, that amount payable under the decree could be recovered from the estate of the deceased and the deceased and in such event the legal representatives of the deceased could be brought on record. But, that did not happen in the present case and even the question whether Dr. Makhani had been negligent in the discharge of his duties as a Surgeon could not be adjudicated upon. In this view of the matter, the maxim actio personalis moritur cum persona, as a general rule is applicable to actions in torts and, therefore, the cause of action against the party against whom an action in tort is brought is extinguished on his death. The maxim means that personal right of action dies with the person in other words death destroys the right of action. The right to sue will be extinguished. In this connection a reference be made to the following, among other, rulings.

11. *In G. Jayaprakash v. The State of Andhra Pradesh reported in AIR 1977 A.P. 20 (22) the Hon'ble Supreme Court held as under:*

“The death of the doctor extinguished his liability for damages and the suit against him stood abated. The maxim, “actio personalis moritur cum persona” applied to the case.

In the 8th Edn. Of Winfield on Tort at p.740. the following passage occurs:

In case of a lawful surgical operation in general negatives the liability. But in a case where actionable negligence is committed by the doctor which amounts to a personal wrong done by him, he may be liable of damages. But his death extinguishes his liability in tort and the right to sue also gets extinguished. So, I see no force in the contention that the 3rd defendant's estate was benefited by the wrong done by him.”

*** *** ***

13. *The Hon'ble Supreme Court while considering the question of bringing on record the legal representatives of the deceased who was sued for damages in a tort of*

defamation was considered and answered likewise in the case of *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair*, reported in AIR 1986 SC 411. That was the case where the suit for defamation had been dismissed and the plaintiff had filed an appeal. During the pendency of the appeal, the Defendant who was being sued for defamation had died. The Supreme Court held that his legal representatives could not be brought on record as the cause of action stood extinguished.

14. In paragraph 7, the Hon'ble Supreme Court has observed as under:

“Where a suit for defamation is dismissed and the plaintiff has filed an appeal, what the appellant-plaintiff is seeking to enforce in the appeal in his right to sue for damages of defamation and as this right does not survive his death, his legal representative has no right to be brought on the record of the appeal in his place and stead if the appellant dies during the pendency of the appeal. The position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case the cause of action has merged decree and the decretal debt forms part of his estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff-respondent which his legal representatives is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent-plaintiff.”

In light of the law discussed above, we do not subscribe to the ratio of NCDRC in **Balbir Singh Makol Case** (supra). Five judge bench of NCDRC therein seem to have erred on following counts –

- (a.) Applied common law maxim *actio personalis moritur cum persona*, by failing to read the statutory modification which are carried out by various enactments in India;

- (b.) Misread the ratio in ***Melepurath Sankunni Ezhuthassan Case*** (supra) and failed to limit the same to facts of the case, which was solely arising from personal injury claim;
- (c.) Made the first category of exceptions under Section 306 of 1925 Act absolute and extended the bar to claims of pecuniary loss against the estate as well;

67. In the context of Rule 4 of Order XXII of CPC, one has to understand and see whether the right to sue against such alleged medically negligent doctor survives or not upon his death. As discussed earlier, the ‘right to sue’ means the right to seek relief through legal proceedings. Such proceedings, in a general sense, are instituted against the opposite party/defendant(s), who possess a corresponding right to defend, as opposed to the claimant’s right to prosecute. The right to defend is intrinsically linked to, and arises from the right to prosecute, and vice-versa. Therefore, for the continuation of proceedings, it is essential that both rights co-exist. Nonetheless, in view of the preceding discussion and the statutory framework provided in 1986 Act as well as 2019 Act, we conclude that upon the death of the alleged medically negligent doctor, his/her legal heirs can be impleaded

and brought on record. Consequently, the extent of liability will be determined based on the pleadings and evidence presented. The question is answered accordingly.

68. The complainant had succeeded before the District Forum and was awarded compensation. However, when taken in appeal by doctor, the SCDRC allowed the same and set-aside the award. Aggrieved, the original complainant preferred revision before NCDRC, pending which, the doctor/opposite party passed away on 04.08.2009. As borne from records, 'right to sue' if any subsists qua claims against the estate on the death of the opposite party in terms of Section 306 of Indian Succession Act, 1925 read with Order XXII Rule 2 and 4 of CPC. In order to establish the claims, the NCDRC is duty bound to adjudicate the negligence aspect, if any by the deceased doctor and resultantly adjudicate the surviving claims.

69. Before we conclude, it is necessary to state that question as to what claim can be attributed to the accretion of the deceased defendant's estate needs to be carefully analyzed by NCDRC as we have dealt only with the question of law. Of course, exhaustive list of these items cannot be given, since it would depend upon pleadings and proof brought before the Court. It may be relevant

to note that the Claimant has the duty to first establish the negligence of the deceased doctor and the claims on the estate recoverable as per Section 306 of the 1925 Act.

70. We may add that the Impugned Order II confuses claims attributable to estate and holds that any adjudication on merits can be recoverable from the estate of the deceased doctor. Rather, the Court has to only look at claims which are maintainable as against the estate, rather than adjudicating personal claims which have elapsed with the death of the doctor.

71. We must also place on record appreciation for the invaluable assistance of the Amicus Curiae, Mr. Raghenth Basant, learned senior counsel and Mr. Varun Kapoor, learned counsel, whose erudite submissions have been of immense help to this Court.

CONCLUSION

72. In light of law laid down in para 64 above, the matter is remitted to NCDRC to be adjudicated within six months from date of this order. Consequently, the impugned order dated 26.05.2010 (Impugned Order I) passed in M.A. No. 1214 of 2009 (Application for substitution) in Revision Petition No. 432 of 2006 and order dated 24.05.2018 (Impugned Order II) passed in M.A. No. 324 of

2011 (Review) in Revision Petition No. 432 of 2006 and R.A. No. 70 of 2011 (Review) in Revision Petition No. 432 of 2006 are hereby set-aside and the revision petition is restored to its original number.

73. Accordingly, the present appeals stand disposed of in above terms. Pending application(s), if any, shall stand disposed of.

.....**J.**
(J.K. MAHESHWARI)

.....**J.**
(ATUL S. CHANDURKAR)

New Delhi;
May 04, 2026.