APPELLATE CIVIL.

Before Cuming and Page JJ.

BHUPENDRA NARAYAN SINHA

v.

CHANDRAMONI GUPTA.*

1926

June 2.

Negligence—Actio personalis moritur cum persona, whether applicable in India—Probate and Administration Act (V of 1881), s. 89—Legal Representatives' Suits Act (XII of 1855).

In India the doctrine of *actio personalis moritur cum personâ* does not form part of the law. Claims by and against the representatives of a deceased person are regulated by section 89 of the Probate and Administration Act of 1881, and also by the Legal Representatives' Suits Act of 1855 so far as the latter enactment is not inconsistent with the former.

Krishna Behari Sen v. *The Corporation of Calcutta* (1) followed.

Rustomji Dorabji v. *Nurse* (2), *Moti Lal Satya Narayan* v. *Harnarayan Premsukh* (3) and *Punjab Singh* v. *Ramautar Singh* (4) dissented from.

SECOND APPEAL by Raja Bhupendra Narayan Sinha, the defendant No. 1.

This appeal arose out of a suit for the recovery of damages for negligence. The father of the defendant No. 1, Maharaja Ranjit Sinha, was the executor of the estate of the plaintiff's husband and the certificated guardian of her property. A sum of Rs. 2,000 was lent on the security of a promissory note by the Maharaja out of the estate of the plaintiff's husband. This

* Appeal from Appellate Decree, No. 412 of 1924, against the decree of B. Mukerjee, District Judge of Murshidabad, dated Sep. 7. 1923, modifying the decree of Ashutosh Pal, Subordinate Judge of Murshidabad, dated May 10, 1922.

(1) (1904) I. L. R. 31 Calc. 993. (3) (1923) I. L. R. 47 Bom. 716.

(2) (1920) I. L. R. 44 Mad. 357, (4) (1919) 4 Pat. L. J. 676.

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money was not recovered and became time-barred On the death of the Maharaja, his son, the defendant No. 1, was appointed the certificated guardian of the plaintiff. The plaintiff on attaining her majority sued the defendants, as the heirs of the Maharaja, for compensation. Both the lower Courts decreed the suit.

Babu Sitaram Banerjee, for the appellant.

Dr. Jadu Nath Kanjilal and *Babu Purna Chandra Chandra*, for the respondent.

PAGE J. The suit out of which this appeal arises was brought to recover damages for negligence. The father of the first defendant, Maharaja Ranjit Sinha, was the executor of the estate of the plaintiff's husband and the certificated guardian of her property. During the period in which he bore this relationship towards the plaintiff he lent out of the estate of the plaintiff's husband a sum of Rs. 2,000 upon the security of a promissory note. In substitution of that note a new promissory note was executed by the parties to the previous note for Rs. 2,500 on the 14th March 1914. No steps were taken by the Maharaja to recover the amount of this promissory note which was payable on demand, the result being that on the 14th March 1917 the cause of action upon the promissory note became barred by limitation. On the 3rd May 1918 Maharaja died, and was succeeded by his son the first defendant. Between 1918 and 1920 when the plaintiff reached her majority the defendant No. 1 was her certificated guardian. On the 3rd May 1921 the plaintiff instituted the present suit against the Maharaja's eldest son and his two brothers, as heirs of the Maharaja. The relief sought, however, was claimed against the first defendant as representing the estate of his father. The plaintiff in the suit claimed damages caused by the

negligence of the Maharaja in permitting the cause of action upon the promissory note of 1914 to become time-barred. She also claimed interest. Under the promissory note interest was fixed at six per cent.

Both the lower Courts decreed the suit in favour of the plaintiff, but whereas the trial Court decreed the suit against the estate of the late Maharaja for the amount of the principal and proportionate costs and interest at the rate of 6 per cent. per annum up to the date of his death, the lower Appellate Court varied the decree by allowing additional interest at the same rate from the death of the Maharaja until the majority of the plaintiff in 1920.

On further appeal to the High Court the learned vakil on behalf of the 1st defendant contended that the doctrine of *actio personalis moritur cum personâ* applied to this cause of action, and inasmuch as the Maharaja's estate admittedly has not been benefited as the result of the tort, the cause of action against the Maharaja did not survive against his executors and administrators.

In our opinion, this contention is misconceived. In India the doctrine of *actio personalis moritur cum personâ* does not form part of the law. Claims by and against the representatives of a deceased person are regulated by section 89 of the Probate and Administration Act (V of 1881) and also by the Legal Representatives' Suits Act of 1855 so far as the latter enactment is not inconsistent with the former. It is, therefore, not necessary to refer to the English case law in connection with the doctrine of *actio personalis moritur cum personâ*. Under section 89 of the Probate and Administration Act of 1881 it is provided that "all demands whatsoever and all rights to prose-"cute or defend any suit or other proceedings existing "in favour of or against a person at the time of his

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"decease survive to and against his executors and "administrators except causes of action for defamation, "assault as defined in the Indian Penal Code or other "personal injuries not causing the death of the party "and except also cases where after the death of the "party the relief sought could not be enjoyed or the "granting of it would be nugatory." In *Krishna Behari Sen* v. *The Corporation of Calcutta* (1) the words "other personal injuries not causing the death "of the party" were construed by Chief Justice Maclean, Mr. Justice Sale, and Mr. Justice Bodilly "to "refer to physical injuries to the person which do not "cause death." On the other hand, in *Rustomji Dorabji* v. *Nurse* (2), in *Mati Lal Satya Narayan* v. *Har Narayan Premsukh* (3), and in *Punjab Singh* v. *Ramautar Singh* (4) these words were construed to mean "wrongs to the person which do not "necessarily cause damage to the estate of the person "wronged." In *Rustomji Dorabji* v. *Nurse* (2) Sadasiva Ayyar J., referring to the doctrine of *actio personalis moritur cum personâ*, observed that "the "maxim has been always considered as an unfair and "even barbarous maxim, especially when applied to a "case where the injured party is denied redress "because the wrong-doer died. I may add that it seems "to me to be based upon no principle of justice, equity, "and of good conscience, and that the technical "Common Law rules as to forms of action, and the "distinction between real and personal actions might "have had much to do with its survival in modern "days". We agree with these observations. Having regard to the language used we do not think that the Legislature intended to perpetuate in this country a doctrine so archaic and unjust, and with all due

(1) (1924) I. L. R. 51 Calc. 993.
(2) (1920) I. L. R. 44 Mad. 357, 369.
(3) (1923) I. L. R. 47 Bom. 716.
(4) (1919) 4 Pat. L. J. 676.

respect to the learned Judges who have taken a different view we think that the construction which has been placed upon the section by the Calcutta High Court is clearly correct. Whichever construction, however, is adopted the cause of action for negligence in the circumstances proved in this case is clearly within the general rule laid down in section 89. For these reasons, therefore, this contention on behalf of the appellant fails.

As regards the question of interest, in our opinion, the additional interest allowed by the lower Appellate Court which was claimed against the defendant No. 1 for breach of duty as the plaintiff's certificated guardian was not part of the cause of action in this suit which is brought against the defendant as representing the estate of the Maharaja, and therefore could not be recovered. The decree below will be varied to the extent that the additional interest claimed under the cross-objection between the death of the Maharaja and the date of the institution of the suit will be disallowed, but the principal sum will bear interest at six per cent. per annum from the date of the suit until realization.

The cross-objection by the respondent has in part succeeded, and in part failed.

The appellant will bear the respondent's costs both of the appeal in which substantially he has failed, and also of the cross-objection.

Decree varied.

CUMING J. I agree.

B. M. S.