

## APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and  
Mr. Justice Madhavan Nair.*

P. M. BALASUBRAMANIAM MUDALIAR (NIL),  
APPELLANT,

1934,  
March 27.

v.

MARIAN RODRIGUES AND SIX OTHERS (PLAINTIFFS  
1 TO 5 AND NIL), RESPONDENTS.\*

*Indian Succession Act (XXXIX of 1925), sec. 306—Damages—  
Suit for, under the Fatal Accidents Act (XIII of 1855)—  
Defendant—Death of—Cause of action—If survives  
against his legal representatives.*

Section 306 of the Indian Succession Act enables a suit for damages against a person under the Fatal Accidents Act to be continued, after his death, against his legal representatives.

APPEAL from the orders of STONE J., dated the 24th day of February 1933, and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Application No. 3938 of 1932 in Civil Suit No. 594 of 1930 and Original Petition No. 266 of 1932.

*C. Krishnaswami Ayyar* for appellant.

*S. Rajamanickam* for respondents 1 to 5.

*A. M. Krishnaswami Mudaliyar* for *V. Varadaraja Mudaliyar* for respondents 6 and 7.

## JUDGMENT.

BEASLEY C. J.—This is an appeal from a BEASLEY C.J. judgment of STONE J. The question here is whether section 306 of the Indian Succession Act can avail the respondents here who were the plaintiffs in the suit in the trial Court and who claimed

\* Original Side Appeal No. 61 of 1933.

BALASUBRA-  
MANIAM  
MUDALIAR  
v.  
MARIAN  
RODRIGUES.

BEASLEY C.J.

damages from the defendant alleging that through his negligence he had caused the death of the first plaintiff's husband. During the pendency of the suit the defendant died ; and the question in the trial Court and here was whether the action could be continued against the legal representatives of the deceased defendant. If section 306 of the Indian Succession Act is of application, then clearly the right to continue the suit against the legal representatives of the deceased defendant survives. This being a case of a fatal accident, without statutory provision such an action could not be brought against the wrong-doer. But, as in England, the Fatal Accidents Act (XIII of 1855) here enables an action for compensation to be brought by the family of a person for loss occasioned to it by his death by actionable wrong. There is another Act—Act XII of 1855—which gives the executors a right to sue and be sued in certain cases for wrongs committed in the lifetime of a deceased person, those wrongs being ones which occasioned pecuniary loss to the estate of the deceased person. Therefore, it is the Fatal Accidents Act (XIII of 1855) which gave the plaintiffs in this case the right to sue for damages occasioned by the negligence of the defendant causing the death of the first plaintiff's husband. What is the position when the defendant dies ? It is contended here for the appellant that the suit abates. On the other hand, the contention which found favour with our learned brother was that section 306 of the Indian Succession Act allows the suit to be continued, even after the death of the defendant, against his legal representatives. One authority quoted in support of the

appellant's argument is the decision in *Ramchode Doss v. Rukmany Bhoy*(1), which was approved by a Full Bench of this High Court in *Rustomji Dorabji v. Nurse*(2). It is very fairly admitted that the latter case does not support the appellant's argument in its entirety. That, I think, is obviously so. Both the Full Bench case, *Rustomji Dorabji v. Nurse*(2), and the case which it approves of, viz. *Ramchode Doss v. Rukmany Bhoy*(1), were cases where suits had been brought claiming damages for malicious prosecution. When section 306 of the Indian Succession Act is examined, it will be seen that there are excepted from that section actions for defamation, assault and other personal injuries not causing the death of the party. In both the cases referred to, it was held that they were actions within the excepted class in section 306. We are here dealing with the case of personal injuries which caused the death, it is not accurate to say, of the party, but caused the death of the husband of the first plaintiff, and we are, therefore, *prima facie* not dealing with a case which is excepted from the latter part of section 306 of the Indian Succession Act. What does section 306 do? It deals, first of all, with an existing action. That is what we are dealing with here. The Fatal Accidents Act (XIII of 1855) allows such an action, and such an action has been brought. It is an action or demand against someone, the wrong-doer. We are not considering here any case of a survival of a right to the plaintiffs because they had a right of action to start with. We are dealing with its

BALASUBRA-  
MANIAM  
MUDALIAR  
v.  
MARIAN  
RODRIGUES.  
—  
BEASLEY C.J.

(1) (1905) I.L.R. 28 Mad. 487.

(2) (1920) I.L.R. 44 Mad. 357 (F.B.).

BALASUBRA-  
MANIAM  
MUDALIAR

v.  
MARIAN  
RODRIGUES.

BEASLEY C.J.

survival against a person who has died. The opening words of the section are:

“ All demands whatsoever (that is wide enough) and all rights to prosecute or defend any action or special proceedings existing in favour of (these are the important words) or against a person at the time of his decease, survive to (and here again are the important words) and against his executors or administrators.”

At the time of the death of the defendant there was an action against him pending. That, therefore, comes within the earlier words of the section. That action survives, according to the words which next follow, “against his executors or administrators”. Reading those words of the section and the section itself, it seems to me that that is the natural construction to put upon the section. So far as we are aware, there is no authority upon the point, there being no cases of a similar nature; and in the absence of any authority, in my opinion, we should follow the reasoning of the learned trial Judge and the result he has arrived at. Under these circumstances this appeal must be dismissed with costs.

MADHAVAN NAIR J.—I entirely agree.

Attorneys for appellant:—*Messrs. King and Partridge.*

Attorney for respondents 1 to 5:—*K. Rajagopalan.*

G.R.