

Karnataka High Court Kannamma vs Deputy General Manager on 27 November, 1990 Equivalent citations: I (1991) ACC 421, 1991 ACJ 707, ILR 1990 KAR 4300, 1990 (3) KarLJ 605 Author: Venkatachala Bench: Mohan, Venkatachala, M Rao JUDGMENT Venkatachala, J 1. The question, which has arisen for decision by this Full Bench on a reference by a Division Bench, is the following: “Whether, in a claim petition presented under Section 110A of the Motor Vehicles Act, 1939, claiming compensation for personal injury resulting from a motor accident as also compensation towards expenses incurred and towards loss of income etc., if the claimant dies during the pendency of the petition, his legal representative can come on record and continue the proceedings?” 2. Circumstances, which led the Division Bench to refer the aforesaid question for decision by the Full Bench, need mention at the outset for a proper understanding of the question and a decision thereon. Out of the use of a passenger bus belonging to the Karnataka State Road Transport Corporation (“The KSRTC”) on Siddaiah Road, Wilson Gardens, Bangalore City, an accident occurred on 25-4-1983. One Muniswamy, a pedestrian, who was involved in that accident, sustained personal (bodily) injuries and got hospitalised for treatment of those injuries. While he was still in the hospital, an application was made by him on 20-6-1983 before the Motor Accidents Claims Tribunal, Bangalore City (“the Claims Tribunal”), claiming compensation from the KSRTC for the injuries sustained by him as a result of the accident. When that application was pending consideration by the Claims Tribunal, he died on 4-11-1983 in the hospital itself as a consequence of the injuries which he had sustained in the accident. This situation made deceased Muniswamy’s legal representatives file interlocutory applications - I.As.I and II, before the Claims Tribunal seeking its permission to prosecute the application which had been filed by him (the deceased) before it, making a claim for compensation from the KSRTC for the personal (bodily) injuries sustained by him in the accident. But, those applications came to be rejected by the Claims Tribunal by its order dated 16-4-1985 finding, inter alia, that such applications could not be entertained by reason of the decision of a Division Bench of this Court in MUNIYAPPA AND ORS. v. H.L. NARASIMHAIAH 1984(1) KLJ 41 wherein it has been ruled that a claim made against a tortfeasor for damages respecting personal injuries does not survive on his death for the benefit of his legal representatives and therefore an appeal filed by such person seeking higher damages cannot also survive for the benefit of his legal representatives. That order was questioned by the legal representatives of deceased Muniswamy by filing M.F.A.No. 2366 of 1985 in this Court. A Division Bench of this Court, which heard that appeal, took the view that the earlier Division Bench decision of this Court in Muniyappa’s case (supra) relied upon by the Claims Tribunal for making the order under appeal required reconsideration, by referring to certain other decided cases in the matter. A question being formulated in that regard by the Division Bench, the same has come to be referred by it for decision by a Full Bench. 3. This Full Bench, which heard learned Counsel on the said question, shall now proceed to decide upon it, regard being given to the circumstances in which it has been referred for decision by the Full Bench, the material statutory provisions and

decided cases bearing upon it. Sub-section (1) of Section 110 of the Motor Vehicles Act, 1939 ("the Act"), enables the State Government to constitute Motor Accident's Claims Tribunal/s for area/s for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of third party so arising, or both. Sub-section (1) of Section 110A of the Act provides for the filing of an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 of the Act - (a) by the person who has sustained the injury; or (aa) by the owner of the property; or (b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Section 110F of the Act bars the jurisdiction of a Civil Court of an area to entertain any claim for compensation where Motor Accident Claims Tribunal is constituted for such area to adjudicate upon such claim. As could be seen from the said statutory provisions in the Act, while an application claiming compensation in respect of an accident involving the death of a person arising out of the use of a motor vehicle can be made by all or any of the legal representatives of the deceased person, an application claiming compensation in respect of an accident involving bodily injury to a person arising out of the use of the motor vehicle can be made either by the person who has sustained the injury or by such person's duly authorised agent. Further, as could be seen from the same provisions, such applications claiming compensation in respect of accidents could only be made before a Claims Tribunal constituted for the area where the accident occurs and not the Civil Court having jurisdiction over such area. 4. If a person who has made or got made an application before a Claims Tribunal claiming compensation in respect of an accident involving such person's bodily (personal) injury arising out of the use of a motor vehicle, dies while such application is pending adjudication before the Claims Tribunal or while the claim is being pursued in an appeal before the High Court, can such claim or appeal be prosecuted by such person's legal representatives, is the question which does not find an answer in the aforesaid statutory provisions of the Act. 5. Section 306 of the Indian Succession Act, 1925, which bears on the said question, in so far as it is material, reads: "306. All demands whatsoever and all rights to prosecute...any action or special proceeding existing in favour of...a person at the time of his decease, survive to...his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party.... 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)" 6. MELEPURATH SANKUNNI EZHUTHASSAN v. THEKITIL GEOPALANKUTTY NAIR and M. VEERAPPA v. EVELYN SEQUEIRA AND ORS. being the decisions where the Supreme Court has dealt with causes of action of an injured in a tort surviving or otherwise on the death of the injured to his legal representatives, reference to them becomes

necessary. The question, which fell for determination by the Supreme Court in Melepurath's case (supra), was whether the cause of action for defamation of the injured survives in favour of his legal representatives when such injured dies while prosecuting an appeal in the Supreme Court. The Supreme Court, while dealing with the said question, having observed that the general rule under the Common Law, that death of either party extinguished any cause of action in tort by one against the other was expressed in maxim "Actio personalis moritur cum persona" ("A personal action dies with the person"), has held that in so far as this Country is concerned which causes of action survive and which abate is laid down in Section 306 of the Indian Succession Act, 1925 ("the Succession Act") (Para 6 of the Report), Again, It has held that Section 306 of the Succession Act though speaks only of executors and administrators, on principle, the same position must necessarily prevail in 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 (Para 8 of the Report). Then, how the right of an injured to sue for damages for defamation survives or does not survive on his death in an appeal in favour of his legal representatives and what is the position of a decree obtained by such person in the suit, is stated in Para 7 of the Report, thus: "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 representatives is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent-plaintiff." Hence, the Supreme Court answered the question, which fell for its determination, in the negative and dismissed the appeal before it, as abated. The question, which fell for determination of the Supreme Court in M. Veerappa's case (supra), was whether a suit of a plaintiff instituted against his Counsel for damages for negligence abated on such plaintiff's death. In dealing with the said questions the Supreme Court having approved the preponderant view taken by several High Courts of the meaning given to the words "personal Injuries" in Section 306 of the Succession Act not to mean injuries to the body alone but also Injuries to a person other than those which caused death and the relevant words must be read ejusdem generis with the words "defamation and assault" and not with the word "assault" alone, has referred to the maxim "Actio personalis moritur cum persona" found embodied in Section 306 of the Succession Act thus: "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 plain-

tiff 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 Patna 841) (supra), Irulappa v. Madhava (supra), Maniramlala v. Mt. Chattibai (AIR 1937 Nag 216) (supra), Baboolal v. Ram Lal (AIR 1952 Nag 408) (supra) and Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair (supra). In Palaniappa Chettiar v. Rajah of Ramnad (AIR 1926 Mad. 243) (supra), and Motilal v. Harnarayan (supra) 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 (AIR 1921 Mad I) (supra) and Ratanlal v. Baboolal (supra) 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 ([1902 ILR (26) Bom 597] (supra) and Melepurath Sankunni v. Thekittil (supra)."

7. The decisions of various High Courts, which bear on the question under consideration, shall now be adverted to and examined. S. Muniyappa v. H.L. Narasimhaiah and others (supra) is a Division Bench decision of this Court rendered in an appeal. A Scooter rider was knocked down by a motor-car out of its use on a road in Bangalore and sustained bodily injuries. He made an application before a Motor Accidents Claims Tribunal at Bangalore constituted for the area where the accident had occurred claiming compensation of Rs. 1,00,000/- from the owner of the motor-car and its insurer. It was alleged by him in the application that the owner and insurer were liable to pay compensation since the accident had occurred due to rash and negligent, driving of the motor-car by its driver. That Claims Tribunal, on consideration of the evidence adduced before it, found the driver of the motor-car guilty of causing the accident by his rash and negligent driving. In so far as the amount claimed as damages by the Scooter rider-claimant for the personal (bodily) injuries sustained by him, it awarded a sum of Rs. 15,430-03 as compensation. Not being satisfied with the compensation so awarded by the Claims Tribunal, the claimant preferred an appeal before this Court seeking enhanced compensation for personal injuries, while the compensation awarded in other respects was not the subject-matter of the challenge in appeal. While the appeal was pending decision, the claimant-appellant died. The death of the appellant had not ensued as a consequence of the bodily injuries sustained by him in the accident. Whether the appeal filed

by the claimant-appellant for enhanced compensation for the personal injuries sustained by him due to negligent driving of the motor-car by its driver survived on his death to his legal representatives, was the question to be decided by the Division Bench of this Court. On a preliminary objection raised in that regard by the respondents, the Division Bench, by referring to Section 306 of the Succession Act, held that the Section makes it very clear that a suit for damages for personal injuries not causing the death of a party would not survive and the cause of action abates with the death of the person injured. It further held as found in Para-20 of the report thus: "Thus as the law stands in India, it is obvious that a suit for damages for personal injury does not survive the death of the injured. An appeal stands on much the same footing as an original suit. So, when an appeal is filed against a decree dismissing a suit for malicious prosecution, but the tortfeasor dies during the pendency of the appeal, the appeal abates, *Maniram v. Chalti Bai* (AIR 1937 Nag 216). Where a decree is passed for damages against the tortfeasor and he filed an appeal but dies during its pendency, the appeal or the suit will not abate, vide: *Paramen v. Sundarraja* [(1902) ILR 26 Mad 499], *Haridas v. Jagannath Das* [(1940) ILR Nagpur 63] *Gopal v. Ramachandra* [(1902) ILR 26 Bom 597]. Where an appeal is filed by the tortfeasor and cross-objections are filed by the plaintiff and the appellant dies then, though the appeal does not abate, the cross-objections would abate, for if the plaintiff had appealed the same would have abated." In Para 21 of that report, the legal position emerged from Section 306 of the Succession Act and the decided cases, has been summarised: "Thus, it is clear that the appeal filed by the victim for enhancement of compensation does not survive the death of the injured, as the law stands in India today. Therefore, the appeal, without more, has to be dismissed. The decree that is already passed by the trial Court in favour of the injured enures to the benefit of the legal heirs as representing the estate of the deceased and they would be entitled to defend it in case that is challenged by the other side by filing an appeal, for the legal heirs have the right to defend the estate of the deceased. But, the appeal in this case would not survive, for the appeal was instituted by the injured claimant himself for enhancement of compensation and that right dies with him." The legal position stated as above by the Division Bench of this Court has since been reiterated by the Supreme Court in the decisions of the Supreme Court in *Melepurath's case* (supra) and *M. Veerappa's case* (supra)³ it becomes obvious that such legal position has stood affirmed by the Supreme Court even though there is no specific reference made to the Division Bench decision of this Court in that regard. 8. However, as the Division Bench of this Court, in referring the question set out at the outset for decision of the Full Bench, has taken the view that the decision of the Division Bench of this Court in *Muniyappa's case* (supra) requires reconsideration in the light of the decisions in *KONGARA NARAYANAMMA AND ORS. v. UPPALA CHINA SIMHACHALAM* 1975 ACJ 448 and *THAILAM-MAI AND ORS. v. A.V. MALLAYYA PILLAI AND ORS.* 1981 ACJ 185 they shall now be examined. The decision in *Kongara Narayanamma's case* (supra) relates to an appeal filed in the High Court of Judicature of Andhra Pradesh under Section 110D of the Act respecting an order made in a claim petition of

the Motor Accidents Claims Tribunal, Guntoor, dismissing the application of the appellants to come on record of the claim petition as legal representatives of the claimant. The claim petition before that Claims Tribunal was of one Venkateshwara Rao filed under Section 110A(1) of the Act claiming compensation for the injuries sustained by him in an accident arising out of the use of a motor vehicle driven rashly and negligently. He died during the pendency of that claim petition before that Claims Tribunal, however, such death not being the consequence of bodily injuries sustained by him in the accident. Application filed by his legal representatives to come on record of the claim petition and prosecute it was dismissed by that Claims Tribunal resulting in the abatement of that petition. Hence, the legal representatives filed the appeal questioning that order of the Claims Tribunal. The learned Judge allowed the appeal as in his view the cause of action under Section 110A(1)(a) of the Act survived to the legal representatives on the death of the claimant and the pending proceeding could be prosecuted by them in respect of compensation for physical injuries. According to the learned Judge, his view was based on the authority of a Division Bench decision of the Calcutta High Court in *PIRISKA ROZARIA v. FORD FOUNDATION* AIR 1969 Calcutta 595. It has to be pointed out that the Division Bench decision, on which the view of the learned Judge was based, could not have been regarded as one supporting such view. There, the Division Bench was concerned with a case where the claimant making the claim under Section 110A(1)(a) of the Act for compensation for personal injuries before a Motor Accidents Claims Tribunal, had died during the pendency of the claim before that Tribunal as a consequence or the result of personal injuries for which he had claimed compensation. In dealing with that case, the Division Bench had held that a claim for compensation made under Clause (a) of Section 110A(1) of the Act for personal injuries could be prosecuted on the death of the claimant by his legal representatives if such death had ensued or occurred as a consequence or result of the physical injuries sustained by him in the motor accident, provided such claim did not come in conflict with that made by the legal representatives under Clause (b) of Section 110A(1) due to death of the claimant occurring as a result of the injuries sustained by him in the motor accident. The learned Judge, in relying upon the Division Bench decision of the Calcutta High Court, with respect to him, has overlooked the fact that the legal representatives of a person who dies as a result of physical injuries sustained by such person in a motor accident, when prefer a claim before the Motor Accidents Claims Tribunal under Clause (b) of Section 110A(1) of the Act, would be entitled to claim compensation for the losses suffered by the estate of the claimant due to such injuries before actual death ensues as a consequence or result of such injuries and therefore the Division Bench found no reason to deny to the legal representatives of the claimant the right to prosecute the claim made by him under Clause (a) of Section 110A(1) of the Act for the losses suffered by him before his death due to such injuries, if such claim was not included in the claim under Clause (b) of Section 110A(1) of the Act. Hence, the view of the learned Judge that a claim for compensation for personal injuries of the claimant sustained in a motor accident can, on his death, be prosecuted by his legal representatives

even if such death is unrelated to the injuries sustained by him in the accident, cannot be regarded as the correct proposition of law inasmuch as it would not be in consonance with the pronouncements of the Supreme Court in Melepurath's case (supra) and M. Veerappa's case (supra). Coming to the decision of the Madras High Court in Thailammai's case (supra) rendered by a learned Judge of that Court, it was a case where the Motor Accidents Claims Tribunal had dismissed an application of a claimant for compensation for personal injuries sustained in a motor accident when such claimant died during the pendency of the application. without permitting his legal representatives to prosecute the application, relying upon a decision of the Madras High Court itself in C.P. KANDASWAMY v. MARIPPA 1974 ACJ 362 (Madras) where an appeal of the claimant was dismissed on his death, as abated. The learned Judge took the view that the claim petition made before the Claims Tribunal could not have been dismissed on the death of the claimant as the claim was for damages to the property, that is, the bicycle which the claimant was riding at the time of the accident, besides the compensation arising on account of personal injuries. The learned Judge's view that a claim for loss of property of a claimant arising out of a motor accident cannot be rejected on such claimant's death as not surviving to his legal representatives, cannot be doubted as the claim for loss of property cannot be treated as a claim for compensation for personal injuries for which the maxim 'actio personalis moritur cum persona' applies, the same having been embodied in Section 306 of the Succession Act. Then, the learned Judge referring to the claims in the claim petition based on personal injuries suffered by the claimant in the motor accident, to wit, pain and suffering, permanent disability, loss of earning, did not express his opinion as to whether such claims survive on the death of the claimant to his legal representatives by stating thus: "In respect of the other two items of claims also, since I am not giving any final opinion, it is open to the Tribunal to consider the question with reference to the law as settled at that time and give a decision on merits." The said course was adopted by the learned Judge since he felt that he was bound by the decision of another learned Judge of the same Court in C.P. Kandaswamy's case (supra), on which the Motor Accidents Claims Tribunal had relied to dismiss the claim petition under consideration. Hence, this decision is no authority for the proposition that certain claims for personal injuries in tort survive on the death of the claimant to his legal representatives as had been thought of by the Division Bench of this Court while referring the question under consideration to the Full Bench for its decision. 9. Two other decisions - JOTIRAM AND ORS. V. CHAMANLAL AND ORS 1984 ACJ 645 (Punjab & Haryana). and SAMPTILAL v. HARI SINGH 1985 ACJ 539 (Rajasthan) to which attention of the Full Bench was drawn at the hearing on the question under consideration, need reference. In Jotiram's case (supra), a Division Bench of the Punjab and Haryana High Court had to consider a case where claimants petition for compensation for personal injuries under the Heads - (1) medical expenses, (2) special diet, (3) expenditure required for regaining health, (4) loss of earnings and (5) pain and suffering was dismissed by the Motor Accidents Claims Tribunal as not surviving on the death of the claimants for reasons unconnected

with his personal (bodily) injuries, in favour of his legal representatives. The Division Bench held that the claim for damages on account of loss to the estate of the injured could not abate on his death and consequently allowed the appeal and remitted the claim petition to the Claims Tribunal for dealing with it in accordance with law by permitting the legal representatives of the deceased claimant to prosecute that petition. A perusal of the decision makes it obvious that the question posed by a learned Judge of the Andhra Pradesh High Court in Kongara Narayanamma's case (supra) as to why an action initiated by an injured person for compensation in respect of items involving loss to his property should not survive on his death to his legal representatives when, in law, his legal representatives can claim compensation for loss to the estate of the deceased, has very much weighed in favour of the view it took of the matter in allowing the appeal. The view taken by the learned Judges of the Division Bench, with respect to them, cannot be accepted by this Full Bench for the very reasons which weighed with it in not accepting the view expressed in the matter by the learned Judge deciding Kongara Narayanamma's case (supra). In Samptilal's case (supra), a learned Judge of the Rajasthan High Court was deciding an appeal arising out of an order made by a Motor Accidents Claims Tribunal dismissing an application of an injured in a motor accident claiming compensation for personal injuries on his death which had no connection with the personal injuries suffered by him. In dealing with that appeal, relying on a Division Bench decision of the Madras High Court, in Kandaswamy's case (supra), the learned Judge found that an action for personal injury not causing the death of the injured party does not survive and does not pass over to his legal representatives. However, the learned Judge took the view that the Tribunal was not justified in dismissing the claim petition on the death of the claimant as not surviving to his legal representatives in so far as it related to the dismissal of the claims in respect of loss to the estate of the deceased claimant, placing reliance on the Andhra Pradesh High Court decision in Kongara Narayanamma's case (supra), the Madras High Court decision in Thailammai's case (supra) and the Punjab and Haryana decision in Jotiram's case (supra). The observation in Kongara Narayanamma's case (supra), which weighed with the learned Judge in deciding the appeal, was: "In making a claim, a claimant could claim loss to his property of whatever description caused by the accident. There is no warrant for holding that the cause of action in respect of that loss would not survive to the legal representatives." Further, the view that the cause of action in respect of the damage to the estate of the deceased survives and passes over to his legal representatives taken by a learned Judge of the Madras High Court in Thailammai's case (supra) and also the view that the right to sue survives to the legal representatives of the deceased injured in respect of the claim on account of loss to the estate, taken by the Division Bench of the Punjab and Haryana High Court in Jotiram's case (supra) had also weighed with the learned Judge in deciding the appeal. As the said observation made in Kongara Narayanamma's case (supra) and the said views expressed in Thailammai's case (supra) and Jotiram's case (supra) by the learned Judges deciding those cases have not found acceptance by this Full Bench while dealing with those

cases, the view taken in the matter by the learned Judge of the Rajasthan High Court based upon such observation and views, with respect to him, does not commend acceptance as the correct legal position. 10. What emerges from the above consideration of the question relating to a claim by a person for compensation for personal (bodily) injuries sustained in a motor accident on such person's death not caused due to such injuries, surviving to such person's legal representatives, may now be summarised: (1) The Common Law Rule 'actio personalis moritur cum persona' as embodied in Section 306 of the Succession Act since applies to India, a claim by a person for compensation for personal injuries caused in a motor accident does not, on that person's death not being the consequence of such injuries, survive to his/her legal representatives; (2) Cause of action for personal injuries being founded on tort (motor accident caused by the tort-feasor), injured person's claims for damages under Heads recognised by Common Law and not by Statute, based on such tort and not independently of it, cannot, on such person's death, survive for prosecution by his/her executors or administrators (or legal representatives) since Section 306 of the Succession Act, in express terms, declares that the cause of action in favour of a person for personal injuries (tort) does not survive on such person's death to his/her executors or legal representatives; (3) A claim by a person for compensation for personal injuries, be it pending before the Claims Tribunal, be it pending in the first Appellate Court or be it pending in the second Appellate Court, does not survive, on such person's death not caused as a consequence of personal injuries, to his legal representatives; (4) A claim of a person for compensation for personal injuries if has resulted in award of the Claims Tribunal or decree of the Appellate Court, survives to his legal representatives on his death, even if such death is not the consequence of personal injuries sustained by him and hence, if such award or decree is disputed in the first Appellate Court or the second Appellate Court, the same could be resisted by the legal representatives of the claimant; (5) Division Bench decision of this Court in Muniyappa's case (supra) related to an appeal by the claimant where enhanced compensation was sought only for personal injuries suffered in the motor accident by the claimant and where no compensation or enhanced compensation was sought by the claimant for properties damaged or lost as a result of the motor accident; (6) Legal position enunciated in the Division Bench decision of this Court in Muniyappa's case (supra) as regards survival of cause of action in personal injury claims arising out of motor accidents being well in accordance with the law laid down on the matter in the Supreme Court decisions in Melepurath's case (supra) and M. Veerappa's case (supra) has to be upheld; and (7) Legal position stated in Kongara Narayanamma's case (supra), Thailammai's case (supra), Jotiram's case (supra) and Samptilal's case (supra) as regards survival of cause of action in personal injury claims arising out of motor accidents by concerned learned Judges, not being in accordance with the law laid down in the matter by the Supreme Court decisions in Melepurath's case (supra) and M. Veerappa's case (supra), has to be dissented. 11. However, before answering the question referred for decision by the Full Bench, one important aspect, which directly bears on the question, needs consideration. A person, who has sustained injury in a

motor accident, is entitled to make a claim for compensation for such injury in person or through his/her authorised agent as provided for under Clause (a) or Clause (c), as the case may be, of Sub-section (1) of Section 110A of the Act. Such person or an authorised agent is also entitled to make a claim for compensation for loss of his/her property in the same motor accident as provided for under Clause (aa) of Sub-section (1) of Section 110A of the Act, apart and distinct from his/her claim for personal (bodily) injury. When the person making claims for compensation both for personal injury and loss of property dies, there can be no impediment for legal representatives of such person to prosecute the claim for compensation for loss of property as surviving to them. In so far as such person's claim for compensation for personal injuries is concerned, the same cannot, on his/her death, not occurring as a consequence of personal injuries, survive to his legal representatives because of the Common Law Rule 'actio personalis moritur cum persona' found embodied in Section 306 of the Succession Act. Then, does such person's claim for personal injuries survive on his death occurring as a consequence or result of personal injuries, to his/her legal representatives, is the important aspect needing consideration. Clauses (b) and (c) of Sub-section (1) of Section 110A of the Act, in express terms, entitle the legal representatives of a person who dies as a result of (motor) accident to claim compensation for such death. A person dying as a result of the accident, cannot mean anything other than the person dying as a result of personal (bodily) injuries sustained by him/her in the accident. If the death of the person occurs instantaneously as a result of severe bodily injuries sustained by him in the motor accident, there would be no scope for such person's legal representatives to claim compensation for his/her personal injuries. But if the death of the person, undoubtedly, occurs as a result of bodily injuries sustained by him/her in the (motor) accident, but belatedly, say, after four months, when still in an hospital obtaining medical treatment, law enables his/her legal representatives to claim compensation under various heads, such as, expenses incurred for obtaining medical treatment for him/her, loss of his/her earnings between the date of accident and the date of death, pain and suffering undergone by him/her due to bodily injuries sustained. If claim for compensation under such heads made by the person injured or his/her authorised agent is pending adjudication either before the Claims Tribunal or an Appellate Court, there can be no valid reason, as to why, on such person's death, such claim for compensation shall not survive to his/her legal representatives and they be permitted to prosecute the claim as loss suffered by the estate of the deceased. Claim for such compensation made by the person injured as loss to his/her estate on his/her death must be regarded as surviving, for even otherwise they would be entitled to make a claim in that behalf on the death of the person injured as a consequence of bodily injuries sustained in the motor accident as provided for under Clauses (b) and (c) of Sub-section (1) of Section 110A of the Act. This would be the correct legal position, which becomes evident when seen from yet another angle, to wit, the cause of action for claim for compensation for personal injuries by the person injured and the cause of action for the claim for compensation for the death of the person injured as a consequence of such injuries, by his legal representatives,

is common - the motor accident caused by the tort-feasor. A Division Bench decision of the Calcutta High Court in Piriska Rozaria's case (supra), which is referred to while examining Kongara Narayanamma's case (supra), can be said to have given recognition to the said position of law when it has held in deciding the case before it that a claim for compensation made under Clause (a) of Section 110A(1) of the Act for personal injuries could be prosecuted on the death of the claimant by his legal representatives if such death had ensued or occurred as a consequence or result of the physical injuries sustained by him in the motor accident, provided such claim did not come in conflict with that made by the legal representatives under Clause b) of Section 110A(1) due to death of the claimant, occurring as a result of the injuries sustained by him in the motor accident. It can, therefore, be concluded that a person's claim for compensation for personal injuries under the head loss to his/her estate, can, on his/her death as a consequence of such injuries, be prosecuted by his/her legal representatives, if they do not include a claim for compensation under that head, as and when they file a claim petition under Clause (b) of Sub-section (1) of Section 110A of the Act, on the death of the person injured. 12. In the result, the Full Bench answers the question referred for its decision by the Division Bench, thus: (i) A claim petition presented under Section 110A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc., (loss to estate) cannot, on such person's death occurring not as a result or consequence of bodily injuries sustained from a motor accident, be prosecuted by his/her legal representatives; but (ii) A claim petition presented under Section 110A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc., (loss to estate) can, on such person's death occurring as a result or consequence of bodily injuries sustained in the motor accident, be prosecuted by his/her legal representatives only in so far as the claim for compensation in that claim petition relates to loss to estate of the deceased person due to bodily injuries sustained in the motor accident.