

BOMBAY HIGH COURT

Motilal Satyanarayan

Vs.

Harnarayan Premsukh

First Appeal No. 119 of 1922

(Norman Macleod, Kt., C.J. and Crump, J.)

07.02.1923

JUDGMENT

Norman Macleod, Kt., C.J.

1. The plaintiff Satyanarayan Dhanajishet brought a suit against the defendants to recover damages for malicious prosecution. Before the suit came on for hearing the plaintiff died and his heirs sought to continue the action. Their application to be placed on the record as heirs of the original plaintiff was dismissed by the Subordinate Judge; and the appellants in their arguments before us rely mainly on the decision in *Krishna Behari Sen v. The Corporation of Calcutta*¹ where it was held by a Full Bench that a suit for malicious prosecution falls within the general words of Section 89 of the Probate and Administration Act, and not within any of the exceptions.

2. In *Rustomji Dorabji v. Nurse*² the learned Judges dissented from the decision in *Krishna Behari Sen v. The Corporation of Calcutta* holding that "the expression personal injuries not causing the death of the party in Section 89 of the Probate and Administration Act does not mean injuries to the body merely, but all injuries which do not necessarily cause damage to the estate of the person wronged.

3. We prefer to agree with that decision, as otherwise we would have to read into the section the words "physical" or "to the body." It has been argued that the expression "other personal injuries" must refer to injuries ejusdem generis as the injuries referred to in the preceding sentence, namely, "assault" as defined in the Indian Penal Code, When we refer to Section 351 for the definition of the word "assault" in the Indian Penal Code, we find that the offence of assault does not involve physical injury, but merely a threat to cause physical injury. Therefore the exception includes causes of action for defamation and assault neither of which causes physical injury; and then includes "all other personal injuries" except those which cause the death of the party. We think the intention of the section was to express in a statutory form the maxim *actio personalis moritur cum persona*. Accordingly an action for malicious prosecution does not survive beyond the life-time of the plaintiff.

¹ I.L.R. (1904) Cal. 993

²I.L.R. (1920) 44 Mad. 357, F.B

4. But it was argued on the strength of the decision in *Twycross v. Grant*³ that the action, so far as it related to the expenses incurred by the deceased plaintiff in defending himself against a prosecution, could be transmitted to the personal representatives. That case was considered in *Lendon v. The London Road Car Company*⁴ which was a case against a defendant for damages for personal injuries caused by an accident. The plaintiff had claimed as consequential damages 75 for loss of earnings, and various sums for medical expenses. The plaintiff died before the action was heard. An application had been made on the part of the administratrix, asking to be allowed to continue the action for those parts of the claim, which was refused by the Judge at Chambers. In appeal from that order Lord Coleridge said:

The action was for personal injuries-that it, for injuries to the person-and the heads of damage relied upon (except as to the damage to the coat) resulted directly from these personal injuries. As to *Twycross v. Grant*⁵ it was not an action for injuries to the person, but for pecuniary damage arising from wrongful acts of another nature. No case showed that an action for personal injuries causing pecuniary loss could be continued after the death of the party injured; and the case of *Puttling v. Great Eastern Railway Co*⁶. showed just the contrary.

5. In this case the injury caused to the plaintiff by wrongful prosecution was personal just as much as if he had been injured in a railway accident. Consequently his representatives cannot continue the action to recover the pecuniary loss which he suffered owing to his having had to defend himself against the prosecution. We think, therefore, the decision of the Court below was right and the appeal must be dismissed with costs.

Appeal dismissed.

³(1878) 4 C.P.D. 40

⁵(1878) 4 C.P.D. 40

⁴(1888) 4 T.L.R. 448

⁶(1882) 9 Q.B.D. 110