

CS No. 392/2021

DR. RAJEEV SOOD Vs. STAR HEALTH & ALLIED
INSURANCE CO. LTD.

07.07.2025

Present : Sh. D. Verma, Ld. Counsel for the LR's of the
plaintiff.

Ms. Shuchi Sood, Ld. Counsel for the defendant,
through VC along with Sh. B.S. Dhir, Ld. Counsel.

The case is now pending for deciding the application whether LR of the plaintiff who has died on 26.06.2024 be brought on record. The record shows that there are two applications moved in this regard. The first application is moved U/o.1 Rule 10 CPC and reply to the same was also filed specifically pointing out that there is a provision U/o. XXII Rule 3 in CPC for bringing on record the LR's. An application U/o. XXII Rule 3 was also moved and reply to that was also filed. Hence, now the contention of the defendant is that as the application moved U/o. XXII Rule 3 is beyond limitation hence the suit stands abated. There is no application for setting aside of the abatement and condonation of delay. I agree with the contention of Ld. Counsel to that extent that so far as the application U/o.XXII Rule 3 CPC is concerned which was moved on 20.12.2024 as it was moved after about six months from the date of death of the plaintiff. But the record also shows that the earlier application U/o. 1 Rule 10 CPC was moved within the period of limitation. The only contention raised is that the provision mentioned is U/o.1 Rule 10 CPC and not U/o. XXII Rule 3 CPC.

I have considered the contention though the provision mentioned is only U/o. 1 Rule 10 CPC but the prayer is

that the plaintiff has died leaving behind the LRs i.e. the wife and one son and that they be taken on record as legal heirs of plaintiff. It is settled principle of law that mentioning wrong provision of law does not affect the merits. The Court has to consider the facts and pleadings and the law which is applicable. Even if there is no provision mentioned still the Court has to consider whether the law permits the same or not.

In the present case, the plaintiff has died, the death certificate is already on record. This fact that he has died is not disputed hence the question remains whether the right to sue survives or not and that also in favour of the LRs. The record shows that it is a suit for recovery along with pendentelite and future interest. The relief claimed is not with respect to the personal right of the plaintiff, which survives till the plaintiff was alive and goes with him. Here is the case where the right to sue still survives after the demise of the plaintiff. The right to sue survives in favour of the LRs of the plaintiff hence, application is allowed but since another application is moved for which the defendant has to file the reply & take steps, hence the plaintiff is burdened with cost of Rs.5,000/- to be paid to the defendant. Amended memo of parties be filed within 07 days supplying the copy to the defendant.

Now to come up on **18.08.2025** for final arguments.

(Virender Kumar Bansal)
Principal District & Sessions Judge
New Delhi District
Patiala House Courts/ND/07.07.2025