

A SH. RAMESHWAR MANJHI (DECEASED) THROUGH
HIS SON SH. LAKHIRAM MANJHI

v.

THE MANAGEMENT OF SANGRAMGARH
COLLIERY AND ORS.

B NOVEMBER 16, 1993

[KULDIP SINGH AND B.P. JEEVAN REDDY, JJ.]

C *Industrial Disputes Act, 1947—Sections 2A, 18(3), 33(C) (2)—Whether industrial dispute relating to termination of service survives, when the workman concerned dies during its pendency—Held : the reference of an individual dispute under section 2A of Industrial Disputes Act does not become functus officio or abate, merely because, pending adjudication the workman concerned dies—Open to the heirs and legal representatives of the deceased workman to have the matter agitated and decided.*

D *Legal Maxims—Maxim "Actio personalis moritur cum persona"—Applicability of.*

E The appellant (since deceased) had been working as coal cutter in the service of the respondent-Management. He met with an accident while working in the colliery and his right leg was amputated. The Medical Board recommended him for light duty on surface. The workman's request to permit him to resume duties, was not acceded to by the Management, and his services were terminated by giving him adequate compensation. The workman raised a dispute under Section 2A of the Industrial Disputes Act, 1947. The Central Government referred the dispute for adjudication to the Industrial Tribunal-cum-Labour Court. During pendency of the reference the workman died. The application for substitution of L.Rs. was opposed by the management on the ground that after the death of the workman the reference did not survive and became infructuous. The Tribunal rejected the application for substitution. The son of the deceased workman filed the present appeal before this Court.

Allowing the appeal, this Court

H HELD : 1. On the death of the workman, even when the reference is of an individual dispute under Section 2 A of the Industrial Disputes Act,

1947, the Tribunal does not become functus officio and the reference does not abate merely because, pendency adjudication, the workman dies. It is open to the heirs and legal representatives of the deceased workman to have the matter agitated and decided. [680-G-H]

Gwalior Rayons; Mavoor v. Labour Court & Ors., (1978) II LLJ 188, *Bank of Baroda v. Workmen*, (1979) II LLJ 57, approved.

2. By and large, the industrial disputes under Section 2A of the Industrial Disputes Act, relate to termination of services of the concerned workman. In the event of his death, during pendency of the proceedings, the relief of re-instatement cannot be granted, but the final determination of the issues involved may be relevant, for regulating the conditions of service of the other workman. Primary object of the Act is to bring industrial peace. The Tribunal/Labour Courts under the Act are instruments for achieving the same objective. It is, therefore, in conformity with the scheme of the Act, that proceedings in such a case should continue at the instance of the legal heirs/representatives of the deceased workman. Even, there may be a claim for backwages or for monetary relief in any other form. The death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman. [676-H, 677-A-C]

3. Section 18(3) of the Act enumerates the parties who are bound by the settlement arrived at in the manner provided therein. It has been enacted with a view to give continuity to the binding effect of the settlements reached between the parties. The provisions of the said section cannot be relied upon for denying a right to the heirs of a deceased workman to be substituted in a pending industrial dispute.

[675-E-H, 676-A]

4. Having regard to the well established principle that all causes of action, except those which are known as dying along with the death of a person must survive to his heirs. The cause of action created in favour of workman under Sub-section (2) of section 33C of the Industrial Disputes Act should in normal circumstances survive to his heirs. The maxim '*actio personalis moritur cum persona*' has been dubbed as unjust maxim. It operates in a limited class of actions *ex delicto* such as actions for damages for defamation, assault or other personal injuries not causing the death

- A of the party or in other actions where after the death of the party, the relief granted could not be enjoyed or granting it would be nugatory. In the event of death of the workman during pendency of the proceedings, the relief of re-instatement, obviously, cannot be granted. But the final determination of the issue involved may be relevant for regulating the conditions of service of the other workman in the industry. [676-C-H, 677-A-B]

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5. Under Section 306 of the Indian Succession Act, also all demands whatsoever and all rights to prosecute and defend any action or special proceedings existing in favour of or against a person at the time of his deceased survive to and against his executors or administrators except

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causes of action for defamation, assault as defined in 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 granting it would be nugatory. The whole concept under the

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Industrial Disputes Act of the Tribunal ascertaining whether the termination of services was proper legal and just is unknown to Civil Courts. So, in the case of a deceased workman, where reference is under section 2A of the Industrial Disputes Act, the heirs and legal representatives can agitate the question firstly, whether the termination of the deceased workman was just legal and proper and secondly, if it was wrongful and invalid, then, compensation in terms of money could have been given to the workman.

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It is in this context of Section 306 of the Succession Act that the right to prosecute these special proceedings before the Industrial Tribunal survives to the administrators, executors, heirs and legal representatives of the deceased workman. [679-E-H, 680-A-D]

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Sitabai v. M/s Auto Engineers & Ors., (1972) LIC 733; *Gwalior Rayons, Mavoor v. Labour Court & Ors.*, (1978) II LLJ 188 and *Bank of Baroda v. Workman*, (1979) II LLJ 57, approved.

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Tocklai Experimental Station, Cinnemara v. State of Assam & Ors., AIR (1960) Assam 132; *Bihar Working Journalists' Union v. H.K. Chaudhuri*, (1968) LTC 515; *Yad Ram v. Bir Singh*, (1974) LIC 970 and *Haramani Naik v. Management*, (1978) LIC 1630, overruled.

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Girijanandini v. Bijendra Narain, AIR (1967) SC 1124; *Sh. Meenakshi Mills Ltd. v. State of Madras*, (1952) II LLJ 326 and *Cawnpur Tannery Ltd. v. Guha*, (1961) II LLJ 110, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 107 (NL) A
of 1984.

From the Judgment and Order dated 4.1.87 of the Central Government, Industrial Tribunal-cum-Labour Court No. 3, Dhanbad in reference No. 54 of 1980.

B.B. Sinha for the Appellant.

Ms. Shompu Bhattacharya and Parijat Sinha for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. The question for our consideration, in this appeal, is whether an industrial dispute survives when the workman concerned dies during its pendency? Can the proceedings before the Tribunal/Labour Court be continued by the legal heirs/representatives of the deceased workman? Relying upon the judgment of Patna High Court in *Bihar Working Journalists' Union v. H.K. Chaudhuri and another*, (1968) L.I.C. 515, the Central Government Industrial Tribunal-cum-Labour Court, Dhanbad, Bihar (the Tribunal), by its award dated January 4, 1982 has answered the question in the negative. This appeal by way of special leave is against judgment of the Tribunal.

There is sharp difference of opinion between the Assam, Patna, Delhi and Orissa High Courts on the one hand and Kerala and Gujarat High Court on the other. The first set of High Courts have held that on the death of a workman the industrial dispute cannot survive and the proceedings must come to an end, whereas the Kerala and Gujarat High Courts have held that the industrial dispute survives the deceased-workman and the reference can be continued by the legal heirs/representatives of the deceased-workman.

We may briefly notice the facts of the case. Rameshwar Manjhi was working as coal-cutter in the service of the respondent-management. On May 3, 1974 he met with an accident while working in the colliery and as a consequence his right leg was amputated. The Medical Board recommended him for light duty on surface. It is his case that he presented himself before the management and requested that he be permitted to

- A resume duties but the management did not permit him to join. The case of the management is that the workman became unfit to perform the duties and as such his services were terminated with effect from July 22, 1974 by giving him adequate compensation. Rameshwar Manjhi raised a dispute under Section 2A of the Industrial Disputes Act, 1947 (the Act). Central Government referred the dispute for adjudication to the Tribunal in the following terms :

- C "Whether the action of the management of Sangramgarh colliery under Eastern Coalfields Limited, Post office Samdi, District Burdwan in terminating the employment of Shri Rameshwar Manjhi, coal cutter with effect from 22nd of July, 1974 was justified? If not, to what relief is the concerned workman entitled?"

- D During the pendency of the reference Rameshwar Manjhi died on January 19, 1981. Lekhiram Manjhi, son and only heir of Rameshwar Manjhi, filed application dated May 24, 1981 before the Tribunal seeking permission to be substituted in the proceedings. The management contested the application on the ground that after the death of Rameshwar Manjhi the reference did not survive and became infructuous. The Tribunal by its award dated January 4, 1982 rejected the application, accepted the objection of the management and closed the reference on the following reasoning :

- E "In support of his contention two rulings have been cited on behalf of workman reported in 1969 (II) LLJ p.57 and 1978 (II) LLJ p.188. The former ruling is of Gujarat High Court while later of Kerala High Court. In the above two rulings it is held that on the death of a workman during the pendency of the proceeding the Tribunal does not cease to exercise jurisdiction as benefits due to the deceased workman can be realised by his legal heir under Section 33(c)(2) of the I.D. Act. But the ruling of our own High Court (Patna High Court) is contra. It has been held in the ruling reported in A.I.R. 1968 Patna p.135 (Bihar Working Journalists Union, Petitioner V/s H.K. Chaudhuri and another, Opp. parties) that in certain cases on the death of a workman the reference will not be infructuous, but it has been held that there can be no doubt that the death of the workman during the pendency of the adjudication proceeding puts an end to the Industrial Dispute for the simple reason that he can no longer be reinstated. We are bound

by the ruling of the Patna High Court and in the fact of the ruling of the Patna High Court, we cannot follow the ruling of any other High Court. The position would have been different if there would have been some ruling of the Supreme Court on the point, but no ruling of the Supreme Court on this point has been cited before me by either party.

In the above circumstances, relying on the ruling of the Patna High Court, it is held that due to death of the concerned workman during the pendency of the adjudication proceeding the Industrial dispute has come to an end and the reference cannot proceed further and has become infructuous as such."

To resolve the controversy it is necessary to examine the reasoning and the conclusions reached by various High Courts on the point in issue. The first decision is that of Assam High Court in the *Management of Tocklai Experimental Station, Cinnemara v. State of Assam and Ors.* A.I.R. (1960) Assam 132. The matter was initially before a Division Bench. On difference of opinion it was referred to the third Judge. The majority held that the cause of a dead man not be taken up by workmen's union and even if they had an interest in the employment or non-employment of the workman, it ceased along with his death. It was further held that in the case of an employer, his antecedent liability would survive the closure of his business but in the case of an employee, his claim to reinstatement expires along with his death and it no longer remains a dispute capable of settlement or adjudication.

Patna High Court in *Bihar Working Journalists' Union v. H.K. Chaudhuri*, (1968) LIC 515 on the interpretation of clauses (c) and (d) of Section 18(3) of the Act came to the conclusion that it was not the intention of the legislature to permit continuance of an industrial dispute at the instance of the heirs or the legal representatives of the deceased workman.

In *Haramani Naik v. Management*, (1978) LIC 1630 the question before the *Orissa High Court* was whether during the pendency of an application under Section 33C(2) of the Act, on the death of the workman, his legal representatives could be substituted. R.N. Misra, J. speaking for the Division Bench of the Court came to the conclusion that the heirs and legal representatives of the deceased workman were not entitled to con-

A tinue the proceedings. The learned Judges of the Orissa High Court followed the Judgment of the Delhi High Court in *Yad Ram v. Bir Singh*, (1974) LIC 970. It would be useful to quote the reasoning of the Delhi High Court in *Yad Ram's* case which is as under :

B ".....an application under S.33C(2) of the Act can be made only by the workman himself and it must follow that if the workman dies during the pendency of such application, his heirs, successors and legal representatives cannot continue it in the specified Labour Court because this Court cannot recognize anybody other than a workman as the applicant before it. We should not be taken to have held that the right to sue for money or equivalent of money of the benefit due to a workman does not survive. It survives to the heirs, successors and legal representatives and they can take appropriate proceedings by way of a suit in a civil Court. They cannot, however, either continue after his death an application made by the workman under S.33C(2) or make such an application themselves in the event of his death."

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As regards Section 33C (2) of the Act, the Bombay High Court in *Sitabai v. M/s. Auto Engineers and others*, (1972) LIC 733 has taken different view than the Delhi and the Orissa High Courts. The Bombay High Court has held that a widow has a right to apply for computation of gratuity amount which became payable to her late husband. It proceeded on the following reasoning :

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F "It is well established that all civil rights of every kind vested in a deceased person and all causes of action in that connection, except those which are in the category of not capable of surviving after his death, survive to his heirs. Causes of action, which are personal, and do not survive, consist of damages due to the personal injuries suffered by a deceased and for defamation and assault. In that connection, Fatal Accidents Act was passed so that in connection with damages suffered in consequence of death of a deceased could be claimed on behalf of the dependents of a deceased person. But apart from certain personal causes of action which died with the death of the deceased person every other cause of action for civil claims has been held to have continued in existence so as to survive to his heirs for more than a century now. The

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decision that was given by the Labour Court, therefore, appears to us contrary to the above well established position." A

We are not inclined to agree with the view taken by the learned Judges of the Assam, Patna, Delhi and Orissa High Courts.

The Assam High Court has primarily gone on the interpretation of the expression "industrial dispute" under Section 2(k) of the Act. It is not necessary for us to examine the reasoning of the Assam High Court any further because by insertion of Section 2A into the Act with effect from December 1, 1965, any dispute or difference between an individual workman and his employer, connected with or arising out of discharge, dismissal, retrenchment or otherwise termination of his services, is deemed to be an industrial dispute notwithstanding that no other workman or any union of workman is party to the dispute. It is thus obvious that section 2A of the Act makes an individual dispute, though not taken up by the union, an industrial dispute within the ambit of the Act. The judgment of the Assam High Court is, thus, no longer an authority on the point. B C D

Patna High Court fell into patent error in relying upon clauses (c) and (d) of Section 18(3) of the Act for reaching the conclusion that the heirs of a deceased workman are not entitled to be substituted in the proceedings before the Tribunal. Section 18(3) of the Act enumerates the parties who are bound by the settlement arrived at in the manner provided therein. Section 18(3) (c) refers to a party to the settlement who is an employer and further provides that the settlement shall be binding not only on the employer but his heirs, successors or assigns in respect of the establishment to which the dispute relates. The said provision is obviously to safeguard the interest of the workmen in the sense that after the death of the employer his heirs, successors or assigns may not say that they are not bound by the settlement. It was not necessary to make similar provision in clause 18(3) (d) because the party referred to in the said clause is composed of workmen and as such the death of an individual workman cannot have any effect on the binding nature of the settlement. The provisions of Section 18(3) of the Act have been enacted by the legislature with a view to give continuity to the binding effect of the settlements reached between the parties under the Act. Patna High Court was not justified in relying upon the provisions of the said section for the purpose E F G H

- A of denying a right to the heirs of a deceased workman to be substituted in a pending industrial dispute.

B We do not agree with the view-point of Delhi and Orissa High Courts to the effect that the claim for computation under sub-section (2) of Section 33C of the Act dies with the death of the workman. It is difficult to understand why a claim of money which became payable to the deceased workman should not be claimable, upon satisfaction of other relevant conditions, by the heirs of the deceased workman by making a claim under sub-section (2) of section 33C of the Act. Having regard to the well established principle that all causes of action - except those which are known as dying along with the death of a person - must survive to his heirs, the cause of action created in favour of workman under sub-section (2) of Section 33C of the Act should in normal circumstances survive to the heirs. We approve the reasoning of the Bombay High Court in *Sitabai's* case.

D The maxim 'actio personalis moritur cum persona' though part of English Common Law has been subjected to criticism even in England. It has been dubbed as unjust maxim, obscure in its origin, inaccurate in its expression and uncertain in its application. It has often caused grave injustice. This Court in a different context, in considering the survival of a claim for rendition of accounts, after the death of the party against whom the claim was made, in *Girijanandini v. Binjendra Narain*, A.I.R. (1967) S.C. 1124 at p.1131 observed as under :

F "The maxim 'actio personalis moritur cum persona' a personal action dies with the person, has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto, and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death or granting it would be nugatory."

H It is thus obvious that the applicability of the maxim 'actio personalis moritur cum persona' depends upon the 'relief claimed' and the facts of each case. By and large the industrial disputes under Section 2A of the Act

relate to the termination of services of the concerned workman. In the event of the death of the workman during pendency of the proceedings, the relief of re-instatement, obviously, cannot be granted. But the final determination of the issues involved in the reference may be relevant for regulating the conditions of service of the other workmen in the industry. Primary object of the Act is to bring industrial-peace. The Tribunals and Labour Courts under the Act are the instruments for achieving the same objective. It is, therefore, in conformity with the scheme of the Act that the proceedings in such cases should continue at the instance of the legal heirs/representatives of the deceased workman. Even otherwise there may be a claim for back-wages or for monetary relief in any other form. The death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman.

In *Gwalior Rayons, Mavoor v. Labour Court and others*, (1978) II LLJ 188 Chandrasekhar Menon, J. of the Kerala High Court sitting singly dealt with the question with utmost clarity and erudition. We quote hereunder, with approval, the reasoning of the learned Judge :

"The scope of adjudication by a Tribunal under the Industrial Disputes Act is much wider than determination of the legal rights of the parties involved of redressing the grievances of an aggrieved workman in accordance with law. As Gajendradkar, J., points out in *Cawnpur Tannery Ltd. v. Guha*, (1961) II L.L.J. 110 at p.112, the adjudication by the Industrial Disputes Act is only an alternative form of settlement of Industrial disputes on a fair and just basis. The primary duty of the Industrial Tribunal is to establish peace in the industry between employer and workmen. Any unfair action by the management even against an individual worker might cast its shadow on the general body of workers who might get perturbed by such action. A resolution of the dispute might then become necessary for industrial peace notwithstanding the death of the workman concerned pending proceeding. The personal relief to the workman concerned to a certain extent occupies a subsidiary place in the scheme of things. Not that it is not important. It is only a consequential result of the decision primarily arrived at securing industrial peace settling the apprehension of the workman

- A without losing sight of the interest of the industry. As Rajamannar, C.J. stated in *Shree Meenakshi Mills Ltd. v. State of Madras*, (1952) II L.L.J. 326 DB, the essential object of enacting the Industrial Disputes Act is to provide recourse to a given form of procedure for the settlement of disputes in the interest of maintenance of peaceful relations between the parties without apparent conflicts such as are likely to interrupt production and entail other damages. In the circumstances proceedings before the Labour Court or the Industrial Tribunal under the Industrial Disputes Act cannot be equated to a personal action in torts in a Civil Court which would come to an end with the death of the aggrieved party to the dispute.
- B In the general set up of an industry, in the nature of the relationship between the employer and the employees, a dispute between an employer and even an individual employee generally affects the entire community of workmen in the industry. They acquire an interest in the dispute. It ceases to be an individual dispute and becomes an industrial dispute affecting the interest of the entire body of workmen. Any decision of the Labour Court will affect the interest of the whole body of workmen and the dispute, therefore, cannot die with the death of the individual workman. Before S.2A of the Act was introduced the Courts had said that an individual dispute should be taken up by the workmen as such before it can become an industrial dispute. Section 2A makes an individual dispute though not taken up by the collective body of workers, an industrial dispute."
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The learned Judge further observed :

- F "Even in respect of ordinary judicial proceedings can it be said that the death of party to the proceedings will terminate the action in all cases? Even under the English Common Law before the Law Reform (Miscellaneous Provisions) Act, 1934 was passed to provide generally for the survival of causes of action in tort, death was considered as extinguishing liability only in respect of cause of action in tort. This was Winfield says in his Law of Tort-due in part to the historical connection of the action of trespass, from which much of our law of tort is derived, with the criminal law and in part to the reference often made to the maxim *actio personalis moritur cum persona* which, though traceable to the fifteenth
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century, probably did no more originally than state in Latin a long-established principle concerning torts such as assault and battery of which it was neither the historical cause nor the rational explanation. Actions in contract generally escaped the rule, and so too did those in which property had been appropriated to a deceased person and added to his own estate"..... Therefore, I see no reason why the Labour Court should cease to exercise jurisdiction in considering the question whether the termination of the services of the two employees was justified or not merely because they died during the course of the proceedings. A decision on that is certainly in the interest of the other employees. And the benefits that would be due to the deceased employees on the finding of the Labour Court can be realised on behalf of their estate by their legal heirs under s.33C(2) of the Act."

In *Bank of Baroda v. Workmen*, (1979) II LLJ 57 a Division Bench of the Gujarat High Court, followed the reasoning of Chandrasekhara Menon, J. in *Gwalior Rayons'* case. B.J. Divan, C.J. speaking for the Bench quoted verbatim from *Gwalior Rayons'* case and in addition observed as under :

"It may be pointed out that under S.306 of the Indian Succession Act, "All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against 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; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory." In this context, it must be pointed out that, so far as the granting of relief of reinstatement is concerned, it would be nugatory on the death of the workman concerned pending the reference before the Tribunal or the Labour Court, as the case may be. However, reinstatement involves the concept of backwages also and very often the Tribunal has to pass orders providing for the backwages from the date of wrongful termination of the services till the date of reinstatement. It is only under the Industrial Disputes Act that in the field of industrial relations, the Tribunal concerned can direct reinstatement of the

A workman. Under the ordinary civil law, it is not open to a civil Court to direct reinstatement of a workman. The only thing that a civil court can do is to provide for damages for wrongful termination of service or wrongful dismissal. Again, the whole concept under the Industrial Disputes Act of the Tribunal ascertaining whether the termination of services was proper, legal and just, is unknown to the civil Courts. So, in the case of a deceased workman where the reference is under S.2A of the Industrial Disputes Act, the heirs and legal representatives can agitate the question, firstly, whether the termination of the deceased workman was just, legal and proper, and secondly, if it was wrongful and invalid, then, what compensation in terms of money could have been given to the workman from a particular date fixed by the Tribunal till the date of reinstatement and if reinstatement cannot be granted because of the death of the workman, till the date of his death. It is therefore in this context of S.306 of the Succession Act that the right to prosecute these special proceedings before the Industrial Tribunal survives to the administrators, executors, heirs and legal representatives of the deceased workman. It is only a cause of action for personal injury or in the case of defamation or assault or battery or malicious prosecution which cannot be said to survive after the death person concerned."

E We have quote in extenso the reasoning of the Kerala High Court in *Gwalior Rayons'* case and of the Gujarat High Court in *Bank of Baroda* case. We agree with and approve the reasoning and the conclusions reached therein.

F With respect to the learned Judges of the Assam, Patna, Delhi and Orissa Courts, we are not inclined to agree with their reasoning and the conclusions to the effect that to the death of a workman his heirs and legal representatives cannot continue the reference or an application under Section 33(2) of the Act before the Tribunal/Labour Court.

G We, therefore, hold that on the death of the workman, even when the reference is of an individual dispute under S.2A of the Act, the Tribunal does not become functus officio or the reference does not abate merely because, pending adjudication, the workman concerned dies. It is open to the heirs and legal representatives of the deceased workman to have the matter agitated and decided.

We allow the appeal, set aside the award of the Tribunal dated January 4, 1982 and send the case back to the Central Government Industrial Tribunal-cum-Labour Court No. 3, Dhanbad, Bihar for decision on merits. The Tribunal shall finally dispose of the matter within six months of the receipt of this judgment. The appellant shall be entitled to his cost which we quantify as Rs. 10,000. A

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I.S.G.

Appeal allowed.