

**JAGODA  
v  
TUDAWE**

COURT OF APPEAL  
WIJAYARATNE, J. AND  
SRIPAVAN, J.  
C.A.NO. 1501/2000  
D.C.GALLE 3588  
OCTOBER 6, 2004

*Civil Procedure Code, sections 14A(1)(a) and 394(2) – Accident – owner of vehicle dies – claim for damages–Who is a legal representative? – who could be appointed as representing deceased owner?–Adiation necessary?*

The petitioner alleged that as a result of an accident he suffered injury and consequent loss and damage. The petitioner stated that a cause of action has accrued to sue the owner of the vehicle, one T, along with his driver. T died before action was instituted.

The petitioner sought the appointment of the sole heir of the deceased as the legal representative of T in his place for the institution of the said action – section 14A (1)(a). The District Court rejected the application.

**Held :**

- (1) In terms of the definition of the Legal representative under section 394(2), apart from the Executor or Administrator, in the case of an estate below the value of Rs.500,000/- only the next of kin who have adiated the inheritance becomes a legal representative of the deceased. The petitioner must state that the respondent adiated the inheritance. The existence of estate(a) below administrable value and (b) adiation by next of kin are two main ingredients of "Legal Representative" in the definition of the term.

**APPLICATION** in revision from the order of the District Court of Galle.

*Rohan Sahabandu* for petitioner.

*A.K.Pemadasa, P.C.*, with *C.E. de Silva* for respondent.

November 10, 2004

**WIJAYARATNE, J.**

The petitioner made application to District Court of Galle under 01 and in terms of section 14A (1)(a) of the Civil Procedure Code to have the respondent to the application appointed in place of the deceased for the institution of the proposed action. The application was made against the sole respondent on the basis that he suffered injury from a motor traffic accident caused by the collision of the vehicle belonging to B.Y. Tudawe, deceased and driven by his chauffeur named in the application. The petitioner alleged that as a result of such accident he suffered injury and consequent loss and damage which he estimated at Rs. 1,530,000/-. The petitioner stated 10 that a cause of action has accrued to him to sue Deshabandu B.Y. Tudawa as the owner of the vehicle along with the driver for the recovery of the aforesaid damages, in an action known as acquilian action. However, the said B.Y. Tudawe died before action was filed, leaving only heir the respondent and to the knowledge of the petitioner there was no testamentary proceedings instituted. He sought the appointment of the respondent the sole heir of deceased as the legal representative of B.Y. Tudawe in his place for the institution of such action.

The respondent objecting to the appointment stated that any 20 cause of action accrued to the petitioner against B.Y. Tudawe did not survive his death, the respondent is not liable in any delictual liability of the deceased and therefore the petitioner is not entitled to have her appointed for the purpose of institution of such action. The respondent at no stage disputed or deemed the fact of her being the sole heir of the deceased B.Y. Tudawe nor did she state that he did not leave any estate.

The Court after inquiry refused the application of the petitioner to appoint the respondent in place of the deceased for the institution of the action on the basis that the applicant in an application 30 under section 14A of the Civil Procedure Code should establish that the deceased left an estate and the respondent proposed to be appointed is the legal representative as defined in section 394(2) of the Civil Procedure Code. To establish that the respondent is the legal representative, the petitioner ought to have stated that the respondent 'adiattad' the inheritance.

The petitioner being aggrieved by the said order of refusal of his application made an application to this Court invoking its revisionary jurisdiction seeking to set aside the said order of the learned District Judge dated 29.11.2000 and a direction to the District Judge to appoint the respondent in place of the deceased or in the alternative to appoint the respondent in place of the deceased "as the legal representative" of the aforesaid deceased Deshabandu Tudawe". The respondent objected to the application for revision on grounds that any cause of action against B.Y.Tudawe did not survive his death, the respondent is not liable for any delicts of the deceased and no cause of action accrued to petitioner to sue the defendant and further alleged that the petitioner could not have maintained this application without his right to leave to appeal being exercised.

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When the matter was taken up for hearing the Counsel representing parties moved that the matter involved is a pure question of law and the same be disposed of by way of written submissions. Upon consideration of pleadings, documents and submissions, I find that the petitioner has not established that the respondent who is said to be the sole heir of the deceased has adiated the inheritance. In terms of the definition of the "legal representative" under section 394(2) of the Civil Procedure Code, apart from an executor or administrator in the case of an estate below the value of Rs.500,000/- only the next of kin who has adiated the inheritance becomes a legal representative of the deceased. The application of the petitioner to appoint the respondent in place of the deceased is on the basis of her being the legal representative of the deceased and not in the capacity of an heir of the deceased. On a mere reading of section 394(2) it is very clear that a next of kin, who had adiated the inheritance, should adiate an estate below administerable value. The existence of estate below administerable value and adiation by next of kin are two main ingredients of "legal representative" the definition of the term.

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The petitioner who seeks the appointment of the respondent in place of the deceased "as the legal representative of the deceased" should first establish that the respondent is the legal representative of the deceased according to law. As the learned District Judge has correctly concluded the petitioner has failed to establish that the

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respondent is the legal representative of the deceased; in other word that the deceased left an estate below administerable value and the respondent as next of kin who adiated the same. In the absence of such fact being established the petitioner is not entitled to have the respondent appointed in terms of section 14A, in place of the deceased.

As the application of the petitioner in this application and the application before the Court below, are for the appointment of the respondent in place of the deceased as "legal representative of the deceased" and not in her capacity as an heir, the liability of an heir in delict of the deceased specially in an acquilian action, does not arise for determination. The ground of objection that the delictual liability of the deceased did not pass on to the respondent is not examined as the application of the petitioner fails on the grounds urged by the petitioner himself. <sup>80</sup>

In the result the application of the petitioner for revision is dismissed and in all the circumstances of the case I make no order as to costs. <sup>90</sup>

**SRIPAVAN, J.** - I agree.

*Application dismissed.*