

(2014) 02 AHC CK 0125

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 8712 of 2014

Irshad Ali and Others

APPELLANT

Vs

Rajan Kumar and
OthersRESPONDENT

Date of Decision: Feb. 13, 2014**Acts Referred:**

- Fatal Accidents Act, 1855 - Section 1, 1A, 3

Citation: (2014) 3 ADJ 182 : (2014) 103 ALR 534 : (2014) 3 AWC 3209**Hon'ble Judges:** Vivek Kumar Birla, J; Amreshwar Pratap Sahi, J**Bench:** Division Bench**Advocate:** S.D. Ojha, Advocate for the Appellant; Archana Singh, Advocate for the Respondent

Judgement

1. Heard Sri S.D. Ojha, learned counsel for the petitioners and Smt. Archana Singh, learned counsel appearing for the Indian Oil Corporation. The petitioners are aggrieved on account of non-payment of compensation due to the death of the daughter of the petitioner No. 1 in an accident which occurred on an explosion of a gas cylinder at a Chaat Stall.

2. The accident was reported to the police but it does not appear to have been intimated to the respondent-Corporation. The fact with regard to the status of the utilisation of a gas cylinder by a Chaat Stall and its legal liability in the event of an accident is a factual dispute.

3. The petitioner had filed a fatal accident claim that came to be registered before the Accident Claims Tribunal/District Judge, Muzaffar Nagar but the petitioners withdrew the same under some misconceptions as if the claim was not maintainable.

4. We have perused the provisions of the Fatal Accidents Act, 1855 as also the terms and conditions of the insurance under which the respondent-Corporation may be found liable for payment of any such compensation.

5. In our opinion, since there is no special forum provided for determination of such claims, the Fatal Accident Act, 1855 can be pressed into service and a civil suit can be filed before the competent Court in accordance with the provisions of Section 1A of the 1855 Act. The petitioners withdrew the claim that had been registered as a fatal accident claim.

6. In the aforesaid circumstances, we leave it open to the petitioners to move an appropriate application before the concerned Court seeking permission to file a civil suit in terms of the 1855 Act, which is the remedy at present available in our opinion for the purpose of claiming compensation or seek any other remedy in law, as, a writ petition before this Court to sort out a severely disputed question would not be maintainable. We would however like to put on record that on an enquiry made by us with regard to the availability of any other fast effective forum, the decision in the case of [Suba Singh and Another Vs. Davinder Kaur and Another](#), has come to our notice where this concern has been expressed in paras. 15 to 22 as follows:

15. Having, thus, considered and disposed of all the contentions raised on behalf of the appellants, we would like to advert to another issue that is a cause of no little concern to us.

16. We are constrained to observe that a suit for damages for murder of a person, like the present one, is filed under the Fatal Accidents Act, 1855. As the year of its enactment shows the Act dates back to the period when the greater part of the country was under the control of the East India Company with the last Mughal "Emperor", Bahadur Shah Zafar as the ineffective, though, titular monarch on the throne of Delhi.

17. The Act is based on the Fatal Accidents Act, 1846 and according to the short title given to it by the Indian Short Titles Act, 1897, it is "An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong". Its Preamble reads as follows: "Whereas no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him."

18. It originally consisted of three sections, but, the original Section 1 was renumbered as Section 1A by the Part B States (Laws) Act (3 of 1951), Section 3 and Schedule, with effect from April 1, 1951. Section 1A of the Act provides as follows:

1A. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.--Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured,

and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator, or representative of the person deceased; and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.

19. Later on the operation of the Act was extended to different parts of the country and as on date it extends to the whole of India except the State of Jammu and Kashmir.

20. It is a matter of grave concern that such sensitive matters like payment of compensation and damages for death resulting from a wrongful or negligent act are governed by a law which is more than one and a half centuries old. Twenty one years ago a Constitution Bench of this Court in [Charan Lal Sahu Vs. Union of India](#), a case arising from the Bhopal Gas Tragedy, had taken note of this antiquated law and in paragraph 168 made the following observations:

168. While it may be a matter for scientists and technicians to find solutions to avoid such large scale disasters, the law must provide an effective and speedy remedy to the victims of such torts. The Fatal Accidents Act, on account of its limited and restrictive application, is hardly suited to meet such a challenge. We are, therefore, of the opinion that the old antiquated Act should be drastically amended or fresh legislation should be enacted which should, inter alia, contain appropriate provisions in regard to the following matters:

- (i) The payment of a fixed minimum compensation on a "no fault liability" basis (as under the Motor Vehicles Act), pending final adjudication of the claims by a prescribed forum;
- (ii) The creation of a special forum with specific power to grant interim relief in appropriate cases;
- (iii) The evolution of a procedure to be followed by such forum which will be conducive to the expeditious determination of claims and avoid the high degree of formalism that attaches to proceedings in regular Courts; and
- (iv) A provision requiring industries and concerns engaged in hazardous activities to take out compulsory insurance against third party risks.

21. It is unfortunate that the observations of the Supreme Court have so far gone completely unheeded. We hope and trust that the Union Government would at least now

take note of the urgent need to bring a contemporaneous and comprehensive legislation on the subject and proceed to act in the matter without any further delay.

22. Let a copy of this judgment be brought to the notice of the Attorney General for India. A copy of the judgment may also be sent to the Law Commission of India.

With the aforesaid observations, the writ petition is finally disposed off.