

(2005) 03 GAU CK 0011

Gauhati High Court

Case No: None

State of Tripura and Others

APPELLANT

Vs

Swapna Chakraborty and
Another

RESPONDENT

Date of Decision: March 1, 2005

Acts Referred:

- Constitution of India, 1950 - Article 137, 82
- Fatal Accidents Act, 1855 - Section 1A, 2
- Limitation Act, 1963 - Section 5

Citation: (2007) 2 ACC 799

Hon'ble Judges: Tinlianthang Vaiphei, J; A.B. Pal, J

Bench: Division Bench

Judgement

A.B. Pal, J.

The above appeal and the cross-objection are directed against the judgment dated 31.7.1996 passed by District Judge, West Tripura, Agartala in Title Suit (F.A.) No. 3 of 1994 whereby an award of Rs. 82,380 was made in favour of the claimant-cross-objectors against their claim of Rs. 17,04,000 on account of death of Nirapada Chakraborty, their predecessor in interest by electrocution on 5.9.1990. The respondents-cross-objectors being the wife and mother of the deceased being aggrieved filed cross-objection for enhancement of the award. The State of Tripura and four others being officials of the Department of Power preferred the appeal against the said award on ground of jurisdiction and maintainability.

2. The short fact relevant for disposal of these two cases is that Nirapada Chakraborty, aged about 31 years, went to his field on 5.9.1990, came in contact with a snapped live wire drawn from main power line and died instantaneously. The allegation is that a loose wire from the main power line was drawn to a shallow pump by the Power Department, which being not taken due care of, fell on the field

of the deceased on the fateful day. He was at once taken to Jirania Hospital where the doctor declared him dead. He left behind his widowed mother, wife and a minor son in great distress. Though the occurrence had taken place on 5.9.1990, the mother and the wife brought the claim by filing a petition only on 30.3.1994, after lapse of about 4 years which was, however, accepted for adjudication by the District Judge, West Tripura Agartala. They claimed an amount of Rs. 17,04,000 as compensation for the untimely death of their only earning member due to negligence of respondents.

3. Defendants-appellants contested the claim before the District Judge contending that the claim was hopelessly time-barred as it was filed about four years after the occurrence. They denied any negligence on the part of the Power Department contending that a departmental enquiry into the incident showed that a hook line was unauthorisedly drawn by G.I. wire from the main line, which had snapped and fallen on the paddy field of the deceased claiming his life. That apart, further contention of the respondents is that this incident was not brought to their notice immediately after it had occurred and that only 7/8 months after the incident, the department came to know about it and at once conducted an inquiry. As per the provisions of a scheme formulated to address such a situation, the appellants paid an amount of Rs. 10,000 to the bereaved family.

4. The District Judge, during the course of inquiry, framed four issues, which are noted below:

(1) Is the claim maintainable in its present form and nature?

(2) Whether the claimants are entitled to get compensation from the opposite parties?

(3) Whether the opposite party was negligent and has liability for paying compensation to the petitioners?

(4) What other relief/reliefs the parties are entitled to?

The Trial Court examined Swapna Chakraborty, wife of the deceased, who was not eyewitness and one Haradhan Das, who was working in the adjacent paddy field and witnessed the occurrence. According to this eyewitness, the line, which had snapped from the main line was drawn by the Power Department to a shallow pump and therefore, respondents were responsible for not taking care and maintaining the line. He stated that when the deceased was spreading medicine in his paddy field, he suddenly came in contact with that live wire, which claimed his life immediately. PW 1, the wife of the deceased corroborated the said statement and admitted that Rs. 10,000 was granted to her as ex gratia. She claimed that her husband was earning Rs. 3,000 per month as cultivator. Appellants have examined Sailendra Chakraborty as OPW 1, who has admitted the death of Nirapada Chakraborty by electrocution. According to him, only 7/8 months after the incident,

they came to know about it and on receipt of such information Sumit Bhattacharjee, Junior Engineer made an inquiry and submitted his report to the effect that the live wire was actually a hook line drawn from the main line unauthorisedly.

5. The District Judge instead of deciding the issues separately took up all for consideration and without discussing the question of maintainability on the ground of delay, proceeded to determine the quantum of compensation after holding that the negligence on the part of respondents in maintaining the power line was responsible for the untimely death of Nirapada Chakraborty. Following the principles provided in Workmen's Compensation Act, the District Judge awarded Rs. 82,380 by multiplying Rs. 400 with 205.95. He also awarded an additional amount of Rs. 2,000 as litigation costs.

6. We have heard the learned Counsel for the parties.

7. Mr. S. Chakraborty, learned Counsel for the appellant State submits that the impugned judgment and award is liable to be dismissed at the threshold as the claim for compensation after a period of 4 years was not maintainable. In support of his contention, he relied on Article 82 of the Schedule of the Limitation Act, 1963. This Article appearing in Part VII covers the suits relating to tort. Admittedly, the present claim arises out of the tortious liability on the part of the defendants-appellants. Article 82 of this part provides that two years is the limitation from the death of the person for filing a suit by executors, administrators or representatives under the Indian Fatal Accidents Act, 1855. As admittedly the death had taken place on 5.9.1990 and the suit was brought in 1994, it was hopelessly time-barred and the District Judge had no jurisdiction to entertain such a claim. Though issue was framed on maintainability and in the written objection the question of limitation was specifically raised, the impugned judgment contains no discussion or finding on this particular issue. His further submission is that as per the scheme under the Indian Electricity Act, the State Government has already granted Rs. 10,000 to the claimants and, therefore, such a belated claim should not have been entertained.

8. Mr. S. Talapatra, the learned Senior Counsel for respondents-cross-objectors, on the other hand, has canvassed his stand entirely from a different angle and desires us to give a broader and pragmatic interpretation to the relevant provisions while addressing a claim under Fatal Accidents Act. According to him, Article 82 may not be interpreted to be the only provision regarding period of limitation in respect of claims under the Indian Fatal Accidents Act. He submits that it is permissible for the claimants, who are late in lodging the claim, to take the shelter of Article 137 under Part II of the said Act, which provides a period of three years for filing any application for which no period of limitation is provided elsewhere in the Third Division of the Act relating to applications. He argues that a suit or an application may be filed for such a claim and if it is an application, the period of limitation will be three years and delay beyond three years can be condoned by invoking the

provision of Section 5 of the Limitation Act, which applies to appeals and applications only. To bring home this point, he takes us to the provision of Section 1-A of the Fatal Accidents Act, 1855, which provides that an action or suit for damages may be taken whenever death of a person is caused by wrongful act, neglect or default. The words "action or suit" appear again in Section 2 of that Act, which provides that not more than one action or suit shall be brought for and in respect of the same subject-matter of complaint. Mr. Talapatra submits that action or suit are two different connotations making the field wider and that when a suit cannot be filed within the time prescribed in Article 82, an action in the form of an application can be filed thereafter, gaining into the scope of condonation u/s 5 of the Limitation Act. In order to bolster his claim, he has produced a photocopy of one judgment of this Court dated 13.6.2003 in C.R.P. No. 70 of 2002 where the words "actions, claims and suits" under the Fatal Accidents Act, 1855 have been held to be within the jurisdiction of the District Judge. We have carefully perused the said judgment, which mainly dealt with the question whether the District Judge can entertain and adjudicate claims and suits under the Fatal Accidents Act, 1855 in the capacity of Presiding Officer of Tribunal or Commissioner, Workmen's Compensation. It was finally held that the District Judge as principal Civil Court has jurisdiction to entertain a suit, claim and action though he cannot do so as a Tribunal or Commissioner for Workmen's Compensation. The phraseology of the words used therein and in Sections 1-A and 2 of the Fatal Accidents Act have been interpreted by Mr. Talapatra to establish his point that the present suit should be treated as an application or action and, therefore, should not be brought within the mischief of Article 82 as aforesaid.

9. While we find no wrong in the impugned judgment regarding determination of the amount of award, we find the question of limitation as a serious roadblock to entertain such a claim. We have given our careful consideration to the submission of Mr. Talapatra in order to appreciate the broader and liberal view sought to be read and interpreted into the relevant provisions. We have noted that Article 82 appearing in Part VII of the Schedule to the Limitation Act specifically and clearly mentions the words "Fatal Accidents Act" for which the period of limitation is two years from the date of death of the person killed. As the Part covers "suits relating to tort" only, we fail to understand how one can read the word "application" also into Article 82 when suits and applications are completely different actions and stand poles apart in the field of limitation inasmuch as for a suit there is no scope of condonation u/s 5 of the Limitation Act while an application stands at the same footing of an appeal taking into its sweep the benefits of condonation of delay. While Part VII of the said Act does not use the words "application or action" and in no other Article there exists any provision relating to any action under the Fatal Accidents Act, there, however, exists the word "action" in Sections 1-A and 2 of the Fatal Accidents Act. But the headline of both the sections deal with only suit and does not mention the words "application or action". However, in the body of both

the provisions, the word "action" has found place and for better appreciation of this legal position, both the sections are quoted below:

1-A. 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.

2. Not more than one suit to be brought.--Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint.

Claim for loss to the estate may be added.--Provided that in any such action or suit the executor, administrator or representative of the deceased may insert a claim for, and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

(Emphasis ours)

It would appear from the above provisions that the words "actionable wrong" in Section 1-A for which a suit can be filed, might have inspired use of the word "action" before the word "suit". When Section 1-A provides "the act, neglect or default is such as would have entitled the party injured to maintain an action and recover damages in respect thereof, such "action" undoubtedly has been used only to mean a suit which may be the remedy against an actionable wrong. We have noted with keen interest the use of the word "suit" in the headline, the words "action or suit" in first and second para and only "action" in the third para of Section 1-A. The words "in every such action the Court may give such damages" in third para certainly point to the suit only. Thus, the words "action or suit" which appear in Sections 1-A and 2 of the Fatal Accidents Act when read in the context of the relevant

provisions of the Limitation Act appearing in Part VII irresistibly leads to the only conclusion that the word "action" or "suit" were intended to mean one course of action or remedy only and the legislature had no intention to provide two separate remedies in two different ways. This view is reinforced from the fact that the words "by...executor, administrator or representative" of the deceased appearing in Section 1-A have been reproduced in Article 82 of Limitation Act. When there is no doubt that death by electrocution is an actionable wrong falling under the ambit of "tort", no provision other than those contained in Part VII of the Limitation Act can, in our considered view, be made applicable and in that view of the matter, Article 137 relating to application cannot be interpreted as an action within the meaning of Section 1-A or 2 of the Fatal Accidents Act. The need to adopt a broader and liberal view to pragmatically address a situation like the one in hand notwithstanding, we are of the view that in the garb of interpreting the law, the Court cannot add or amend and thereby legislate a provision which is unambiguous and leaves no doubt about the period of limitation of an action against a wrong, which must be only in the form of a suit as has been done in the present case.

10. In view of the above discussions, the judgment and award of the Court below is not sustainable in law as the suit was barred by limitation and, therefore, the District Judge had no jurisdiction to entertain such a suit after a period of four years from the date of death of the deceased. The appeal is, therefore, allowed and the impugned judgment and award are set aside leaving the parties to bear their own costs. For the same reason, the cross-objection is dismissed.