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DAMINI AND ANOTHER

v.

MANAGING DIRECTOR, JODHPUR VIDYUT VITRAN
NIGAM LIMITED AND ANOTHER

B

(Civil Appeal No.12851 of 2017)

SEPTEMBER 14, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

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Limitation Act, 1963 – Art. 82 under Part VII of the Schedule and Art.113 under Part X of the Schedule – Limitation for filing suit/claim under the Fatal Accidents Act – When a bus reached a station, the driver climbed the rooftop of the bus to bring down the luggage of the passengers – While doing so, the driver came in contact with a live electricity wire – Due to electrocution, he fell down from the roof of the bus and died – Appellants i.e. widow and son of the deceased filed application u/s.1A of the Fatal Accidents Act – Courts below dismissed the application holding that the claim should have been presented within two years from the death of the person – Appellants contended that petition filed before Courts below has to be treated as a Civil Suit for damages, and hence, it was the residuary entry, viz., Art.113 which should have been applied, in which case, limitation is of three years – Held: Part VII of the Schedule to the Limitation Act, 1963 provides for period of limitation with regard to suits relating to tort – Art.82 under the Part VII of the Schedule provides for a specific period of limitation, viz., two years for a suit for damages under the Fatal Accidents Act, 1855 – Once a specified period of limitation is referable to any of the entries in the Schedule to the Limitation Act, 1963, then residuary Art.113 under Part X of the Schedule cannot be invoked – Therefore, the suit u/s.1A of the Fatal Accidents Act has to be filed within two years – However, in instant case, there was a scheme under the first respondent for providing compensation to the victims – Jurisdiction u/Art.142 of the Constitution invoked – The first respondent to pay Rs.7 lakh as compensation to first appellant – Constitution of India – Art.142 – Fatal Accidents Act, 1855 – s.1A.

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Disposing of the appeal, the Court

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HELD: 1. Part VII of the Schedule to the Limitation Act,

1963 deals with the “suits relating to tort”. In the instant case, for a suit for damages under the Fatal Accidents Act, 1855 and Article 82 provides for a specific period of limitation, viz., two years from the date of death of the person. Therefore, when a suit for compensation is filed under the Fatal Accidents Act, 1855, the same has to be filed within the period of two years as prescribed under Article 82 of the Limitation Act, 1963. Once a specific period of limitation is referable to any of the entries in the Schedule to the Limitation Act, 1963, then the residuary Article 113 cannot be invoked.[Paras 8, 10 and 11] [941-G-H; 942-A-B]

2. However on a query as to whether there is a scheme under the first respondent for providing compensation to the victims, the standing Counsel informed that there is a scheme under the Rules now applicable wherein the legal heirs of the deceased person are entitled to a one-time compensation of Rs.5 lakhs. The accident is of the year 2008. This is a fit case to invoke jurisdiction under Article 142 of the Constitution of India. The First respondent is directed to pay Rs.7 lakh as compensation to the first appellant. [Para 13] [943-C-D]

Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat (1994)
4 SCC 1 : [1994] 2 SCR 644 – held inapplicable.

Case Law Reference

[1994] 2 SCR 644 held inapplicable Para 12

CIVIL APPELLATE JURISDICTION : Civil Appeal No.12851 of 2017.

From the impugned final Judgment and Order dated 29.06.2015 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil First Appeal No.189/2015.

Balraj Dewan, Adv. for the Appellant.

Puneet Jain, Ms.Christi Jain, Priyal Jain, Ms.Pratibha Jain, Advs. for the Respondents.

A The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. What is the period of limitation for filing a suit or claim under The Fatal Accidents Act, 1855 is the issue arising for consideration in this case.

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3. The appellants are the widow and son of one Pradeep Bhai Patel who worked as a driver of a bus. The deceased was driving passengers from Ahmedabad to Rajasthan. When the bus reached a dharamshala, the deceased climbed the rooftop of the bus to bring down the luggage of the passengers. When the deceased was on the rooftop, a naked electricity wire touched his hand. Due to the electrocution, the deceased fell down from the roof of the bus. Thereafter, he was rushed to the hospital where he was declared dead by the doctors. The cause of death was the contact with the live electricity wire.

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4. The appellants filed an application under Section 1A of the Fatal Accidents Act, 1855 before the District Judge, Jaisalmer, Rajasthan claiming Rs.22,68,000/- towards damages. The claim was resisted on the ground of limitation among other grounds.

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5. According to the respondents, under Article 82 of The Limitation Act, 1963, the claim should have been presented within two years from the date of death of the person. The contention was upheld and the claim petition was dismissed. The decision was upheld by the High Court as well, and thus, the appellants are before this Court.

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6. It is the contention of the appellants that the petition filed before the District Judge has to be treated as a Civil Suit for damages, and hence, it was the residuary entry, viz., Article 113 which should have been applied, in which case, the limitation is three years from when the right to sue accrues which is the date of death, i.e., 14.09.2008.

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7. In the present case, the claim petition was preferred on 05.09.2011 before the District Judge, and therefore, according to the learned Counsel for the appellants, the petition was within time.

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8. We are afraid the contentions raised by the appellants cannot be appreciated. Part VII of the Schedule to the Limitation Act, 1963 which provides for period of limitation deals with suits relating to tort. Article 82 is under Part VII. The same reads as follows:

"PART VII- SUITS RELATING TO TORT

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Description of suit	Period of limitation	Times from which period begin to run
By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855 (13 of 1855)	Two years	The date of the death of the person killed."

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9. Under Part X, Article 113 reads as follows:

"PART X-SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

Description of suit	Period of limitation	Times from which period begin to run
Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues."

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10. As rightly contended by Shri Punjeet Jain, learned Counsel appearing for the respondents, once a specific period of limitation is referable to any of the entries in the Schedule to the Limitation Act, 1963, then the residuary Article 113 cannot be invoked. In the instant case, for a suit for damages under the Fatal Accidents Act, 1855 Article

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A 82 provides for a specific period of limitation, viz., two years from the date of death of the person.

11. Part VII of the Schedule deals with the “suits relating to tort”. Therefore, when a suit for compensation is filed under the Fatal Accidents Act, 1855, the same has to be filed within the period of two years as prescribed under Article 82 of the Limitation Act, 1963. In the instant case, the action for damages is brought under Section 1A of the Fatal Accidents Act, 1855. The provision reads as follows:

C “[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.

E 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;

F 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.”

G 12. The appellants have placed reliance on the decision of this Court in Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat¹ to justify their argument that Article 113 should be applied for computation

H ¹(1994) 4 SCC 1

of period of limitation. Jay Laxmi (supra) was not a case of death of a person and it was also not a case under the Fatal Accidents Act, 1855. It pertained to a claim of damages for loss due to damage to property. Therefore, Jay Laxmi (supra) has no relevance in a suit for damages under the Fatal Accidents Act, 1855. It is also to be noted that there is no particular period of limitation under the Fatal Accidents Act, 1855. Therefore, the suit under Section 1A of the Fatal Accidents Act, 1855 has to be filed within two years.

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13. However on a query as to whether there is a scheme under the first respondent for providing compensation to the victims, the learned standing Counsel has informed us that there is a scheme under the Rules now applicable wherein the legal heirs of the deceased person are entitled to a one-time compensation of Rs.5 lakhs. The accident is of the year 2008. Therefore, we are of the view that it is a fit case to invoke our jurisdiction under Article 142 of the Constitution of India and grant Rs. 7 lakhs as compensation. The first respondent shall pay this amount to the first appellant within two months from today otherwise the appellants will be entitled to interest of 12 per cent per annum from the date of the accident and the officers responsible for the delay shall be personally liable for the same.

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14. We make it clear that this order is passed under the peculiar facts of this case and hence, it is not to be treated as a precedent.

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15. The appeal is disposed of as above. There shall be no order as to costs.