

THE HIGH COURT OF TRIPURA
A G A R T A L A
RFA No. 14 of 2013

Appellants:

1. Smt. Sipra Banik,

W/o. Late Arun Chandra Banik @ Arun Banik.

2. Sri Chandan Banik,

S/o.Late Arun Chandra Banik, @ Arun Banik

3. Sri Litan Banik,

S/o. Late Arun Chandra Banik @ Arun Banik.

All are resident of village Ishanchandra Nagar, P.O:
Subhash Nagar, P.S-Belonia, District-South Tripura.

4. Smt. Nandita Banik (Poddar),

D/o. Late Arun Chandra Banik @ Arun Banik,

W/o. Sri Narauan Chandra Poddar, R/o: No.2,
Phulkumari (Banduyar), P.O & P.S:
Radhakishorepur, District-Gomuti, Tripura.

By Advocate :

Mr. A. Bhowmik, Adv.

Defendant-Respondents :

1. The Chairman-cum-Managing Director,

Tripura State Electricity Corporation Limited, Bidyut
Bhawan, Banamalipur, P.O-Agartala, P.S-East
Agartala, District-West Tripura.

2. The Additional General Manager,,

Electricity Circle No.1, Udaipur, Banduyar, P.O &
P.S: Radhakishorepur, District-Gomati, Tripura.

3. The Deputy General Manager,

Electrical Division, Udaipur, Banduyar, P.O & P.S-
Radhakishorepur, District: Gomati, Tripura.

4. The Senior Manager,

Electrical Sub-Division, P.O- Belonia, District: South
Tripura.

5. The Senior Manager,

Electrical Sub-Division, Rajnagar, P.O- Belonia,
District: South Tripura.

Proforma Respondent :

6. Smt. Tulsi Banik,

W/o. Late Jagadish Chandra Banik, Mother of Late
Arun Chandra Banik @ Arun Banik. R/o:-Village
Ishwar Chandra Nagar, P.O- Subash Nagar, P.S-
Belonia, District-South Tripura.

By Advocate :

Ms. S. Deb Gupta, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment and Order : **3rd July, 2015.**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER(oral)

This appeal by the plaintiff-appellants is directed against the judgment and decree dated 20th April, 2013/25th April, 2013 passed by the learned Civil Judge (Senior Division), South Tripura, Udaipur in Money Suit No. 05 of 2012 whereby the suit of the plaintiff has been dismissed holding that the same has been filed beyond the period of limitation. On merits also the learned trial Court has dismissed the suit.

[2] Briefly stated, the allegations made in the plaint are that the plaintiff No.1 is the widow, plaintiffs 2 and 3 are the sons and plaintiff No.4 is the daughter and proforma-defendant is the mother of the deceased, Arun Chandra Banik alias Arun Banik. According to the plaintiff the deceased was grazing his cattle on the other side of the border fencing with permission of the BSF authorities. At about 1.00 pm live high tension wire of 33 KV electricity of the Rajnagar Belonia line fell down upon the deceased, Arun Banik and as a result of which he suffered severe electric shock and burn injuries. Arun Banik was shifted to the Belonia hospital from where he was referred to the G.B.P. Hospital and admitted there on 11.08.2008. Unfortunately, Sri Arun Banik succumbed to his injuries at Agartala on 15.08.2009 at about 10.00 pm.

[3] According to the plaintiffs the deceased died due to the negligence of the electricity corporation in not maintaining it's high tension

wires properly. According to the plaintiffs, the defendant did not properly perform their duties and did not maintain the 33 KV line properly and, therefore, were liable to compensate the plaintiffs for the damage suffered by them. The suit was filed on 12.07.2013. The learned trial Court on the issue of limitation held that the suit was governed by Article 82 of Schedule-I of the Limitation Act, 1963 and the limitation was 2(two) years from the date of death i.e. 15.08.2009 and the suit having been filed beyond the period of limitation was not maintainable.

[4] Sri Arijit Bhowmik, learned counsel for the plaintiffs submits that this suit would be governed not by Article 82 but by the residual Article 113 and the limitation would be 3(three) years and therefore, the suit was filed within limitation. He has referred to the judgment of the Apex Court in ***Jay Laxmi Salt Works(P) Ltd. Vrs. State of Gujarat : (1994) 4 SCC 1; State of Andhra Pradesh Vrs. Challa Ramkrishna Reddy and Others: AIR 2000 SC 2083***, the judgment of the Kerala High Court in ***Kerala State Electricity Board and another Vrs. K. V. Bhaskaran Nair and others : AIR 2003 Kerala 57***, judgment of the Andhra Pradesh High Court in ***A.P. State Electricity Board and other Vrs. Y. Venu Kumar and Ors.*** reported in ***2006(3) ALD 710*** and another Division Bench judgment of the Kerala High Court in ***K. K. Vava and others Vrs. Kerala State Electricity Board and others(RFA No. 149 of 2013) delivered on 31st March, 2014***. He has also placed reliance on the judgment of the Orissa High Court in ***Cuttack Vrs. Raibari Chhatraia and Others(RFA No. 9 of 2006)*** delivered on 26.02.2013.

[5] On the other hand, Ms. S. Deb Gupta, learned counsel for the respondents submits that this is a claim arising out of the Fatal Accidents Act, 1855 and therefore, Article 82 squarely applies to the case and the limitation is 2(two) years and not 3(three) years. In support of her contention Ms. S. Deb Gupta has relied upon the judgment of the Agartala Bench of the Gauhati High Court in ***State of Tripura and others Vrs. Swapna Chakraborty and another : (2007) 1 GLR 254.***

[6] Under Common Law there was no right to claim damages in case of death of one person caused by another person due to his wrongful act, neglect or default. No action or suit was maintainable in this behalf. The situation was that though in case of injuries a suit for damages was maintainable, no suit could be filed by the legal heirs in case of death even if the death was due to the accident or due to an actionable wrong of another person. To remedy the situation, after the advent of the rail and road transport in England, the Fatal Accidents Act of 1846 was introduced. In India the Fatal Accidents Act was enacted in the year 1855 and the introduction of the Fatal Accidents Act, 1855 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."

Section 1A of the Fatal Accidents Act, 1855 reads thus:

"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.”

[7] Coming to the provisions of the Limitation Act, 1963 (for short, Limitation Act). Part-VII of the schedule to the Limitation Act deals with suits relating to tort. The limitation provided is two years in Article 82. Articles 82 and Articles 113 of the Act reads as follows:

Article	Description of suit	Period of limitation	Time from which period begins to run
82.	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 wronged.
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

If the case is considered to be case under the Fatal Accidents Act, 1855 then limitation of two years will apply but if it is held that the case does not fall under any of the other articles of the limitation act, then provisions of residuary Article 113 will apply and Limitation would be three years.

[8] I shall refer to the Division Bench judgment of the Kerala High Court in ***Kerala State Electricity Board (supra)*** because that is the sheet anchor of the arguments of the learned counsel for the plaintiff-appellants. That was also a case of death due to electrocution and the Kerala High Court held that the claim is governed by Article 113 and not by Article 82 of the Limitation Act. The Kerala High Court relied upon the judgments of the Apex Court in ***Jay Laxmi Salt Works(P) Ltd.(supra)*** and ***Challa Ramkrishna Reddy(supra)***. Relying upon ***Jay Laxmi Salt Works(P) Ltd.(supra)*** the Kerala High Court held that when tortious liability arising due to negligence/mistake/defective planning or failure to discharge public duty is there then the case is governed by the provisions of Article 113 of the Limitation Act. The judgment of the Andhra Pradesh High Court in ***Challa Ramkrishna Reddy(supra)*** was also relied upon and the Kerala High Court held as follows:

“*****In view of the principle laid down in ***Jay Laxmi Salt Works(P) Ltd. Vrs. State of Gujarat: (1994) 4 SCC 1***, we are of the view that the claim put forward by the respondents cannot be thrown away on the technical ground of limitation. In this case also, there is allegations of negligence and failure to discharge public duty on the party of the employees of the first appellant, K.S.E.Board which is a Statutory Body. So the suit claim is to be treated as one for compensation or damages on account of a tortious act committed by the State. Hence the same is not governed by Article 82 but by Article 113 of the Indian Limitation Act. So the finding of the court below that the suit is not barred by limitation is correct and we confirm that finding.”

[9] Reference may be made to the judgment in ***Jay Laxmi Salt Works(P) Ltd.(supra)***. In ***Jay Laxmi Salt Works*** the State of Saurashtra which later became part of the State of Gujarat had made a plan for reclamation of vast areas of land from the saltish water of the sea by erecting a ‘reclamation bundh’ so as to prevent the sea water flowing

into several creeks in the area on the sea side. The construction work of this bundh was completed in the year 1955. In the very first monsoon of 1956 due to change of natural course of different streams in the reclaimed area the water of this stream was diverted to the factory of the plaintiff which was existing before construction of the bundh. The water entered the land and factory of the plaintiff. The plaintiff had been writing to the authorities even before the construction of the bundh, either to abandon the construction or to change the location of the weirs so as not to damage the property of the plaintiff. This was not a case relating to a death of any person. It was not a claim under the Fatal Accidents Act. This was a case where damages were claimed for damage caused to the property of the plaintiff. The question before the Apex Court was whether Article 36 of the Limitation Act of 1908 would apply or whether Article 36 or 120 of the Limitation Act would apply in the facts and circumstances of the case. Article 120 corresponds to Article 113 and Article 36 as it existed in the Limitation Act of 1908 read as follows:

"Description of suit	Period of limitation	Time from which period begins to run
36. For compensation for any malfeasance, misfeasance or non-feasance independent of contract and non herein specially provided for."	Two years	When the malfeasance, misfeasance or non-feasance takes palce.

The Apex Court then dealt with the words malfeasance, misfeasance or non-feasance and after discussing the entire law held as follows:

"15.***As has been explained earlier the damage was caused to the appellant not only because of negligence of officers but also because it was due to failure in discharge of public duty and mistake at various stages. Liability in tort may arise as observed by Salmond without fault. The basic ingredients of torts, namely, injury and damage due to failure to**

observe duty has been found to have been established. In the conservative sense it was negligence. But in modern sense and present day context it was not only negligence but mistake, defective planning, failure to discharge public duty. It was thus tort not in the narrow sense but in the broader sense to which Article 120 applied. The suit, therefore, could not be thrown out as it was filed beyond two years from the date the incident took place. The substantial question of law if Article 36 was exhaustive of all torts is thus answered in the negative. Further the rule in *Rylands v. Fletcher* has not been modified by our Court in *Modern Cultivators*². And the article of Limitation Act applicable to the facts of the case was Article 120 and not Article 36.”

What the Apex Court held was that all wrongful acts or torts were not covered under Article 36 which only dealt with acts of malfeasance, misfeasance or non-feasance. Therefore, Article 36 would not include in its ambit liability in tort which may arise without fault i.e. strict liability as established in ***Rylands Vrs. Fletcher : LR (1868) 3 HL 330*** or even the liability arising out of duty to take care as explained in ***Donoghue Vrs. Stevenson :(1932) AC 562***. The question is whether this judgment would apply to Article 82 or not. The question before the Apex Court was whether it was Article 36 which should apply or whether it is Article 120 be applied. The question before this Court is entirely different. The wording of Article 82 is totally different from the wording of Article 36 of the 1908 Act, though the wording of Article 113 is exactly similar to Article 120. Article 82 clearly deals with all suits filed by executors, administrators or representatives under the Indian Fatal Accidents Act, 1855 regardless of the nature of the cause of action. Before the advent of the Motor Vehicles Act and before introduction of the scheme for payment of compensation under the Railways Act, even claims arising out of a Motor Vehicles Act or in Railways accidents would be the subject of suits filed under the Fatal Accidents Act. Section 1A of the Fatal

Accidents Act is the only provision as far as I am aware under general law which deals with filing of claims for damages in relation to death.

[10] Part-VII of the schedule of the Limitation Act deals with suits relating to tort. It is well known that tort is nothing else but an “actionable wrong”. In case death is caused by an “actionable wrong” then only Article 82 is applicable. The words malfeasance, misfeasance or non-feasance are not part of Article 82. Therefore, I am of the considered view that the judgment of the Apex Court rendered in **Jay Laxmi Salt Works(P) Ltd.(supra)** will not apply to a case where a claim is filed claiming damages for death of a person because any claim in this behalf would be a claim under the Indian Fatal Accidents Act.

[11] Now, coming to the judgment in **Challa Ramkrishna Reddy(supra)** that in my opinion is not at all applicable because in that case the deceased and his son who apprehended danger to their lives complained to the police and requested for adequate police guard. Their request was not heeded and a bomb was thrown at them which caused the death of the deceased and injuries to his son. The case for compensation was filed not against the tortfeasor or wrongdoers but against the State claiming that the State had not provided adequate security to the deceased and his son. The case was decided by comparing the provisions of Articles 113 with Article 72 which reads as follows:

“Description of suit	Period of limitation	Time from which period begins to run
72. For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends.	One year	When the act or omission takes place.

The suit in that case had not been filed under the Fatal Accidents Act because under the Fatal Accidents Act the suit has to be filed against the wrong doers or the tortfeasor whereas in that case the suit was filed against the State claiming that adequate protection had not given to the deceased and his son leading to their death. The Court further held since the Sub Inspector of police himself was part of the conspiracy the provisions of Article 72 would not apply. In this case the Court did not deal with the provisions of the Fatal Accidents Act or with Article 82 of the Limitation Act.

[12] As far as the judgment of the Andhra Pradesh High Court is concerned i.e. ***Y. Venu Kumar and Ors*** (*supra*) that also relates to an electrocution and the claim was under the Fatal Accidents Act. Relying upon the judgment of the Apex Court in ***Challa Ramkrishna Reddy***(*supra*) the issue of limitation was decided in favour of the plaintiffs holding that the suit was not covered by Article 82 or by Article 72 but was covered by Article 113 of the Limitation Act. With due respect, I am unable to agree with the Andhra Pradesh High Court. In my view the judgment in ***Challa Ramkrishna Reddy***(*supra*) was not applicable.

[13] The Kerala High Court as stated hereinabove has placed reliance on all the three judgments. The Orissa High Court judgment is also a case of electrocution but in that case some of the claimants were minors also and the main factor which appears to have weighed with the Orissa High Court was that the limitation could not work against the minors. There is no discussion with regard to Article 82 in the said judgment.

[14] On the other hand, in *State of Tripura Vrs. Swapna Chakraborty* (*supra*) a Division Bench of the Gauhati High Court which then exercised jurisdiction over the State of Tripura was dealing with the case of electrocution and the question raised was whether the period of limitation would be governed by Article 82 or by the residuary article. The Division Bench after making reference to Article 82 and the provisions of the Fatal Accidents Act has held as follows:

"*** 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.*****"**

I am in respectful agreement with the said judgment. As pointed out above the Apex Court judgments were delivered in different contexts. The wording of Article 82 is totally different from the wording of

Article 36 of the 1908 Act or Article 72 of the 1963 Act. Article 82 encompasses all claims which are based on Section 1A of the Fatal Accidents Act. No doubt the Fatal Accidents Act also deals with claims/ actions/ suits arises from torts or actionable wrongs but Article 82 covers all claims made under the Fatal Accidents Act and unlike the divisions between different types of tort which could be made under Article 36 of the Act, 1908 or under Article 72 of the Act of 1963, Article 82 encompasses within its fold all types of tort and all actions and suits which can be brought under the Fatal Accidents Act.

[15] The Delhi High Court in *Abha Yadav and Others Vrs. Municipal Corporation of Delhi and Others: 2003 ACJ 1620* has also taken the same view and has held that the limitation for filing a suit where the husband of the plaintiff died due to electrocution would be governed by Article 82 of the Limitation Act because the suit is governed by the Fatal Accidents Act, 1855. However, in the case before the Delhi High Court since one of the plaintiffs was a minor the benefit of Sections 6 and 7 of the Limitation Act was given to the plaintiffs.

[16] In *Maya Rani Ghosh etc. Vrs. State of Tripura & Others: AIR 2007 Gau. 76* decided by the Division Bench of the Agartala Bench of the Gauhati High Court it was held as follows:

"54. When the words 'action' and 'suit', appearing in the Act of 1855, are read, in the context of the relevant provisions of the Limitation Act, as appear in Part VII, one is driven to the lone and only conclusion that the word 'action' or 'suit' were intended to mean one course of 'action' and one remedy only and the legislature had no intention to provide two separate remedies in two different ways. This impression gets strengthened from the fact that the words 'by executors, administrators or representatives' of the deceased, appearing

in Section 1-A, have been reproduced in Article 82 of the Limitation Act. When there is death by electrocution, it is an 'actionable wrong', which falls within the ambit of 'tort'. In such a case, no provision, other than those contained in Part VII of the Limitation Act, can, in our view, be made applicable and in that view of the matter, Article 137, which relates to applications, cannot be applied."

[17] In ***Shaitan Vs. Ajmer Vidyut Vitran Nigam Limited*** : ***RLW 2008 (2) Raj. 1429*** the Rajasthan High Court and In ***Smt. Minakshi Patra Vrs. Secretary, Irrigation and Power, Govt. of Orissa and Others*** : ***AIR 1999 Orissa 137*** the Orissa High Court have also taken the same view.

[18] True, it is that one has sympathy with the plaintiffs. If two views are possible then this Court would also take a view which is in favour of the plaintiffs but having considered the arguments of the learned counsel for the parties and having gone through the judgments cited before me, I am clearly of the view that the judgment of the Agartala Bench of the Gauhati High Court lays down the correct exposition of law. As far as the judgments of the Kerala High Court, Andhra Pradesh High Court and Orissa High Court in RFA No.9 of 2006 are concerned they have relied upon the judgment of the Apex Court in ***Jay Laxmi Salt Works (P) Ltd.(supra)*** without realizing that, that was a claim for damages to property and not a claim under the Fatal Accidents Act. I respectfully agree with the views of the Gauhati High Court, Delhi High Court, Rajasthan High Court and Orissa High Court (AIR 1999 Orissa 137).

[19] In this view of the matter, I am clearly of the view that the suit was barred by limitation. Hence, it is not necessary for me to decide

the other issue involved. The appeal filed by the plaintiffs is accordingly dismissed. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE