

IN THE HIGH COURT OF TRIPURA
AGARTALA

RFA 01 OF 2012

- 1. Sri Tapan Kumar Mursom,**
 father of Mandadhari Mursom(deceased)
- 2. Smti. Netai Pati Mursom,**
 wife of Sri Tapan Kumar Mursom,
 both are resident of village Chaigaria(Jumerdhepa),
 Mursom Basti, P.O. Melaghar, P.S. Melaghar,
 District: West Tripura

.....Appellants

- Vs -

- 1. The State of Tripura**
 represented by the Secretary to the Govt. of Tripura,
 in the Power Department,
 having its office at New Capital Complex,
 Litchu Bagan, P.O. Kunjaban,
 P.S. West Agartala,
 District: West Tripura
- 2. The Chairman-cum-Managing Director,**
 Tripura State Electricity Corporation Limited,
 having its office at North Banamalipur,
 P.O. Agartala, P.S. East Agartala,
 District: West Tripura
- 3. The Deputy General Manager,**
 Tripura State Electricity Corporation Limited,
 having its office at Bishalgarh, Gakulnagar,
 P.O. Bishalgarh, P.S. Bishalgarh,
 District: West Tripura

..... Respondents

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the appellants	: Mr. K.K. Pal, Advocate
For the respondents	: Mr. D.C. Nath, Advocate
Date of hearing & order	: 24.11.2015
Whether fit for reporting	: NO

JUDGMENT & ORDER (ORAL)

Heard Mr. K.K. Pal, learned counsel appearing for the appellants as well as Mr. D. C. Nath, learned counsel appearing for the respondents.

2. This is an appeal under Section 96 of the CPC from the judgment and decree dated 06.06.2011 delivered in Money Suit No. 38 of 2008. The appellants who instituted the suit claimed compensation for death of their daughter, namely Mandadhari Mursom who died in a fatal accident by way of electrocution for the negligence attributable to the respondent-Corporation and its officers. On 01.07.2002, the said incident of electrocution took place when that young lady was ensnared in a live electric wire lying on the road. She died instantaneously.

3. The appellants categorically pleaded on the basis of the FIR filed by Jadumohan Mursom before the Melaghar Police Station, leading to the Melaghar P.S. case No. 31 of 2002 under Section 304(A) IPC read with Section 39 of Indian Electricity Act that the respondent-Corporation was under strict liability. In response to such allegations,

the respondent-Corporation stated in the written statement that the said case was not registered against the corporation but against one private individual who installed the hook-line from the electricity line maintained by the Electricity Corporation unauthorisedly and there was no direct contact with their line. The following issues, having regard to the respective pleadings, were framed for adjudication of the suit.

- i) whether the suit is maintainable in its present form and nature?
- ii) whether the daughter of the plaintiffs died out of an electrocution accident or not?
- iii) whether the defendants are liable for electrocution death of deceased Mandadhari Mursom or not?
- iv) whether the plaintiffs are entitled to get amount as claimed?

4. It is an admitted position that the appellants filed a claim petition being T.S. (Fatal Accident) 6 of 2004 in the court of the District Judge, Agartala, West Tripura on 10.05.2004. But in view of the judgment of the Gauhati High Court where it was held that such application under Section 1A and 1B of the Fatal Accident Act, 1855 is not maintainable before the Principal Civil Court in as much as the Principal Civil Court is not the originating civil court in view of the Tripura Court Act as amended from time to time and it has to be filed before the originating civil court having the competent jurisdiction.

5. Having regard to that aspect of the matter the said petition was returned to the appellants by the order dated 28.02.2007 with a direction to file the same before the civil court of

competent jurisdiction, as the said claim before the District Judge was not tenable. It is also not in dispute that the appellants filed the suit before the competent court on 14.08.2008. The trial court while deciding the issues has observed that the suit before it was filed after more than six years whereas the money suit is to be instituted within three years. But while deciding the issue No.2, the trial court has returned the finding that death of Mandadhari Mursom, daughter of the appellants the defendants No.2 and 3 in the suit occurred for electrocution. The respondents No.2 and 3 of this appeal, are responsible for that electrocution. The issue No.1 was decided against the plaintiffs. However, the quantum of the damage was determined at Rs. 1,50,000/- with additional amount of funeral expenses and loss of estate, making the award up to Rs. 1.50,000/- with interest @ 6% per annum. At the time of deciding the issue No.1 as it is found that the suit is not within the time even after discounting the period which has been wasted for pursuing the proceeding before the District Judge, the suit was dismissed on returning the following observation:

“It is decided by this court that the suit instituted by the plaintiffs is not maintainable in his present form and nature as the plaintiffs are stated in the suit of the expiry of the limitation period and as such though the remaining three numbers of issues have been decided in affirmity and in favour of the plaintiffs but in view of the discussion made in herein above in deciding the issue No.1 the suit is hereby dismissed on context of and without any cost to the parties to the suit.”

6. Mr. K.K. Pal, learned counsel appearing for the appellant has submitted that if the period of limitation is considered three

years considering the suit is a money suit, the appellants' suit is within that period of limitation. The method of calculation as adopted by the trial court is entirely faulty and cannot be sustained. According to Mr. K. K. Pal, learned counsel, the cause of action arose on 01.07.2002, when the young girl fell victim to electrocution and the suit was filed on 14.08.2007. But the period from 10.04.2005 to 31.05.2007, the day when the appellants received the plaint from the court of the District Judge has been wasted for prosecuting a wrong forum. Hence, under the provisions of Section 14 of the Limitation Act, the said period should be discounted from the time. Thus, the suit is within the period of Limitation of three years.

7. The method of calculation as advanced by Mr. K. K. Pal, learned counsel appearing for the appellants, has been seriously contested by Mr. D. C. Nath, learned counsel appearing for the respondents. He submits that one year ten months nine days was consumed for the initial institution of the claim in the court of the District judge and the period from 01.06.2007 to 14.08.2007, the appellants consumed the time for filing the fresh suit. Thus the relevant filing was more than three years even after discounting the entire period as claimed by the appellant. That apart, another pertinent point which requires consideration is that it is the nature of the suit based on which the period of limitation is counted. The suit that has been filed by the appellants can only be brought under Section 1A of the Fatal Accident Act, 1855 or if it is categorised as an ordinary suit for realising the damage as action

of the tortious liability, the suit would be governed by the provisions of Article 72 of the Schedule appended to the Limitation Act, 1963. Thus, there is no infirmity in the finding returned by the trial court and as such no interference from this court is required in the impugned judgement and order.

8. In the result the appeal stands dismissed.

After preparing the decree, send down the LCRs.

JUDGE

Moumita