



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.04.2018

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

S.A.No.14 of 2015
& M.P.No.1 of 2015

Balasubramanian

... Appellant/Appellant/4th defendant

Vs.

- 1.Kosalai @ Kowsalya
- 2.Umashankar
- 3.Umamaheswari

..Respondents 1 to 3/Respondents 1 to 3/Plaintiffs 1 to 3

- 4.Tamilnadu Electricity Board,
rep. by its Chairman,
Anna Salai, Chennai.

- 5.Tamilnadu Electricity Board,
rep. by its Assistant Divisional Engineer,
Kadalangudi,
Mayiladuturai Taluk,
Nagapattinam District.

- 6.Tamilnadu Electricity Board,
rep. by its Assistant Executive Engineer,
Kadalangudi,
Mayiladuturai Taluk,
Nagapattinam District.

..Respondents 4 to 6/Respondents 4 to 6/Defendants 1 to 3

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 29.10.2012 passed in A.S.No.1 of 2012 on the file of the District Court, Nagapattinam modifying the judgment and decree dated 18.04.2011 passed in O.S.No.77 of 2006 on the file of the Principal Sub Court, Mayiladuturai.

For Appellant	:	Mr.S.Sounthar
For RR1 to 3	:	Mr.K.Balakrishnan
R4 to R6	:	Mr.V.Viswanathan



J U D G M E N T

Second appeal is filed against the Judgment and decree dated 29.10.2012 passed in A.S.No.1 of 2012 on the file of the District Court, Nagapattinam modifying the judgment and decree dated 18.04.2011 passed in O.S.No.77 of 2006 on the file of the Principal Sub Court, Mayiladuturai. .

2. The appellant is the fourth defendant, in the suit in O.S.No.77 of 2006 on the file of the Principal Sub-Court, Mayiladuthurai, the respondents 1 to 3 are the plaintiffs. The respondents 4 to 6 are the defendants 1 to 3. The respondents 1 to 3 filed the said suit for compensation of Rs.3 lakhs for the death of one Mani, the husband of the first respondent and the father of the respondents 2 & 3. According to the respondents 1 to 3, on 29.11.2004, at about 4 p.m., the said Mani, after cutting grass for the cattle, went to the field belonging to the appellant/fourth defendant, to drink water from the bore well shed, where he was electrocuted and became unconscious. He was taken to the Government Hospital, Mayiladuthurai where he was declared as brought dead. The second respondent/second plaintiff has lodged a complaint in the Kuthalam Police Station and the said complaint was registered in Cr No.539 of 2004. Originally, the suit was filed against the respondents 4 to 6. It was alleged by the respondents 1 to 3 that due to negligence on the part of the respondents 4 to 6 in maintaining the electric wires, the incident took place. The deceased Mani was working as an Agricultural Coolie and was maintaining Hens and Cows. The accident took place only when the deceased Mani went to cut grass for milching Cows. He was earning a sum of Rs.3000/- per month and sought for Rs.3,00,000/- as compensation.

3. The sixth respondent filed the written statement and the same was adopted by the respondents 4 & 5. In the written statement, they have stated that the accident did not occur due to negligence on the part of the respondents 4 to 6. According to them, the accident took place in the Bore shed belonging to the appellant, when the motor was running. There was electricity leakage when the deceased got electrocuted. The appellant was not made as a defendant in the suit. The respondents 1 to 3 suppressed the fact and filed the suit that on the day when the deceased was electrocuted, electric wires were not disconnected or snapped at the place of accident and the respondents 4 to 6 are not responsible for the accident and not liable for any compensation and prayed for dismissal of the suit.



4. The respondents/plaintiffs 1 to 3 impleaded the appellant, as the fourth defendant in the suit. The appellant filed his written statement and additional written statement, wherein, it was contended that the suit against him is barred by limitation. The appellant was impleaded as a party after two years i.e., after expiry of the period of limitation. The appellant has also stated that he has given suit land to one Balakrishnan and the said Balakrishnan only was in possession of the land. The appellant was working as Teacher and he is not cultivating the land. The land is the private land and the third parties have no right to enter into the land. There is suspicion as to how the said Mani died. Only by agitating and blocking the road, the respondents 1 to 3 got certificate that the said Mani died due to electrocution but the said Mani died due to starvation and fits.

5. Before the trial Court, on the side of the respondents 1 to 3, three witness were examined as PWS1 to 3. The Post Mortem Report was marked as Ex.P1. On behalf of the respondents 4 to 6, RW1 & 2 were examined and the appellant examined himself as RW3. The appellant and the respondents 4 to 6 did not mark any documents.

6. The learned trial Judge, considering the pleadings, both oral and documentary evidence, has held that the deceased died due to negligence on the part of the appellant in maintaining bore well shed and the deceased Mani died due to electrocution. The trial Court has also held that the said Mani did not die due to negligence on the part of the respondents 4 to 6. The trial Court held that Article 82 of the Limitation Act is not applicable to the facts of the case and only Article 113 of the Limitation Act is applicable and the suit is not barred by limitation against the appellant. Fixing the notional income of the deceased @ Rs. 3000/- per month, the trial Court passed judgment and decree directing the appellant to pay a sum of Rs.2,42,000/- as compensation together with interest at the rate of 7.5% till the date of decree and thereafter, interest @ 6% till payment in full and costs of the suit. The respondents 1 to 3 did not file any appeal against the dismissal of the suit against the respondents 4 to 6.

7. Against the said judgment dated 18.04.2011 made in O.S.No.77 of 2006, the appellant filed A.S.No.1 of 2012 on the file of the District Court, Nagapattinam. The learned Appellate Judge framed necessary issues for consideration in the first appeal. After considering the pleadings, both oral and documentary evidence, the learned first appellate Judge has held that the suit is not barred by limitation and the death of Mani occurred only due to the negligence on the part of the



appellant. The first appellant judge, however, modified the quantum of compensation as Rs.1,67,000/- instead of Rs.2,42,000/- together with interest @ 7.5% from the date of the suit till the date of decree and interest @ 6% from the date of decree till the date of realisation.

8. As against the said judgment and decree dated 29.10.2012 made in A.S.No.1 of 2012, the appellant has filed the present Second Appeal.

9. At the time of admission of the Second Appeal, this Court framed the following substantial questions of law:

(i) Whether the courts below were right in holding that the appellant is liable to pay compensation, when it is in evidence that the deceased had trespassed into the property of the appellant and got electrocuted?

(ii) Whether the rule Rylands Vs. Fletcher will be applicable to the facts of the present case as against the appellant?

(iii) Whether the principle Volenti non fit injuria is applicable and the same would exempt the appellant from paying compensation?

(iv) Is it not that the deceased had contributed for electrocution?

(v) Whether the courts below were right in exonerating the Tamil Nadu Electricity Board which is responsible for maintaining the electricity system? and

(vi) Whether the principle, the right to sue for compensation, died with the deceased?

Considering the issues raised by the appellant, the substantial questions of law are re-framed as follows:

(i) Whether the courts below were right in holding that the appellant is liable to pay compensation, when it is in evidence that the deceased had trespassed into the property of the appellant and got electrocuted?

(b) Whether the courts below erred in holding suit claim is within limitation overlooking Article 82 of Limitation Act?.

10. The learned counsel appearing for the appellant and the learned counsel appearing for the respondents made submissions on the substantial questions of law now framed in the Second Appeal.

11. The learned counsel for the appellant contended that the deceased Mani was a trespasser and he has no authorisation to enter into the land of the appellant and into the bore well shed of the appellant. The said Mani did not die due to electrocution but he died only due to starvation and fits. The respondents 1



to 3 by pressurizing the Government Officials and the Doctors by agitating and blocking the road obtained Ex.P1, Post Mortem Report as if the said Mani died due to electrocution. In any event, even if the said Mani died due to electrocution, it is a fatal accident and under Article 82 of the Limitation Act, the respondents 1 to 3, ought to have filed the suit against the appellant within two years. The appellant was impleaded only on 06.08.2007, while the said Mani died on 29.11.2004. As per Order VI, Rule 17 and Order I, Rule 10(5), when a person is impleaded, subsequent to filing the suit, it is deemed that he was impleaded as a party only on service of summons on him. Unless the Court passed an order that the said defendant shall be deemed to have been a party on any earlier date. The courts below failed to appreciate the provisions of Articles 21 & 82 of the Limitation Act.

11(a). In support of his contention, the learned counsel for the appellant placed reliance on the decision of the Kerala High Court in the case of Madan Gopal Vs.Dr. Rugmini(CDJ 1988 Ker HC 283), wherein, in paragraph No.12, it is held as follows:

12. Under art. 82 of the limitation act, 1963 two years is the period of limitation prescribed for filing such a suit and the period would begin from the date of the person injured. Art. 82 is in the following terms:
"by executors, Administrators two the date of or representatives under the years death of the indian fatal accidents act, 1885 person killed". (13 of 1855)

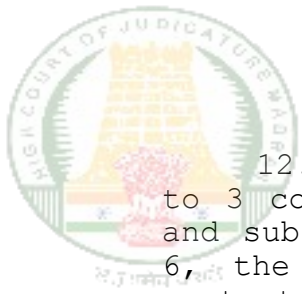
It has been explained in an earlier decision reported in Johnson and another v. Porto novo cundasamy and others (I. L.R. Madras series vol. 28) 1905 page 479) that the representative mentioned in the (indian) fatal accidents act, 1855 would include all persons for whose benefit the right of action was given. It was also held in that decision that the right of action conferred by the act is not for the benefit of the personal estate of the deceased, But for the benefit of his wife, Parent and child. Therefore, In our view art. 82 of the limitation act is the relevant article applicable to this case. The learned counsel for the appellant contended that the relevant article applicable in this case is art. 113. That is a residuary article applicable to suits for which no period of limitation is provided elsewhere in the schedule. When there is a specific article in the statute, The residuary article has no application. Mala died on 21st september, 1983 and the suit was filed only on 23 - 7 - 1986. The allegation made by the applicant in the application show that the suit would be barred by law and the court below was right in rejecting the application under order XXXIII r. 5 C. P. C.



The learned counsel for the appellant also placed reliance on the decision of the Gauhati High Court in the case of The State of Tripura and others Vs. Smt. Swapna Chakraborty and another, (AIR 2005 GAUHATI 173), wherein, in paragraph No.9 , it is held as follows:

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 under Section 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.



12. Per contra, the learned counsel for the respondents 1 to 3 contended that the appellant was not impleaded by mistake and subsequently, after the stand taken by the respondents 4 to 6, the appellant was impleaded as fourth respondent. The contention of the learned counsel for the appellant that Article 82 is applicable to the facts of the present case is not correct. Only Article 113 of the Limitation Act is applicable to the facts of the present case. The appellant was impleaded as fourth respondent within the period of limitation. The Courts below have properly considered Articles 82 & 113 and held that the suit against the appellant is not barred by limitation and also concluded that no question of law much less substantial question of law arises and prayed for dismissal of the appeal.

13. Heard Mr.S.Sounthar, learned counsel for the appellant Mr.K.Balakrishnan, learned counsel for respondents 1 to 3 and Mr.V.Viswanathan, learned counsel for the fourth respondent.

Substantial questions of law 1& 2:

14. The deceased Mani is a third party to the appellant. He is not an employee or he is permitted to enter the Bore well shed or the land of the appellant. The said Mani, entered into the Bore Well Shed of the appellant and while he was with wet hands in the Bore Well Shed, was electrocuted. According to the appellant, there is no possibility of leakage of electricity from the Bore Well Motor as arrangements were made for stopping of running motor if there is any leakage of electricity. The appellant contended that the deceased Mani did not die due to electrocution but he died due to starvation and fits. The appellant has not produced any evidence to show that he made arrangements for stoppage of electricity, if when there is a leakage of electricity. Similarly, he has not substantiated his claim that the deceased Mani died due to starvation and fits. On the other hand, the respondents 1 to 3 examined Dr.Govindarajan, who conducted Post Mortem and marked Ex.P1, Post Mortem Report. Dr.Govindarajan, examined as PW3 gave evidence that the said Mani died due to electrocution and substantiated his evidence by Ex.P1. In view of these facts, there is no error in the findings of the courts below that the said Mani died due to electrocution. It is the contention of the respondents 1 to 3 as well as the contention of the respondents 4 to 6 that Mani died due to electrocution due to leakage of electricity in the Bore Well Shed of the appellant, this was accepted by the Courts below. In view of such findings, the death of the said Mani is only a fatal accident and limitation for claiming compensation or damages for the death of a person caused by a wrongful act or negligence by another person is governed by Article 82 of the Limitation Act. The appellant was impleaded as the fourth defendant on 06.08.2007, while the said Mani died on 29.11.2004, due to fatal accident. As per



Order I, Rule 10, Sub Rule 5, a person, who was impleaded as one of the defendants, shall be deemed to have been ordered as a party only on service of summons. Necessary provisions are Order I Rule 10(5) and Section 21 CPC and Article 82, 113 of Limitation Act. The said provisions are extracted for easy reference:

S.21.Effect of substituting or adding new plaintiff or defendant-

(i)Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party,

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2)Nothing in sub-section(1)shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Provision of Law	Period of limitation	Time from which period begins to run
Article 82:- By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855.	Two years	The date of the death of the person killed.
Article 113:- Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

15. Both the Courts below have held that the appellant was impleaded on 06.08.2007 and though the suit is deemed to have been initiated against him only from that date, the Courts below have erred in holding that Article 113 is applicable to the facts of the present case. The said Article is residue Article and will be applicable only when there is no specific Article fixing the period of limitation for a particular nature of suit. For claiming compensation or damages for fatal accident,



limitation is provided for filing a suit as per Article 82. With regard to the facts of the present case, the claim of the respondents 1 to 3 is only for compensation for the death of Mani due to fatal accident of electrocution for filing the suit for damages or compensation by representatives of the deceased is two years as per Article 82 of the Limitation Act from the date of death of the person. In the present case, the said Mani died on 29.11.2004, and the appellant was impleaded as fourth defendant only on 06.08.2007. At the time of impleading, the trial Court did not pass any order as such impleadment will be construed to earlier than the date of order impleading the appellant. No order was passed under proviso to Section 21 of the Limitation Act, fixing earlier date of impleading the appellant as fourth defendant. Considering all the above facts and materials placed on record, and the judgments of the Courts below, I hold that the deceased Mani was a trespasser into the land of the appellant and entered into the bore well shed without permission of the appellant or the person in -charge of the said Bore Well Shed and died due to fatal accident.

16. In view of the above conclusion, I hold that the suit against the appellant is barred by limitation and the Courts below committed an error of law in holding that Article 113 of the Limitation Act is applicable and not Article 82 of the Limitation Act. For the above reasons, both the substantial questions of law are answered accordingly, in favour of the appellant. Hence, the judgment and decree dated 29.10.2012 passed in A.S.No.1 of 2012 on the file of the District Court, Nagapattinam is set aside and the suit in O.S.No.77 of 2006 on the file of the Principal Sub Court, Mayiladuturai is dismissed.

17. Accordingly, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Judge,
Nagapattinam

2.The Principal Subordinate Judge,
Mayiladuturai.

3.The Section Officer,
Vernacular Records,
High Court, Madras-104(2 copies)

+1cc to M/s.S.Sounthar, Advocate sr.no.25280

+1cc to M/s.K.Balakrishnan, Advocate sr.no.25033

+1cc to M/s.V.Viswanathan, Advocate sr.no.25390

S.A.No.14 of 2015

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