

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1)

RSA No.2794 of 2010(O&M)
Date of Order: 28th August, 2018

State of Haryana and others

..Appellants

Versus

Ms. Piyoja Saini and another

..Respondents

(2)

RSA No.208 of 2011(O&M)

Ms. Piyoja Saini and others

..Appellants

Versus

State of Haryana & others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Girdhar, AAG, Haryana
for the appellant (in RSA NO.2794 of 2010)
for the State (in RSA NO.208 of 2011)

Ms. Monika Arora, Advocate,
for the appellants (in RSA No.208 of 2011)
for the respondents (in RSA NO.2794 of 2010)

ANIL KSHETARPAL, J.

This judgment shall disposed of Regular Second Appeal No.2794 of 2010 and Regular Second Appeal No.208 of 2011, as both have been filed by plaintiffs as well as by the defendants, arising from a single suit, disposed of by a common judgment by the learned trial court as well as by the learned first appellate court.

Plaintiffs, namely, Piyoja Saini and Akshit Saini, minor children of late Sh. Rakesh Kumar Saini, filed a suit under Section 1-A of the Fatal Accident Act, 1855 (hereinafter referred to as 'the Act') for grant of compensation to the plaintiffs. The suit was filed by both the minors through their mother Smt. Anju Saini widow of late Sh. Rakesh Kumar Saini. It is the suit of the plaintiffs that their father late Sh. Rakesh Kumar Saini died in an accident on 17.08.1997 when he was coming to home from his business on a motorcycle. He died due to the fact that a kikkar tree which had bent, hanging on the road from the last 15 days from the date of accident, caused the accident. It is the case of the plaintiffs that 15 days before the accident dated 17.08.1997, there was storm and due to that kikkar tree planted by the defendants i.e. the Forest Department had bent and started hanging on the road at the height of 4 feet causing obstruction to the traffic. However, the officials did not remove the same and the deceased late Sh. Rakesh Kumar Saini who was coming on a motorcycle at 8.00 PM had struck against the aforesaid tree because of bending and starting hanging above the road. Late Sh. Rakesh Kumar Saini fell down and sustained injuries on his chest, mouth and left hand and thereafter was admitted in Civil Hospital, Shahabad from where he was referred to Post Graduate Institute of Medical, Education and Research (PGIMER), Chandigarh, and he succumbed to his injuries. FIR was registered against the forest officials on 19.08.1997. The suit was instituted on 18.01.2003.

The State of Haryana contested the suit and pleaded that motorcycle had not struck with the tree as there was no tree which had bended and started hanging on the road. It was pleaded that the plaintiffs have made a false story and got registered the case against the Forest

Officials. It was further pleaded that the representation filed by the plaintiffs had rightly been rejected vide order dated 21.08.1998. The suit was also claimed to be barred by time. It was also claimed that the plaintiffs are not indigent persons therefore the suit is not maintainable without payment of the court fee.

Learned trial court on appreciation of the evidence dismissed the suit, whereas the learned first appellate court reversed the judgment passed by the learned trial court and decreed the suit by awarding a sum of Rs.5,76,000/- along with interest @ 9% per annum from the date of filing of the suit till realization.

In the considered opinion of this court, following substantial questions of law arise in the present case:-

- (i) Whether a suit filed by the minors before attaining majority but after the period of limitation prescribed under the Limitation Act, 1963 (hereinafter referred to as 'the Act of 1963') would be barred by time?
- (ii) Whether while calculating the damages the guidelines issued by the Constitution Bench of the Supreme Court while deciding claim under the Motor Vehicle Act can be applied?

Both the courts have found the suit to be within limitation. Learned counsel for the State of Haryana could not point out any error in appreciation of evidence by the learned first appellate court while returning the finding that the tree had started hanging on the road dangerously due to storm at the height of 4 feet belonged to the Forest Department and late Sh. Rakesh Kumar Saini, father of the plaintiffs had died as he had

struck against the aforesaid tree and fell down and sustained injuries. Learned counsel for the State of Haryana submitted that as per Article 82 of The Limitation Act of 1963, suit could only be filed within 2 years from the date of death of the person killed. He submitted that since the suit was instituted beyond the period of 2 years, therefore the judgments of the courts below are erroneous on this aspect and hence liable to be set aside.

On the other hand, learned counsel for the plaintiffs has submitted that both the minors were under a disability as provided in Section 6 of The Limitation Act of 1963 and, therefore, the limitation stood extended upto a period of 2 years after the disability has ceased to exist. Hence, she submitted that the suit although filed after a period of 2 years from the date of accident but before attaining the majority would be within limitation as limitation stood extended upto the period of 2 years from the date of legal disability ceased to exist.

She further submitted that the learned first appellate court has erred in awarding meager compensation without taking into consideration the compensation payable under the head of Enhancement of Income on account of future prospects. She further submitted that under the conventional heads also, namely, loss of estate and funeral expenses, no amount has been awarded.

Now the stage is set for considering the questions of law:-

QUESTION NO.(i):-

Whether a suit filed by the minors before attaining majority but after the period of limitation prescribed under the Limitation Act, 1963 (hereinafter referred to as 'the Act of 1963') would be barred by time?

As per Section 6 of the Act of 1963, where a person entitled to institute a suit or make an application for execution of a decree is, at the

time from which the prescribed period is to be reckoned, a minor or insane or an idiot, he may institute the suit or make an application within the same period after disability has ceased to exist. Section 6 of the Limitation Act, 1963 is extracted as under:-

6. Legal disability.—(1) *Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.*

(2) *Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.*

(3) *Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.*

(4) *Where the legal representative referred to in sub-*

section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained sub-sections (1) and (2) shall apply.

(5) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Section 7 of the Act of 1963 further provides that where disability is of one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased. Section 7 of the Act of 1963 is extracted as under:-

7. Disability of one of several persons.—*Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the*

concurrence of the others or until the disability has ceased.

It is apparent from the co-joint reading of Sections 6 and 7 of the Act of 1963 that where a person or persons entitled to institute a suit are under a disability when the prescribed period is to begin, the period would begun to run only after the disability has ceased to be exist.

In the present case, both the plaintiffs were minors and they had filed a suit through their mother during the period of disability. Learned State counsel submitted that once the plaintiffs have not chosen to take the benefit of Section 6 of the Limitation Act, the suit filed by the plaintiff on 18.01.2003 with respect to the accident which took place on 17.08.1995 was barred by time.

This court has considered the submissions made by learned counsel for the State, however, do not find any substance therein.

As per Section 6 of the Act of 1963, period of limitation gets extended upto the date when the limitation expires after the disability has ceased to exist. If the argument of learned counsel for the State is accepted, it would lead to absurd results. As per learned counsel for the State, the limitation began to run from 17.08.1997 and ended on 16.08.1999 i.e. two years from the date of accident and thereafter it would begun to run from the date disability ceases to exist i.e. on the date when the youngest attains the age of majority and for 2 years thereafter.

This is not the intention of the Act. Section 6 clearly provides that the limitation gets extended and does not begun to run till the disability ceases to exist. Reference in this regard can be made to a judgment passed by this court in the case of **Gurvinder Singh @ Angrej Singh v. Ginder**

Singh and others, 2011(52) R.C.R.(Civil), 712, wherein exactly this issue was examined. Similar issue was examined by a Division Bench of Allahabad High Court in the case of Smt. Usha Rani Banerjee and others v. Premier Insurance Company Ltd., Madras and others, 1983 AIR (Allahabad) 27, which of course was a case filed under Motor Vehicles Act, 1939 prior to the amendment in the year 1969. In this case also it was held that even if one of the several persons jointly entitled to institute a suit and a discharge cannot be given by others, time will not run against any one of them. The Hon'ble Division Bench held that the mother who was major could not give a discharge without concurrence of her two children who were under a disability and since both the children who were minor incapable to giving their consent, therefore, she could not give consent on their behalf to give discharge. In these circumstances, it was held that the period of limitation would begin to run after the disability has ceased to exist with regard to youngest of the several persons.

In view of the aforesaid discussion, question no.1 is answered in favour of the plaintiffs and both the courts have rightly held that the suit was within limitation.

QUESTION NO.(ii)

Whether while calculating the damages the guidelines issued by the Constitution Bench of the Supreme Court while deciding claim under the Motor Vehicle Act can be applied?

In the considered opinion of this court, the purpose of grant of damages under the Fatal Accident Act, 1855 is to award just damages with a view to compensate the heirs notwithstanding the death of the person who has died. Just compensation is the word used in Section 166 of the Motor Vehicles Act. Therefore, the principles laid down in the Motor Vehicle Act

can be invoked to calculate the damages payable under the Motor Vehicle Act.

Hence, question no.2 is also answered in favour of the plaintiffs.

In the present case, late Sh. Rakesh Kumar Saini who was father of the plaintiffs, aged about 30 years had died in an accident, leaving behind two minor children, one was still in the womb and a widow. However, the suit has been filed only by the minor children. Learned first appellate court had assessed the income of the deceased at Rs.6,000/- per month. It is proved that late Sh. Rakesh Kumar Saini was running a shop dealing in seeds, insecticides, pesticides, cattle feed etc. Since no material has been placed on file to prove that the assessment of the income at Rs.6,000/- was wrong, therefore, this court goes by the assessment of the income which has been made by the first appellate court. Learned first appellate court has applied a cut of 1/3rd on account of personal expenses. However, the first appellate court has not noticed that the present suit has not been filed by widow, therefore, dependency has to be worked out with reference to only plaintiffs. Hence, the dependency of two minor children is worked out at 50% if the income which comes to Rs.3,000/-. However, since the deceased was only 30 years of age at the time of accident, therefore, the first appellate court has fallen in error in not adding income on account of future prospects to the extent of 40%. The first appellate court has even erred in applying the multiplier of 12 instead of 17. Under the conventional heads, the appellants shall be only entitled to loss of estate and funeral expenses as laid down in *National Insurance Company Limited v. Pranay Sethi and others, JT 2017(10) SC 450*. Thus, the

compensation payable is re-worked as under:-

<i>Heads</i>	<i>Compensation awarded by the High Court</i>		<i>MACT</i>
Income Taken	Rs.6000-00		Rs.6000-00
+ future Prospects	Rs.2400-00= 8400/-		NIL
-50% Deduction	Rs. (-) 4200/-		(-)Rs.2000-00
	Rs. 4200/-		Rs.4000-00
Multiplier	Rs.4200x12x17=8,56,800/-		Rs.4000x12x12= Rs.5,76,000/-
Conventional Heads:-			
Consortium	NIL		
Funeral expenses	Rs.15000-00		NIL
Loss of Estate	Rs.15000-00		
Total	Rs.8,56,800+30,000=8,86,800/-		Rs.5,76,000/-
Already awarded by Motor Accident Claims Tribunal	Rs.5,76,000/-		
Compensation Awarded by the High Court : Rs.8,86,800-00			
(-)Compensation Awarded by the MACT : Rs.5,76,000-00			
Enhanced Compensation : Rs.3,10,800-00			

Enhanced compensation shall be payable with interest @ 9% per annum from the date of institution of suit till realization.

Accordingly, the Regular Second Appeal No.208 of 2011 is allowed and the Regular Second Appeal No.2794 of 2010 filed by the State is dismissed.

28th August, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No