

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.469/2018**

% **30th May, 2018**

POONAM SHARMA & ORS. Appellants

Through: Mr. Rakesh Tikku, Senior
Advocate with Mr. Amiet
Andley, Advocate and Mr.
Sandeep Kumar, Advocate.

versus

UNION OF INDIA & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.23655/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.23656/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 47 days
in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M. No.23657/2018 (exemption from filing TCR)

3. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.469/2018

4. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit impugning the judgment of the Trial Court dated 8.12.2017 by which trial court has though found the respondents/defendants guilty of negligence in arrest and medical treatment of Sh. Vinod Kumar Sharma, the late husband of the appellant no.1/plaintiff no.1, and held that damages of Rs.7.50 lacs could be awarded, yet, the suit was held to be barred by limitation, and therefore the suit was dismissed.

5. The cause of action as prayed for in the suit was that Sh. Vinod Kumar Sharma, the late husband of the appellant no.1/plaintiff no.1 and late father of the appellant nos.2 and 3/plaintiff nos. 2 and 3, met with an accident on 10.12.1992 while driving his scooter. Sh. Vinod Kumar Sharma in the accident suffered a head injury and was taken by the police/respondent no.6/defendant no.6 to Deen Dayal Upadhyaya Hospital for examination/treatment. The hospital authorities observed that Sh. Vinod Kumar Sharma was under the influence of alcohol. The hospital/respondent no.5/defendant no.5 stitched the wounds of Sh. Vinod Kumar Sharma on the head and after

prescribing medication discharged him. Since Sh. Vinod Kumar Sharma was found by the police to be in breach of Section 185 of the Motor Vehicles Act, 1988, hence for this offence Sh. Vinod Kumar Sharma was taken to police lockup. During the night, Sh. Vinod Kumar Sharma complained of severe headache and he was taken to hospital but he was again discharged by prescribing the same treatment. In the morning, Sh. Vinod Kumar Sharma was released on bail and taken to home where his condition deteriorated and therefore he was again taken to Deen Dayal Upadhyaya where his X-ray and CT Scan was done. It was then revealed that Sh. Vinod Kumar Sharma has suffered from internal injuries and bleeding and therefore he was referred to RML Hospital for surgery of brain but Sh. Vinod Kumar Sharma was declared brought dead. In the suit plaint it was further pleaded that Sh. Vinod Kumar Sharma was employed with Nitco Roadways Limited at a salary of Rs.3,000/- per month and since the police authorities and the hospital failed to perform their duties and consequently this resulted in the death of Sh. Vinod Kumar Sharma, hence the appellants/plaintiffs should be held entitled to damages of Rs.17.72 lacs with interest at 12% per annum as prayed in the suit.

6. The suit was contested by the respondent nos. 3 to 6/defendant nos.3 to 6 who denied any wrong doing.

7. Trial court has found the respondent nos. 3 to 6/defendant nos.3 to 6 guilty of wrong doing and has held that if damages were to be awarded, then the same would be of the amount of Rs.7.50 lacs by applying the principles under the Motor Vehicles Act, but the suit was found to be hopelessly barred by time and consequently the suit was dismissed.

8. For dismissing the suit as barred by limitation, trial court has taken three separate eventualities. Firstly, the aspect on the issue of limitation was taken of the fact that since the cause of action of damages would have arisen on account of the death of Sh. Vinod Kumar Sharma on 11.12.1992, but the suit was filed around 13 years later on 20.9.2005, therefore the suit which had to be filed either within one year because of Article 72 of the Limitation Act, 1963 such a suit would be barred by limitation and had to be dismissed. The second alternative finding of the trial court was that even if limitation is taken as three years under Article 113 of the Limitation Act, yet once again the suit filed beyond three years from 11.12.1992 was

barred by limitation. The third aspect which the trial court has taken for holding the suit to be barred by limitation is that even if the appellants/plaintiffs are given the benefit of the period of pendency of the Civil Writ No.594/1993 in this Court in which the appellants/plaintiffs were held entitled to a compensation of Rs.2 lacs with costs of Rs.5,000 and with further opportunity to file a suit for damages, yet even if the period of pendency of the writ petition from approximately 15.4.1998 till 30.9.2002 is excluded, even then the period from 11.12.1992 till the writ petition was filed on 15.4.1998 and the period after disposal of the writ petition on 30.9.2002 till the filing of the suit on 20.9.2005 when added, these periods prior to filing of the writ petition and the period after filing of the writ petition till filing of the suit, will make the suit as filed beyond three years i.e though appellants/plaintiffs can be given the benefit of Section 14 of the Limitation Act for exclusion of the period of pendency of the writ petition for filing of the subject suit, even then the suit has been filed beyond a period of three years. Trial court has very exhaustively and extensively dealt with the aspects of limitation under alternative heads from paras 18 to 32 of the impugned judgment and I agree with the

reasoning and conclusion contained in the same, and am not reproducing the said paras herein to avoid prolixity.

9. Learned senior counsel for the appellants/plaintiffs argued that cause of action in this suit should be taken as having arisen from the date of decision of the writ petition on 30.9.2002, however I cannot agree because cause of action for a suit to claim damages will arise on the date of happening of the event or the injury which caused damages and the acts of negligence, and which happened on 10.12.1992. Merely because a court subsequently arrives at a finding in a litigation of negligence, would not mean that on arriving at such a finding of negligence only then would a cause of action arise. This argument is therefore rejected.

10. In view of the above discussion, I do not find any merit in the appeal. Dismissed.

MAY 30, 2018
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VALMIKI J. MEHTA, J