



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA-1026-2025(O&M)
Date of decision: 20.05.2026

Sarwan Singh @ Samma Singh & Others

...Appellant(s)

Vs.

Sukhraj Kaur & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Karanjit Singh, Advocate
for the appellants.

NIDHI GUPTA, J.

Present Second Appeal has been filed by defendants No.1 to 4 laying challenge to the concurrent judgments and decrees of the learned District Courts whereby Suit filed by the plaintiff/respondent No.1 herein for recovery of Rs.25 lakh, has been partly decreed by both the Courts below.

2. Brief facts of the case as pleaded in the plaint are that Gurpreet Singh was the only son of the plaintiff and was an agriculturist. The plaintiff being mother of the deceased was fully dependent upon Gurpreet Singh @ Gopi. The plaintiff was constructing her new house in the field after demolishing her old house. On 08.12.2012 at about 11 pm, the plaintiff and her son were sleeping at the construction site when plaintiff and other persons heard noise; and saw that approximately 11 persons on motorcycle came



where the plaintiff and Gurpreet Singh were sleeping. These persons were identified by the plaintiff as defendants No.1 to 9 all armed with different weapons. All the said persons attacked Gurpreet Singh and injured him, as a result of which Gurpreet Singh died on the intervening night of 9/10 December 2012 at 1:30 am in Hospital. On statement of plaintiff, FIR No.202 dated 10.12.2012 was registered under Sections 302, 364, 336, 452, 148 and 149 IPC read with Section 25, 27 Arms Act at Police Station Ajnala, Amritsar against the defendants. After registration of the FIR, defendants were arrested and some were wrongly declared innocent by the Police. Husband of the plaintiff had already expired. Plaintiff was fully dependent upon Gurpreet Singh. It was averred that due to untimely death of late Gurpreet Singh, entire family including the plaintiff have been deprived of his love and affection. Hence, present Suit was filed by the plaintiff on 05.05.2016 for recovery of damages Rs.25 lakh along with interest on account of death of Gurpreet Singh.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the Id. Additional Civil Judge (Senior Division), Ajnala had partly decreed suit of the plaintiff vide judgment and decree dated 15.07.2019 as follows: -

“17. In view of the findings on above issues, the suit of the plaintiff stands partly decreed with costs to the effect that the plaintiff is entitled to receive compensation amounting to Rs.18,00,000/- alongwith interest at the rate of 6% p.a. from the date filing the present suit till its realization from the defendants no.1 to 4 for



causing injuries on the person of Gurpreet Singh due to which he had died. Decree sheet be prepared. File be consigned to the Judicial record room, Ajnala, after due compliance.”

4. Civil Appeal filed by defendants No.1 to 4 was partly accepted by Id. Additional District Judge, Amritsar vide judgment and decree dated 23.01.2025, and compensation payable to plaintiff was reduced as follows:-

“20. In view of above discussion, this Court is of the opinion that the judgment passed by the Id. Trial Court reveals that formula applied by the Id. Trial Court to compensate damages has been incorrectly applied. Hence, the judgment of the Id. Trial Court deserves to be modified to the extent of amount of compensation of Rs.11,28,400/-to which plaintiff is entitled alongwith interest at the rate of 6% per annum from the date of filing of the suit till realization from defendants no.1 to 4 for causing injuries on the person of Gurpreet Singh son of the plaintiff, due to which he had died. Except the above said modification, I do not find any infirmity, illegality or perversity in the judgment and decree passed by the learned Trial Court and the defendants have not been able to make out any worthwhile ground, warranting any interference in the well-reasoned judgment and decree passed by the Id. Trial Court, in this appeal. Thus, in the considered view of this Court, the appeal of the defendant is devoid of any merit and same is hereby dismissed with no order as to costs. Decree sheet be prepared accordingly. Appeal file be consigned to Record Room after its due compilation.”

5. Hence, present second appeal by the defendants No.1 to 4.



6. Learned counsel for the appellant inter alia submits that both the District Courts failed to consider the fact that the present Suit filed by respondent/plaintiff was beyond limitation as, under Article 82 of Limitation Act, 1963 the period of limitation is two years from the date of death of the deceased in order to claim compensation. In the present case the alleged murder of the deceased took place on 08.12.2012, whereas the Suit was filed by the plaintiff on 05.05.2016 i.e. 3½ years from the date of the murder of the deceased. This important fact has been completely side tracked by both the District Courts. Another important fact not considered by the both the District Courts was that the First Appeal of appellant against their conviction is still pending adjudication before the Hon'ble High Court vide CRA-D 438-DB of 2016 and in case the appellants are acquitted no cause of action would arise against them to claim compensation by the respondent/plaintiff. It is accordingly prayed that the impugned judgments and decrees be set aside.

7. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the record in detail. I find no merit in the submissions advanced on behalf of the appellant.

8. Both the Courts below have concurrently found that Gurpreet Singh was murdered by the appellants. The plaintiff had examined PW1 Dr. Manpreet Kaul, who deposed that she conducted post-mortem examination, and she proved the Post-Mortem Report as Ex.P1 and found 31 injuries on the dead body of Gurpreet Singh and all the injuries were ante-mortem in nature.



The plaintiff further placed on record certified copy of Judgment dated 21.03.2016 (Ex.P3), which shows that accused Nos.1 to 4/defendants No.1 to 4 were held guilty for having committed an offence under Section 304 read with Section 34 IPC and were sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/- each and in default of payment of fine to further undergo sentence as specified. Therefore, plaintiff has proved that appellants had caused injuries on the person of Gurpreet Singh which led to his death. The District Courts returned findings of fact independent of the Criminal Courts, based on the evidence placed before it. The same being pure findings of fact returned concurrently by both the Courts below, this Court in second appeal cannot interfere with the same. As such, pendency of the Criminal Appeal filed by the appellants against their conviction is of no help to them.

9. It has also come on record that plaintiff is a widow lady, and deceased Gurpreet was her only son. The plaintiff suffered mental agony due to untimely death of her son who was murdered by the appellants. Therefore, plaintiff was held entitled for compensation from defendants No.1 to 4.

10. Further, on a Court query, learned counsel for the appellants has admitted that objection of limitation was not raised by the appellants in their written statement before the learned Courts below. Accordingly, no issue was framed by the learned trial Court in this regard. As such, said plea is not available to the appellant at this belated stage.



11. Even otherwise, suit of the plaintiff is not governed by Article 82 of the Limitation Act; as the said provision is applicable to cases arising out of the Fatal Accidents Act, 1855. The distinction is that the Fatal Accidents Act applies only to accidental or wrongful deaths by "neglect or default". Whereas Intentional murder constitutes a distinct and separate cause of action. In the case of murder or intentional homicide, the Courts have consistently held that the claim is an independent right under ordinary civil or common law and would fall outside the scope of the Fatal Accidents Act. Thus, murder, would not be subject to the two-year limitation restriction of Article 82.

12. I am supported in my view by a judgment of the Tripura High Court rendered in **Sipra Banik v. Chairman-cum-Managing Dire., Tripura State Electricity (Tripura) : Law Finder Doc Id # 722467**; wherein it is held that: -

*"14. On the other hand, in **State of Tripura v. 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 1A for which a suit can be filed, might have inspired use of the word 'action' before the word 'suit'. When Section 1A 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 1A. 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 1A 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 1A 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 1A 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 v. 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.”*

13. Clearly therefore, Article 82 of the Limitation Act is applicable only to an actionable claim brought under the Fatal Accidents Act, 1855.

14. In this regard, reference needs also be made to landmark judgment of our own Court in **Partap Singh v. Gurdial Kaur, (P&H) : Law Finder Doc Id # 29532**, wherein, the entire issue has been examined, and it has been held as follows: –

“8. The only point that was urged by the learned Counsel for the appellant is that the suit is barred by time in view of Article 82 of the Limitation Act, 1963 which concerns a suit under the Fatal Accidents Act, 1855. Under the said article, the suit claiming compensation under the Indian Fatal Accidents Act, 1855 is to be filed within two years from the date of death of the person killed. According to him, the suit claiming compensation for the death of the husband of the plaintiff is one under



the Fatal Accidents Act and therefore the suit filed by the plaintiff beyond the period of two years is liable to be dismissed.

9. No doubt an issue was framed by the trial Court whether the suit is not within time. The trial Court categorically stated that the said issue has not been pressed by the learned Counsel for the defendants. During the course of arguments, the same was also not raised by the appellant in the lower Appellate Court. Since the said issue has been given up by the defendants, it is not open to the appellant to raise the same. Apart from that I am of the opinion that the provisions of The Indian Fatal Accidents Act are not applicable to the present case as the plaintiff has not brought any action under the Fatal Accidents Act. It is a suit claiming damages for the intentional killing of the husband of the plaintiff by the defendants. It is not a case of any accidental death due to the wrongful act, neglect or default on the part of the 1st defendant-appellant. The death of the husband of the plaintiff was homicidal, but not accidental.

10. It is no doubt true that the common law maxim is *Action personalis moritur cum persona* (a personal right of action dies with the person) and at common law, no one can recover damages for the death of another which is known as the rule in *Baker v. Bolton*, 1808(1) Camp 493. To get over this maxim, the Fatal Accidents Act, 1855 has been enacted. This maxim cannot be made applicable where the plaintiff has a new cause of action or totally new action.

11. It has been held in **Official Liquidator, Supreme Bank Ltd. v. P.A. Tandolkar and others**, 1973(1) SCC 602 as follows :-

"The maxim Action personalis moritur-cum persona, as pointed out in Winfield's "Law of Tort" (Eighth Edn., pp 603-605), was an invention of English Common Lawyers. It seemed to have resulted from the strong quasi-criminal character of the action for trespass. Just like a prosecution for a criminal offence, the action



for trespass, which was "the parent of much of our modern law of tort" was held, by applying this maxim, to be incapable of surviving the death of the wrong-doer, and in some cases, even of the party injured. The maxim, with its extension, was criticised by Winfield and found to be "pregnant with a good deal more mischief than was ever born of it". Whatever view one may take of the justice of the principle, it was clear that it would not be applicable to actions based on contract or where a tortfeasor's estate had benefited from a wrong done. Its application was generally confined to action for damages for defamation, seduction, inducing a spouse to remain apart from the other and adultery."

The very title of the Act namely 'Fatal Accidents Act' itself denotes that the death must be due to an accident. The remedy provided under the Act must be confined to an action for the injury caused to the deceased and in respect of which the deceased could have maintained action in case he had survived.

12. The common law right of the plaintiff, who is the widow of the deceased to claim damages for the personal loss suffered by her due to death of her husband is not taken away or restricted by the provisions of the Fatal Accidents Act. The act of killing of a person on whom the plaintiff was dependent and thereby deprived of her livelihood itself furnishes a new cause of action to her. That cause of action is independent of the loss to the estate of the deceased or the right of the deceased to claim damages for the injury sustained by him had he been alive. By intentionally killing a person on whom the plaintiff was dependent upon, the defendant caused an injury to the plaintiff who can enforce her remedy in her own right against the killer for the loss suffered by her. What is to be borne in mind is that, in cases where actions are brought arising out of an accident resulting in death, the wrong done is not strictly the death; the wrong done which gives rise to the cause of action is injury which may or may not sooner or later result in death. A person who is



still alive can always and has been able to bring an action in such circumstances and in the event of death of such a person, the right of that person to seek damages for the injury caused to him has been given to his dependents under the Fatal Accidents Act. That right of the person, who sustained the injury which ultimately resulted in his death, is independent of the right of his dependents for the personal loss suffered by the dependents. The provisions of the Indian Fatal Accidents Act, 1855 are supplemental in addition to the rights of the plaintiff to claim damages under the ordinary civil law. Since the plaintiff has not filed the suit under the Fatal Accidents Act, it cannot be said that the suit is barred by time under Article 82 of the Limitation Act, 1863.”

15. Learned counsel for the appellants is unable to dispute or controvert the aforesaid facts, findings, and legal position.
16. Thus, no ground is made out to set aside the impugned judgments and decrees. In view of the above, present Second Appeal stands **dismissed**.
17. Pending application(s) if any also stand(s) disposed of.

20.05.2026
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No