
that the Executing Court cannot travel beyond the order or decree. It has to execute in terms of Order 21 of the Code of Civil Procedure.

(37) What is the position herein? A settlement was arrived at. At best, the Labour Court could interpret the said settlement and if there was anything more due, the benefit could be given to the workmen but the Labour Court could not interpret or go into the controversy of fraud, if any, because on basis of fraud in execution the decree cannot be modified. Similarly, when there was a basic controversy about the age of retirement, it was not pertaining to a pre-existing right. The award of the Labour Court in this regard, therefore, cannot be sustained.

(38) For these reasons, both the writ petitions are allowed and the impugned awards are set aside.

(39) Nothing said herein would restrain the private respondents from raising a proper dispute and getting it referred for adjudication.

(40) In all fairness to the parties counsel, it must be stated that certain other contentions on merit had been urged and argued. An attempt has been made not to touch the same but nothing said herein in any event shall be taken to be expression of opinion on the merits of the case if reference is made to the Labour Court.

R.N.R.

Before T.H.B. Chalapathi, J

PARTAP SINGH,—Appellant

versus

GURDIAL KAUR & ANOTHER,—Respondents.

R.S.A. No. 1632 of 1998

23rd July, 1998

Fatal Accidents Act, 1855—Limitation Act, 1963—Art. 82—Damages claimed for the intentional killing of the husband—Nature of such claim—Not a claim under the Fatal Accidents Act—Limitation.

Held 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 defendant. The death of the husband of the plaintiff was homicidal but not accidental. The common law right of the plaintiff, who is 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. Provisions of Art. 82 of the Limitation Act are, therefore, not attracted.

(Paras 9 & 13)

Vinay Kumar Mahajan, Advocate,—*for the Appellant.*

JUDGMENT

T.H.B. CHALAPATHI, J.

(1) This Second Appeal has been filed against the order of learned Additional District Judge, Faridkot dismissing the appeal filed by the defendants in Civil Appeal No. 68 of 1997 dated 17th March, 1998.

(2) The Plaintiff-respondent filed the suit claiming damages of Rs. one lac on the ground that her husband was murdered by the defendants-appellants. The trial Court on the basis of evidence on record came to the conclusion that the husband of the plaintiff was murdered by the defendants and that the plaintiff is entitled to compensation and accordingly awarded a sum of Rs. one lac as compensation by his order dated 18th March, 1997. Against the said judgement and decree both the defendants preferred an appeal to the Additional District Judge, Faridkot, who by the impuged judgement allowed the appeal of the second defendant and confirmed the decree and judgment of the trial Court as against the 1st defendant, who is the appellant herein.

(3) There is no dispute that Malkiat Singh husband of the plaintiff was assaulted by the defendants on the night of 14th March, 1984 and he died on 15th March, 1984 in the Christian Medical College & Hospital, Ludhiana and both the defendants were prosecuted for the offence under Section 302 I.P.C. and they were convicted by the learned Sessions Judge, but the Apex Court acquitted 2nd defendant while maintaining the conviction and sentence of life imprisonment

awarded to the 1st defendant, who is the appellant herein,—*vide* its judgment dated 11th August, 1988.

(4) The plaintiff filed the suit claiming compensation and damages against both the accused on the ground that they were responsible for causing the death of her husband.

(5) Both the Courts concurrently found that it is the appellant who fired a gun shot at the deceased as a result of which the husband of the plaintiff died. On the basis of the evidence adduced before the Courts below it was held that the appellant herein was responsible for the death of the deceased. That being a pure finding of fact, this Court in the Second Appeal will not re-appreciate the evidence to come to a different conclusion.

(6) It is no doubt true that the reason in the judgment of the Criminal Court is not binding on the Civil Court, but the Civil Court came to an independent conclusion that on the basis of evidence on record, the death of the husband of the plaintiff was homicidal and that the 1st defendant-appellant killed him. This finding has been arrived at on a proper appreciation of evidence on record.

(7) Learned Counsel for the appellant has also not been able to show how the finding arrived at by the Courts below on the basis of evidence is incorrect. I, therefore, confirm the said finding.

(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 *actio 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* (1). 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* (2) as follows :—

“The maxim *actio 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 wrongdoer, 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.”

(12) 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.

(13) The common law right of the plaintiff, who is the widow of the deceased to claim damages for the personal loss suffered by her

(1) (1808) 1 Camp 493

(2) 1973 (1) S.C.C. 602

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.

(14) I, therefore, do not find any merit in this appeal and the same is accordingly dismissed.

S.C.K.

Before Jawahar Lal Gupta & N. K. Agrawal, JJ

M/S KIRAN HOUSE (K.T.H.) AND OTHERS,—*Petitioners*

versus

UNION OF INDIA & OTHERS,—*Respondents.*

CWP 1820 of 1999

10th February, 1999

Constitution of India, 1950—Arts. 14, 246 & 249—Service tax—Whether Parliament has power to legislate—Whether levy discriminatory.