
For Appellants	Mr. C.R. Sahu, Advocate
For Respondents No.1 & 2	Mr. Raja Sharma, Advocate
For Respondent/State	Mr. Rahul Tamaskar, Govt. Advocate
Amicus Curiae (to assist the Court)	Mr. Prajanal Agrawal, Advocate

Hon'ble Mr. Justice Goutam Bhaduri &
Hon'ble Mr. Justice Radhakishan Agrawal

Judgment on Board

Per Goutam Bhaduri, J.

24-01-2024

1. By this appeal the appellants/plaintiffs would call in question the legality and validity of the impugned judgment and decree dated 28-7-2023 passed by the District Judge, Balodabazar, District Balodabazar, in civil suit No.01-A/2020 whereby the suit preferred by the plaintiffs claiming compensation against electrocution death of Hemant Dhruw (since deceased) was dismissed. The appellants, who are legal heirs of the deceased, are present before this Court against such dismissal.
2. In order to advance the cause of justice Mr. Pranjal Agrawal, Advocate, who was present in the Court on the earlier occasion, was requested to assist the Court as *amicus curiae*. He argued the case. Mr. Pranjal Agrawal was assisted by Mr. C.R. Sahu, original counsel for the appellants. Respondents No.1 & 2 are represented by Mr. Raja Sharma, Advocate. Respondent No.3 is represented by the State counsel.

3. The facts of this case, in brief, which led to filing of civil suit, are that one Hemant Dhruw, resident of village Jhonka, was working as a labour and used to look after his entire family, who are the appellants (legal heirs) herein. According to the plaintiffs, the deceased used to earn ₹ 7,000/- per month, which would have increased with the passage of time. On 22.02.2014 at Village Jhonka, because of heavy rains and storm one of the electric wire, which had a connection from the transformer, fell down on the ground wherein electricity flow continued. On 22.02.2014 at about 5:00 a.m. the deceased went to answer the nature's call and got into contact with the scattered wire, wherein he sustained severe injuries due to electrocution and initially he was referred to the Government Hospital at Balodabazar. Subsequently, he was referred to the higher center, however, during the course of treatment the deceased succumbed to the injuries on 28.2.2014. On account of sudden demise in harness, the merg was registered and in the postmortem cause of death was affirmed due to electrocution. Statement was given by the villagers that it was because of the fault on the part of the Electricity Department. Subsequently, after a gap of almost five years, notices were exchanged by the legal heirs claiming compensation and the suit was eventually filed claiming compensation to the tune of ₹ 25,00,000/-.
4. The Electricity Department (Respondent Nos.1 & 2) denied the adverse allegations and stated that death was caused due to self inflicted injuries and it was stated that the deceased was installing

some DO in the transformer, therefore the incident happened. The department also raised a question about the limitation to say that the suit should have been filed within three years and prayed for dismissal of the same being barred by limitation.

5. The trial Court framed four issues and held that the death was not due to the negligence on the part of the Electricity Department and further held that the suit is barred by limitation. Consequently, dismissed the suit. Thus, this appeal.
6. Learned *amicus curiae* would submit that the nature of death was due to electrocution, therefore, the question would fall whether the suit can be dismissed on the ground of delay in compensation cases. He would further submit as per Section 2 (j) of the Limitation Act 1963 (for short 'the Act, 1963') the prescribed period has been defined and the suit which was filed is predominately a claim petition for electrocution death. Therefore, it would be a continuous cause of action. Learned counsel would refer Halsbury's Laws of England to submit when the time runs continuous as the claimants are deprived claim of compensation on account of death of their breadwinner and they being the dependents their claim cannot be curtailed. He would also submit that after the notice was issued by the claimants to compensate them on 12.1.2019, the time may be stated to be started running. It is further contended that the suit was filed on 25.9.2019, hence, it cannot be held to be barred by time. He would next submit that the written statement and Ex.D/1, which is Panchnama prepared by the Department itself, would show that

department has admitted its fault, therefore, they cannot go back of their own admission. Learned counsel would submit that the cause title of the suit itself would show that the plaintiffs No. 2, 3, 4 and 5 were minors at the time of filing of the suit, therefore, the suit cannot be held to be barred by time on account of limitation as the minors could have prosecuted their claim even after attaining the age of majority. He would, therefore, submit that following the principle laid down by the Supreme Court in the case of *M.P. Electricity Board v Shail Kumar and Others*¹, the compensation is required to be assessed.

7. Learned counsel appearing for the respondents, *per contra*, would submit that as per Article 82 of the Indian Limitation Act, in case of fatal accident the limitation of two years would apply. He would further submit there is no evidence on record to show that the accident occurred due to any rash and negligent act on the part of the Electricity Department. He would also submit that the suit itself is barred by limitation and the plaintiffs were under dormant of their right for five years, the suit was filed in the year 2019 for incident which took place in 2014, therefore, the same could not have been entertained. The impugned judgment and decree passed by the learned District judge is well merited, which do not call for any interference.
8. We have heard the learned counsel for the parties and perused the record.

¹ 2002 AIR SCW 129

9. The first question which falls for consideration is that when the suit was dismissed at the threshold on the ground of limitation, whether the limitation can be pressed into ?
10. The law of limitation is found upon maxims such as “*Interest Reipublicae Ut Sit Finis Litium*” which means that litigation must come to an end in the interest of society as a whole, and “*vigilantibus non dormientibus Jura subveniunt*” which means that the law assists those who are vigilant with their rights, and not those who sleep thereupon. The law of limitation in India identifies the need for limiting litigation by striking a balance between the interests of the state and the litigant. So when the beneficiaries, for a cause of action, are minors, it cannot be said that they are sleeping over their rights.
11. The term “*period of limitation*” has been defined in Section 2(j) of the Act as the period of limitation prescribed for any suit, appeal or application in the Schedule of Limitation Act; further, “prescribed period” means the period of limitation computed in accordance with the provisions of the Limitation Act. Section 3(2) prescribes the general rule that, subject to the provisions contained in sections 4 to 24 (both inclusive) of the Act, every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.
12. The expression ‘Claim Petition’ is synonymous with ‘the Applications’ and therefore an aggrieved person would mean legal

heirs or through agent cannot be deprived of claiming the compensation if not preferred within a stipulated period of time.

13. Further more perusal cause title of the suit would show that four of the claimants were minors when the suit was filed in 2019. This fact is not in dispute that they are legal representatives/dependents of being children of the deceased Hemant Dhruw. This case does not arise out of a fatal accident as has been argued by the learned counsel for the respondent that Article 82 of the Act would apply, therefore, we are not in agreement with such submission for the reason that the majority of the claimants were minors i.e. the children of the deceased Hemant Dhruw. Therefore, it would be a case of continuous cause of action.
14. The Concept of continuing cause of action arose principally in regard to the point of time up which damages could be assessed in a given action and way back in the year 1804, the decision *Hole v. Chard Union*², Lord Lindely had observed:

“What is continuing cause of action? Speaking accurately, there is no such thing; but what is called continuing cause of action is a cause of action which arises from the repetition of acts or omission of the same kind as that for which the action was brought”.
15. That, the cause of action normally accrues when there is in existence a person who can sue and another who can be sued and in the present case when the notice was sent in the year then only right to sue has accrued in the favour of the plaintiff, therefore the present case is not barred by limitation.

² (1804) 1 Ch. 298 : 8 R.84 (70) LT 52

16. As per the Halsbury's Laws of England, Vol. 28, Para 822 & 825 it is particularly stated that:

822. Persons capable of suing or of being sued. A cause of action cannot accrue unless there is someone in existence capable of instituting the action and another person in existence who can be sued. If a person is in such position that, even if an action were brought and judgment given against him, the judgment could not be enforced, a cause of action cannot accrue against him.”

825. When Time Continues to run.....if the time has begun to run against a person entitled to sue, or in favour of a person capable of being sued, the fact of his death and that there is an interval between his death and the grant of administration does not prevent time from running against or in favour of the administrator, as the case may be.

17. Section 9 of the Limitation Act speaks about Continuous Running of Time. It provides that the general principle that where time has begun once to run, no subsequent disability or inability to institute a suit or make an application stops it, is incorporated in Section 9. There is a proviso to the section, very limited in its operation, to the effect that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt is suspended while the administration continues. The proviso becomes necessary since the same person cannot be both the plaintiff and the defendant in the same suit.
18. It is pertinent to mention here that time runs when the cause of action accrues and when there is in existence of a person who can sue and another who can be sued which demonstrates the time begins to run.

19. In the present case the minor who did not attain the age of majority they filed the case after service of the notice to the respondent. At the most, it can be stated that the cause of action started when the first notice was served on 12.01.2019 and the suit having been filed 25.9.2019, in the facts and circumstances of the case, the suit cannot be held to be barred by limitation.
20. Now coming back to the merits of the case, the plaintiffs adduced the evidence. According to PW-1 Rameshwari Devi, wife of the deceased, when her husband went to answer the call of nature; he came into contact with live electric wire; and thereafter died. In the cross-examination, a suggestion was given that a day prior to the incident there was a wind, storm and rain fall in the village; the electricity was off; and the entire village was in dark. The suggestion given to the witness that her husband got into electrocuted when he tried to put a DO on the poll was denied. Further she stated that while putting a DO on the electric poll he fell down and died. According to PW-1 Rameshwari despite information given to the department, they did not take any action to rectify the defect. Similar statement has been made by PW-2 Parmeshwar. He also stated the same thing that when the deceased went to answer the call of nature; he came into contact with a scattered electric wire; and died. He has admitted the panchnama, which was prepared by the Electricity Department wherein he had signed. According to him, he has studied up to class 5. He categorically states that he had not read the panchanama Ex.D/1

which was prepared by the Electricity Department on 04.11.2019 wherein it was written that while putting a DO on electric pole by climbing into on it; the deceased came into contact of electric wire and died. The said Ex. D/1 is of 4.11.2019 whereas the incident happened on 22.02.2014. We are unable to appreciate as to what prompted the Electricity Department to prepare such panchnama with such narrative after five years of the incident.

21. The respondent has adduced evidence of DW-1 Bhuneshwar, Executive Engineer. He stated that he was working at Balodabazar with effect from 20.05.2021. According to him, while putting a DO by the deceased by climbing into electric pole he came into contact of the electric wire and died. The incident when was of 22.02.2014 then how this witness was known of the fact, how the incident happened is completely ambiguous and it appears that he was a hearsay witness. In the cross- examination he admitted that a transformer has been put in Village Jhonka and on the date of incident he was working at Abanpur and was not posted at Balodabazar. The statement of this witness is, therefore, of no avail as to how the incident happened. Likewise the statement of DW-2 Umashankar Sahu, Assistant Engineer, he too stated that he was posted at Balodabazar on 01.02.2019. This witnesses admitted that he does not have the personal knowledge of the fact whether the deceased was climbing the pole to put a DO and came into contact with the electric wire. The defense, therefore, raised by the department was of no avail as no primary evidence about the

incident has been placed. It is obvious that if the incident, according to DW-1 Bhuneshwar and DW-2 Umashankar Sahu when they deposed on the basis of the documents which have kept in the office they were not present at the relevant time and the narration of the incident might have been recorded. However, if the documents have not been placed on record, the adverse inference is required to be drawn in respect of the same.

22. When such death has occurred due to electrocution and the statement of PW-1 Rameshwari and PW-2 Parmeshwar would show that the deceased came into contact of the live electric wire and was electrocuted. In absence of any other evidence, the same would be acceptable, which would lead to draw the analogy of strict liability.
23. In absence of any substantial evidence, the question arises for consideration is that whether the defence raised by the Department that they were not liable for the death and act of negligence was committed by the deceased himself whether is available to them or not. Similar nature of issue was considered by the Supreme Court in the case of *Shail Kumar* (supra).
24. By referring the decisions rendered by the Supreme Court in the matters of *Shail Kumar* (supra), this Court in *Chhattisgarh State Power Distribution Co. Ltd. & Another v Smt. Bahgwati Bai*³ held thus at paras 9 to 12 :

(9) Now the question arises for consideration as to whether defence raised by the electricity department

3 FA 198 of 2003 (decided on 16-6-2014)

that they were not liable for the act as no negligence was committed by them whether was available to them or not. Predominantly department has tried to raise defence to the 'torts' strict liability rule and exception for Act of god or safety measures. This issue was considered in the case of M.P. Electricity Board Vs. Shail Kumar and others, 2002 AIR SCW 129 wherein Hon'ble Supreme Court has held that responsibility to supply electric energy in the particular locality is statutorily conferred on the Electricity Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it, the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. Therefore applying such principle, the defence so taken on the part of the management of the board that by reason of thunder storm the live wire fell down without there being any negligence was unavailable to the board. Even when safety measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertaking. The basis of such liability is the foreseeable risk inherent in the very nature of such activity and as such liability cast on such person is known, in law, as strict liability which is exactly in this case.

(10) Similarly Hon'ble Supreme Court in the case of Union of India Vs. Prbhakaran Vijaya Kumar (2008) 9 SCC 527 has laid down principle that exception to the doctrine of strict liability or no fault liability for hazardous activities cannot be applied to a Welfare State and there has been a corresponding shift from positivism to sociological jurisdiction. The Hon'ble Supreme Court at para 24 of this judgment had held as under:-

“24. The basic of the doctrine of strict liability it twofold; (I) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their

activities generate, and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products (vide Torts by Michael Jones, 4th Edn.p. 267)

(11) Hon'ble Supreme Court has stated that doctrine of strict liability shall be applicable to the public corporation or local bodies which may be of the social utility, undertaking not working for private profit.

25. Now turning to the quantum of compensation - PW-1 Rameshwari, wife of the deceased has stated that they claimed compensation of ₹ 25,00,000/-. The case of the plaintiff was that the deceased used to work as a labour and used to earn monthly income of ₹ 7,000/- and in future, it would have been increased up to ₹ 10,000/- per month. The incident happened in the year 2014. Therefore, in our considered opinion taking into consideration the facts and circumstances of the case, we deem it proper to hold the monthly income of the deceased to ₹ 5,000/- instead of ₹ 7,000/-. According to the postmortem report, the age of the deceased was shown to be of 32 years.
26. In order to assess the damages, we would rely upon the decision rendered by the Supreme Court in the case of **National Insurance Company Limited v Pranay Sethi and others**⁴ and applying the principle laid down in the said matter an addition of 40% of the established income would warrant as the deceased was aged about 32 years on the date of incident. We would also rely upon the decision rendered by the Supreme Court in the matter of **Sarla**

4 (2017) 16 SCC 680

Verma (Smt.) and Others v Delhi Transport Corporation and Another⁵. Thus, considering the age of the deceased i.e. 32 years, future prospects would be considered at 40% of the salary and since there were more than four dependents, deduction would be one fourth towards the personal income of the deceased. Taking into the age of the deceased, the multiplier would be 16. Thus, we calculate the compensation as under :

S.No.	Head	Calculation
1.	Income of the deceased @ ₹ 5000/- per month	₹ 5000 x 12 = ₹ 60,000/-p.a.
2.	40% of (1) above to be added as future prospects	₹ 24,000/-
	S.No.1+ S.No.2	₹ 84,000/-
3.	One fourth deduction as personal expenses of the deceased	₹ 21,000/-
	(₹ 84000- ₹ 21000)	₹ 63,000/-
4.	Compensation after multiplier of 16 is applied	₹ 63000 x 16 = ₹ 10,08,000/-
5.	Loss of estate	₹ 15,000/-
6.	Consortium to wife	₹ 40,000/-
7.	Funeral expenses	₹ 15,000/-
	Total compensation (S.No.4+5+6+7)	₹ 10,78,000/-

27. In view of the above, the decree is modified in the aforesaid manner.

The defendant No.1 & 2 are directed to pay an amount of ₹

⁵ (2009) 6 SCC 121

10,78,000/- to the plaintiffs. The amount of compensation will carry interest at the rate of 6% per annum with effect from the date of filing of civil suit i.e. 25-9-2019 till the actual date of realization.

28. The aforesaid compensation amount be distributed amongst the appellants/ plaintiffs in the following manner :

- Plaintiff No.1 namely; Rameshwari (wife of the deceased) is entitled to ₹ 1,78,000=00 through her Bank account.
- Each of the plaintiff No.2 to 5 namely; Minor Dhaneshwari, Minor Kushumlata, Minor Subhash; and Minor Shraddha (children of the deceased) are entitled to ₹ 2,00,000=00. Out of which an amount of ₹ 1,50,000=00 be kept in the fixed deposit account in any Nationalized Bank till the date of their attaining age of majority in each of their name and remaining amount of ₹ 50,000=00 be disbursed to each of them through their respective Bank accounts.
- Plaintiff No.6 namely; Hiriya Bai (mother of the deceased) is entitled to ₹ 1,00,000=00 through her Bank account.

29. As a result, the appeal is allowed to the extent indicated above, leaving the parties to bear their own cost(s).

30. Registry is directed to transmit a copy of the judgment and decree to the Secretary, District Legal Services Authority, District Balodabazar-Bhatapara, forthwith for taking necessary steps so that it reaches to the beneficiaries.

31. Before parting, we appreciate the valuable assistance rendered to us by Mr. Pranjal Agrawal, learned *amicus curiae*.
32. A decree be drawn accordingly.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Radhakishan Agrawal)
Judge

Vaibhav/
Gowri

HEAD NOTE

Aggrieved person cannot be deprived of claiming compensation merely for the reason that claim petition was not preferred within time.

व्यथित व्यक्ति को केवल इस आधार पर क्षतिपूर्ति का दावा करने से वंचित नहीं किया जा सकता है कि दावा याचिका समय के भीतर प्रस्तुत नहीं किया गया था।

The Electricity Department cannot escape its responsibility of paying compensation to the dependents of victims of electrocution by citing negligence on the part of the victim.

पीड़ित की उपेक्षा का हवाला देकर विद्युत विभाग विद्युत आघात के पीड़ितों के आश्रितों को क्षतिपूर्ति के भुगतान के अपने उत्तरदायित्व से बच नहीं सकता है।