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(1987) 09 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No. 455 of 1986

Anita Rani and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 08-09-1987

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 33 Rule 2, Order 33 Rule 5
Fatal Accidents Act, 1855 — Section 1A, 2, 3

Citation : (1988) ACJ 439 : AIR 1988 P&H 141

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Judgement

1. This appeal has been filed by the appellants-appellants against the order of Senior Subordinate Judge, Patiala, dt. April 15, 1986 rejecting their application for permission to sue as indigent persons.

2. Briefly, the facts are that on May 5, 1983, curfew was imposed in Patiala, Ashok Kumar, who was a resident of that town. was standing in the chubara of his residential house along with the members of his family on the said date. It is alleged that Swaran Singh defendant-respondent 5 shot dead Ashok Kumar from the roof of the temple opposite to his house, while he was looking from behind the glass pane of the chubara. It is further alleged that the murder was committed by the said defendant at the instance of defendants 3, 4 and 6 to 10. The applicants appellants, viz., the widow and sons of Ashok Kumar deceased claimed Rupees Ten Lacs as damages for the alleged murder and filed an application under O. XXXIII, of Civil P.C., for permission to sue as indigent persons.

3. Respondents 3 to 10 filed an application under O. XXXIII, R. 5, of Civil P.C., stating that the plaint was not in accordance with S. 3 of the Fatal Accidents Act (hereinafter referred to as the Act), as it did not contain full'' particulars of the persons for whose benefit the suit had been instituted. The parents of the deceased were alive and entitled to compensation under. the Act, but they had

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not been added as parties in the application, nor had their names been mentioned in the application as beneficiaries. The application, it is alleged, did not satisfy the requirements of O. XXXIII, R. 2 of the Code, read with S. 3 of the Act and, therefore, it was liable to be rejected. It was opposed on behalf of the widow and sons. It was inter alia pleaded by them that they had not filed the application for permission to sue as indigent persons under the Act, but they had done so under the law of torts and, therefore, the provisions of the Act were not applicable. They further pleaded that the provisions of O. XXXIII, R. 2 of the Code had been complied with, as reference to all the legal heirs of the deceased had been made in the application for permission to sue as forma pauperis.

4. The learned trial Court held that the provisions of the Fatal Accidents Act were applicable to the case, and the said application did not comply with the provisions of S. 3 of the Act. Consequently, it dismissed the application for permission to sue as indigent persons, under O. XXXIII, R. 5 of the Civil P.C. The appellants have come up in appeal against the said order to this Court.

5. The learned counsel for the appellants has not challenged the finding of the trial Court that the provisions of the Fatal Accidents Act were applicable to the Present case. He only contends that the provisions of S. 3 of the Act Mad been complied with and, therefore, the application for permission to sue as indigent persons could not be dismissed under O. XXXIII, R. 5 of the Code.

6. I have heard the learned counsel and given my thoughtful consideration to their arguments. In order to determine the question, it is relevant to refer to Ss. 1A 2 and 3 of the Act, which are as follows :

"l A.--Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.'' Whenever the death of a person shall be caused by wrongful act, neglect order fault, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action. and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to. an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been'' caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so ca used, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;

and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment or decree

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shall direct.

2. Not more than one suit to be brought.-

Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint.

3. Plaintiff shall deliver particulars etc.-

The plaint in any such action or suit shall give a f l particular of the person or persons for whom; or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought'' co be recovered."

7. It is evident from a reading of the aforesaid sections that if a person dies on account of wrongful act, neglect or default of another person, the latter would be liable to action for damages. Such an action can be brought by an administrator, executor or representative of the deceased person and the Court shall grant damages to the persons for whose benefit the action has been brought. The action can be brought for the benefit of the wife, husband, parent, child and the estate of the deceased. The plaint should contain the particulars of the persons for whose benefit such action has been brought. It is also evident that only one action can be brought for damages. The word ''representative'' has not been defined in the Act, but it does not mean only those dependents as given in the Act namely, wife, husband, parent and child. It includes those persons as well who are entitled to succeed to the estate of the deceased. In this view, I am fortified by the observations of a Full Bench of this Court in Parkash Chand and Another Vs. Pal Singh and Others, . D. S. Tewatia, J. speaking for the Bench observed thus:

"In so far as the expression representative for the purpose of S. 1A of the Fatal Accidents Act is. concerned, it would refer to the whole body of such persons as are under the law of succession applicable to the deceased entitled to succeed to his estate, including the dependents and, therefore all or any of such person.. would be entitled to initiate action for claiming damages u/s 1A of the Fatal Accidents Act for the benefit of any or all of the dependents surviving the deceased in regard to the pecuniary loss suffered by any such dependent. One can envisage a situation where the surviving dependent lay totally unconscious and the deceased had died intestate. In such a situation, only representative of the deceased could bring action.

If the term ''representative of the deceased'' in S. 1A of the Fatal Accidents Act was held to connote only the dependents, and the dependent or dependents were not in a position to bring an action, then such dependents would have to forego the damages on account of pecuniary loss that they have suffered as a result of the death of the person deceased. One cannot attribute such a lack of foresight to the legislature and, therefore, the term ''representative of the deceased'' occurring in S. 1A cannot be conceived to be referring to only the

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dependents. Of course, damages realised as a result of the action would enure for the benefit of the dependents alone and not for the representative of the deceased who had initiated the action if that representative of the deceased happened to be a person other than the dependent person himself."

8. With this background, it is to be seen whether the application complies'' with the provisions of S. 3 of the Act, or not. In para 3 of the application, the name of the mother, Smt. Vijay Shakti and name of the father Shri Vidya Sagar have been mentioned, though in a different context. From the para, it is clear that the father and mother of the deceased are alive. As already observed above, S. 1A prescribes that the suit brought for damages by an administrator, executor or representative of the deceased shall be for the benefit of wife, husband, parent and child. If Ss. 1A and 3 are read conjointly, it is. clear that the mentioning of the names of the persons who are entitled to the damages under S.I.A in the plaint, is sufficient compliance of the provisions of S. 3. It is not necessary to mention in the plaint that the suit had been brought for the benefit of the persons mentioned therein. Otherwise also it is well settled that the plaints should not be construed very strictly and the Court should be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded. See Kidar Lall Seal and Another Vs. Hari Lall Seal, and AIR 1926 PC 29. After taking into consideration the aforesaid circumstances, I am of the view that the plaint in the present case does not suffer from any defect, as observed by the trial Court.

9. Mr. Salooja, learned counsel for the respondents has submitted that as the appellants have not mentioned in the plaint that the suit had been brought for the benefit of the father and mother of the deceased, therefore, the application for permission to sue as indigent persons was rightly rejected. He referred to Rivers Steam Navigation Co. Ltd. Vs. Hira Lal De and Others, , Suraj Prasad Vs. Moolchand and Others, and Union of India (UOI) Vs. Satyabati and Others, . In Rivers Steam Navigation Company''s case (supra), the application for permission to file a suit in forma pauperis was filed by two sons of the deceased. The application was, however, presented by one of them. The plaint did not contain the particulars of the beneficiaries. In the aforesaid circumstances, it was observed that the application was liable to be rejected under O. XXXIII,. R. 5 of the Code of Civil Procedure. However, the same Bench in Satish Chandra Sen Vs. Jewan Lal Daga and Another, , had decided another case wherein it was observed that if there was some defect in the form of the suit, the application for permission to file a suit in forma pauperis cannot be dismissed on that ground. That case was also under the Fatal Accidents Act. In that case, Khanta Kumari Banik was travelling along with her two sons in a boat belonging to Rivers Steam Navigation Company Limited. The boat met with an accident and the two children of the respondent drowned. She filed an application for permission to sue in forma pauperis claiming the damages. The application filed by her did not contain the particulars as required by S.3 of the Act. The learned Bench.

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observed that the plaint so far as that related to the claim under the Fatal Accidents Act, did not comply with the requirements of O. XXXIII, R. 2. of the Code and might therefore be defective in form. But, for that defect in form, Khanta''s application for permission to sue in forma pauperis could not be rejected. From the above two cases, it is clear that the learned judges decided the former case on the facts and in the circumstances of that case. In Suraj Prasad''s case (supra) it appears that the names of the persons for whose benefit the suit could be brought, were not mentioned in the plaint. In Satyabati''s case (supra), the name of the father who was financially well off, had not been mentioned in the application for permission to sue as pauper. In the circumstances, it was held that omission to mention father''s name in the application was fatal. In my view, all the above cases are distinguishable and the learned counsel for the respondents cannot derive any benefit from the observations therein.

10. For the aforesaid reasons; I accept the appeal, set aside the order of the trial Court and remand the case to it for deciding the application for permission to sue as indigent persons on merits.

11. No order as to costs.

12. The parties are directed to appear in the trial Court on Sept. 28, 1987.

13. Appeal allowed.

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