

(1987) 04 OHC CK 0016
In the Orissa High Court
Case No : Second Appeal No. 309 of 1978

Dinabandhu Mandal	Vs	APPELLANT
Mahendranath Mandal		RESPONDENT

Date of Decision : 21-04-1987

Acts Referred:

Law Reform (Miscellaneous Provisions) Act, 1970 — Section 5

Citation : AIR 1988 Ori 183

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : E. Mohanty and Debasis Das, for the Appellant; G. Rath and B.K. Nayak, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—Defendant is the appellant against the affirming judgment.

2. Plaintiff filed the suit claiming damages to the tune of Rs. 4,100/- on the allegation that the defendant developing intimacy with plaintiff's daughter Shanti illegally seduced her and had illicit intercourse with Shanti. Plaintiff's wife's sister Bimala once saw Shanti and the defendant in a compromising position in Dec. 1971 and told the plaintiff about it. Plaintiff then came home and enquired into the matter and could know that Shanti was in an advanced stage of pregnancy. Shanti narrated her father that the defendant had promised to marry her. Plaintiff, therefore, convened a panchayati of the caste men, but the defendant absconded and did not attend the meeting. Shanti gave birth to a child on 27-2-1972. Plaintiff alleged that on account of such illegal seduction and intercourse by the defendant and the consequent pregnancy of Shanti, the plaintiff's family suffered dishonour and disgrace as well as mental agony and lost social position. Plaintiff also alleged that on account of the pregnancy and child-birth, plaintiff lost the services of his daughter Shanti for a considerable period and accordingly plaintiff filed the suit for damages to the tune of Rs. 4,100/-.

3. The defendant denied all the allegations made in the plaint. It was further stated that Shanti was not performing any domestic work in the house of the plaintiff and, therefore, the plaintiff had no right to demand or expect any service from Shanti. The defendant stated that the plaintiff was not entitled to any damages.

4. On these pleadings, the learned Subordinate Judge framed 7 issues and held that the suit was maintainable and was not barred by the law of limitation. On issues Nos. 3 and 4, the learned Subordinate Judge found that it was the defendant who impregnated Shanti and Shanti gave birth to a son in 1972 and for a period of one year Shanti could not do the daily household duties cast upon her and the plaintiff was, therefore, debarred from getting the benefit of the services of his daughter and consequently, the plaintiff was entitled to recover damages. So far as the quantum of damages is concerned, the learned Subordinate Judge assessed the compensation to the tune of Rs. 4,000/- and accordingly decreed the suit to that extent.

5. On appeal, the learned District Judge rejected the contention of the defendant-appellant that the suit for damages on account of loss of service of the daughter is not maintainable as the daughter is not in the position of a servant. The learned District Judge also rejected the contention regarding limitation and affirmed the finding of the Subordinate Judge that it was the defendant who seduced Shanti and Shanti was impregnated by the defendant. On these findings, the decree of the trial court was affirmed and the appeal was dismissed.

6. Mr. Mohanty for the defendant-appellant raises three contentions in this second appeal, namely -

(i): The suit claiming damages for loss of service to the family on account of Shanti's inability in consequence of Shanti being impregnated by defendant is not maintainable;

(ii) The finding regarding seduction is a finding based on no evidence and the ingredients of seduction have not been proved and, therefore, the said finding must be set "aside; and

(iii) There is no evidence proving the quantum of damages and accordingly the plaintiffs suit must fail.

7. In the Law of Torts, a full chapter deals with the subject "Injuries to domestic Relations". A parent has a right to sue a person who takes away by force, entices, harbours, injures or imprisons his child and thereby causes loss of service to the parent, but an action lies only on proof of loss of service. The service may be actual or constructive. In the case of a son or daughter who has attained majority and is living with the parent, some actual service must be proved though it may be of a trifling character. [See, Carr v. Clarke (1818) 2 Chi 260]. But where a son or a daughter is rendering no service at all and living away from the parent, the question of loss of service does not arise. In Lynch v.

Knight(1861) 9 HL Cas 577. it has been held that where there is no loss of service, damages will not be awarded merely for mental pain or disgrace. The aforesaid English rule is not of universal application in India. Even in England, the rule has been criticized as anomalous, unsatisfactory and barbarous. The Allahabad High Court considered the case of enticement of a wife in the case of Sobha Ram Vs. Tika Ram, . Their Lordships have held that where a person entices away the wife of another, a suit for damages against him by the husband is competent and the enticement of the wife of the plaintiff is a good ground for awarding him damages. It has been observed therein that the action for seduction of a daughter or a servant has no bearing on the case. In that very case, their Lordships have observed that the case of a wife stands on a different footing from that of a servant or daughter because there is no contract of marriage between the husband and the wife.

In the Law of Torts by Salmond (18th Edition) at page 331, the law has been described thus:-

"No parent has, as such, any right in respect of his child of such sort that an action for damages will lie against any other person for a violation of that right. The only right which a parent has as such is a right to the possession and custody of his child during minority. The remedy for the infringement of this right is not an action for damages against the person who deprives him of his child but the recovery of possession either by means of a writ of habeas corpus or by an application to the Family Division to exercise its power in respect of the guardianship of infants....."

So far as action for loss of service is concerned it has been stated that it is a tort actionable at the suit of a father to take away, imprison, or cause bodily harm to his child, male or female, if (i) the relation of master and servant existed between them; (ii) the act is a tort as against the child, other than a tort founded upon the rape, seduction or enticement of that child, and (iii) the parent is thereby deprived of his child's services. So far as the first category is concerned, all rights of action vested in a parent in respect of his child are vested in him not in his capacity as a parent, but in the capacity as the master of his child and, therefore, dependent on the existence in the particular case of the relation of master and servant. If this relation does not exist, either because the child is too young to give any services, or because he is in the service of some other person, or for any other reason, the father has no remedy for any wrong done to him in respect of his child. So far as the second category is concerned, it is irrelevant whether the wrongful act be intentional or negligent, provided it does not constitute rape, seduction or enticement. So far as the third category is concerned, the parent must prove damage resulting from the loss of service. Hence, no damages can be recovered from injuries to a child too young to perform any services. It is to be noted that an action for enticement or seduction which was once actionable in England has been abolished since the Law Reform (Miscellaneous Provisions) Act, 1970, has come into force. Section 5 of the

aforesaid Act abolished the action in tort given to a parent for the loss of service caused by the rape or seduction of his child.

This being the position of law, in my opinion, a suit claiming for damages on account of loss of service to the family because of the seduction of the daughter must be held to be not maintainable and the contention of the defendant-appellant on this score must be upheld.

8. That apart, I find sufficient force in the contention of the learned counsel for the appellant that the evidence is totally lacking to prove the damages in question. In fact, no evidence has been led to indicate as to the nature of service which the father or the family was getting from the seduced daughter which they lost on account of the seduction and consequent pregnancy of the daughter and, therefore, the courts below were not justified in awarding the damages in question. In view of my conclusion as aforesaid it is not necessary to examine the correctness of the contention as to whether the finding of seduction can be sustained or not.

9. In the net result, therefore, the judgment and decree of the courts below are set aside and the plaintiffs suit is dismissed This second appeal is allowed, but there would be no order as to costs thereof.