

(2017) 03 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4159 of 2013 (O&M)

Harish Goyal

APPELLANT

Vs

Parminder Singh

RESPONDENT

Date of Decision : 18-03-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Section 14

Citation : (2017) 2 ACC 168

Hon'ble Judges : Mrs. Anita Chaudhry, J.

Bench : Single Bench

Advocate : Mr. P.K.S. Phoolka, Advocate, for the Appellant; Mr. R.K. Girdhar, Advocate, for the Respondent No. 1; Mr. Vikas Mehsmipuria, Advocate, for the Respondent Nos. 2 to 4

Final Decision : Allowed

Judgement

Mrs. Anita Chaudhry, J.—This is the second appeal only by defendant No. 1 aggrieved by the judgments and decrees of the Courts below.

A strange incident occurred on 14.2.2002, plaintiff Parminder Singh was electrocuted and a part of his left arm had to be amputated, his face was disfigured. A T.V. Cable wire was allegedly passing over 11 K.V.A. line. The cable connection had been disconnected but the cable was still lying inside the house in the shape of a coil near the T.V. set. The plaintiff felt a strong smell emitting from the wire that night. As he went near the T.V., he was pulled towards the cable and got electrocuted. The matter was reported to the Electricity Department. The Assistant Electrical Inspector conducted an investigation. On 15.2.2002, a DDR was lodged by the father of the plaintiff, he did not implicate any person. The case of the plaintiff was that his treatment continued for a long period and when he was well and able to walk, he filed a writ petition in the High Court on 9.2.2005 (few days prior to the expiry of three years). The High Court vide order dated 17.2.2005 gave a direction that if the plaintiff was entitled to

any relief then it shall be released in his favour within one month. The case of the plaintiff was that no amount was paid. He again filed a writ petition and was asked to approach the appropriate Civil Court on 22.5.2006. It was pleaded that the order was received by him on 4.7.2006 and due to vacations, he could not file the suit and as he was unwell. The suit was ultimately filed in August 2006. It was pleaded that there was no delay in filing the suit. The plaintiff was claiming damages to the tune of Rs. 49,21,000/-. The break up of the compensation claimed by him is detailed in para 4 of the plaint.

2. The suit was filed as an indigent. The application was later allowed.

The defendants took the plea that the suit was barred by time and it was bad for non-joinder of parties. Defendants No. 1, 3 and 4 in their joint written statement pleaded that the plaintiff or any other person could not interfere with the cable line installed by the board and there would be some defect in the installation of the cable wire or the electric fitting in their house.

3. Defendant No. 2 took the plea of limitation, non-joinder and estoppel. It was pleaded that the father of the plaintiff had made a statement that it was an unavoidable accident and the cable operator could not be blamed and the cable wires could not be charged as was alleged and they were not at fault.

Replication was filed by the plaintiff and with respect to objections relating to the limitation, it was only pleaded that the suit was within limitation.

On the pleadings of the parties, following issues were framed by the trial Court :-

"1. Whether the plaintiff is entitled to compensation on account of wrongful act and negligence of the defendants as prayed for ? OPP

2. Whether the suit is within time ? OPP

3. Whether the suit is not maintainable in the present form ? OPD

4. Whether the suit is bad for non-joinder of necessary parties ? OPD

5. Relief."

4. The trial Court found the plaintiff to be negligent to the extent of 50% and the cable owner and the Electricity Department were held to be responsible for the remaining portion. The suit was held to be within limitation. After considering the bills and the amount spent by the plaintiff, it was held that the defendants were to pay Rs. 7,19,272.50 and it was to be shared by all the defendants in the manner given in the judgment.

5. Aggrieved by the judgment, the cable operator filed an appeal challenging his liability and urged that there was an admission on the part of the family that there was no cable connection on the date of incident and he could not be blamed nor was responsible for the loss and the suit was barred by limitation. The Appellate Court held that the cause of action accrued to the plaintiff on 18.10.2003 when he was discharged from the hospital and the suit had been

filed on 9.8.2006 which was within limitation. All the pleas taken by the appellant were rejected and the appeal was dismissed.

I have heard both the sides.

6. The submission on behalf of the appellant is that under the Fatal Accidents Act, the limitation is one year and the incident had occurred in February 2002 and the writ was filed in February 2005. It was urged that in the DDR lodged with the police, the father of the plaintiff had made a statement that it was a natural accident. It was urged that the cable connection had been disconnected earlier and it was the plaintiff who had pulled the cable wire inside so as to use the connection and he could not be blamed. It was urged that the suit had been filed much after the expiry of the limitation and no exclusion had been pleaded and in order to save the limitation the plaintiff was required to show that he was pursuing his remedies in a wrong Court. It was urged that limitation would not get extended because the plaintiff was admitted in the hospital.

7. The submission on the other hand was that the accident took place in February 2002 and the plaintiff was admitted in the hospital at Ludhiana from where he was referred to Ganga Ram Hospital and his treatment continued till October 2003 and he was not able to do any physical work and it was only when he could partially recover from his injuries he had approached the High Court with a writ petition wherein directions were given to the department for releasing the relief but it rejected his claim and the plaintiff again approached the High Court and he was allowed to approach the appropriate Civil Court and the suit was filed in August 2006. It was urged that both the lower Courts have correctly dealt with the issue of limitation and he was diligently pursuing his remedies and the time in between would stand excluded under Section 14 of the Indian Limitation Act. Reliance was placed upon Dasarath Behera and others v. Katai Dei and others 1991 AIR (Orissa) 160, Mohammad Shafeeq v. Mirza Mohammad Husain and others 2002 (9) SCC 460 and Rameshwarlal v. Municipal Council, Tonk 1996(6) SCC 100. It was urged that the suit was filed on 4.8.2006 and was within limitation.

8. It would be necessary to first refer to the provisions contained in Section 14 of the Indian Limitation Act which read as under :-

Exclusion of time of proceeding bona fide in court without jurisdiction. -

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil

proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order 23 of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.- For the purposes of this section,-

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

9. It has to be first considered whether the suit is within limitation. The onus was upon the plaintiff and this is how he explained. Para 7 of the plaint reads as under :-

"That the incident took place on 14.2.2002. The plaintiff was admitted in various Hospitals from time to time firstly he was admitted in DMC Ludhiana on 19.2.2002, secondly in C.M.C. Ludhiana on 26.2.2002, then he take the treatment from Sir Ganga Ram Hospital, New Delhi, Khajanchi Plastic Surgery New Delhi on 30.8.02. Thereafter he came to know Doctor Dr. Abraham G. Thomas of Pondicheri of Medical Institute where he remained under treatment for surgery firstly from 6.9.02 to 2.10.02, secondly from 22.5.03 to 6.6.03, thirdly 2.9.03 to 18.10.03. After that the treatment was continue from that Hospital and they advised for made surgery operation but plaintiff/applicant has not in capacity to bear the expenses. When the plaintiff able to walk then he filed a Civil Writ Petition in the Punjab and Haryana High Court against the same defendant on 9.2.2005 in which the Hon''ble High Court ordered that if the petitioner is found entitled to any relief, the same shall be released in his favour within one month thereafter vide order dated 17.2.2005. But despite the order of the Hon''ble High Court the defendants does not paid any single penny to the plaintiff. Then he again on 8.7.2005 filed writ petition against the same defendants in the Hon''ble Punjab and Haryana High Court which they ordered that they approached the appropriate Civil Court vide order dated 22.5.2006, copy of the said order was received on 4.7.2006. The vocations period was upto 15.7.06 and after that the plaintiff fell ill and due to this he cannot approach the

court and to any counsel and when he get relief from illness he is filing the present suit without any improper delay. So the suit is filed within the limitation."

10. It was urged on behalf of the respondents that Article 82 of the Limitation Act would not be applicable as the Fatal Accidents Act only deals with the cases where there is a death and the case is not covered under Section 1(A) of the Fatal Accidents Act and Article 82, thus, has no application and the limitation would be three years and the period that was spent by the plaintiff in approaching the High Court and the department would stand excluded. It was also their submission that the plaintiff was not in a position to file the suit as he was hospitalized.

11. Article 82 of the Indian Limitation Act provides a period of two years for filing a suit from the date of death of the person killed. This article would not be applicable. The present case is outside the purview of the Fatal Accidents Act. Article 113 of the Indian Evidence Act provides a period of three years. The incident had taken place on 14.2.2002 whereas the suit was filed on 4.8.2006 i.e. clearly beyond three years.

12. The plaintiff had approached the High Court with a writ petition on 9.2.2005 i.e. 5 days before the expiry of three years and is seeking exclusion of the period he had spent in pursuing his remedies before a wrong Court. The writ petition was disposed of on 17.2.2005. The representation given to the department was decided on 4.5.2005. It would have to be seen whether the period he was pursuing the remedies with the department would be covered under Section 14 of the Limitation Act. The plaintiff again approached the High Court with another writ petition on 8.7.2005 which was disposed of on 22.5.2006.

13. In order to claim exclusion of time a party should be prosecuting a case before another Court relating to the same matter and in good faith. Before Section 14 of the Indian Limitation Act can be pressed into service, the conditions which are to be satisfied are :-

1. The proceedings prior or subsequent should be civil proceedings prosecuted by the same party.
2. The prior proceedings were to be prosecuted with due diligence and good faith.
3. The earlier proceedings and the later proceedings must relate to the same matter and issue.
4. Both the proceedings should be in the Court.
5. The failure of the prior proceedings were due to defect of jurisdiction and other causes of the like nature.

The main factor which would be influencing the Court in extending the benefit of Section 14 of the Indian Limitation Act would only be when the prior proceedings had been prosecuted with due diligence and good faith.

14. The limitation had started to run on the next day of the incident if not on 14.2.2002. The plaintiff could have filed a suit latest by 13.2.2005. He approached the High Court on 9.2.2005 and is seeking exclusion from February 2002 to February 2005 on the plea that he was under treatment and was unable to bear the expenses.

15. We were told during the proceedings that the department had already paid their portion of the compensation to the plaintiff. They did not even file the appeal challenging the order of the lower Court. The present appeal is only by the cable owner.

16. So far as the other findings recorded by the both the Courts below are concerned, they have to be confirmed. If the cable connection had been disconnected then the cable wires should have been removed. It has come in evidence that the cable operator had used the electricity wires for placing the cable wire without having a parallel system. The incident occurred when the cable wire got insulated and high voltage current entered the cable wire. The department was made partly responsible as they had not acted diligently and were negligent when they had allowed a private dish owner to use its poles and line to put the cable wire. The cable operator was also held responsible as it had used the 11 K.V. line to put the cable wires. The trial Court had rightly held the plaintiff to be responsible as they were using the cable wire though their connection had been disconnected. The father of the plaintiff had made a statement that he had no grievance against the cable operator and therefore he was pursuing his remedies only against the electricity department. The reasons given in para 38 of the judgment of the lower Court read as under :-

"Thereafter comes the question as to whether there was any negligence of the plaintiff or his family in receiving of the electric shock. The answer to the same is yes. If the defendant No. 2 had provided them with a cable T.V. dish connection through a cable wire by putting it on 11 K.V. line then the said connection was being taken by the family of the plaintiff. The family of the plaintiff should have objected to its providing through the 11 K.V. electric line. Moreover when the connection got disconnected they should have got removed the cable of the said connection which in the case in hand had not taken place. In that eventuality the fault for the occurrence of the accident is also on the part of the plaintiff and his family members which cannot be less than the fault of the defendants on account of their negligence. Therefore whatever loss the plaintiff had suffered he is to bear the 50% of the same on account of his fault and negligence and remaining 50% is to be provided by the defendants No. 1, 3 and 4 on the one hand and defendant No. 2 on the other hand, jointly and equally."

The trial Court had dealt with issue No. 2 in the following manner :-

43. Thereafter comes the question of limitation period. The learned counsel for the defendants have argued the attraction of Article 82 of the Limitation Act, 1963, towards the facts and circumstances of the present case. Perusal of Article

82 reveals that it talks about the limitation period provided to the executors, administrators or representatives under the India Fatal Accidents Act, 1855, to be of two years from the date of death of the person killed. In the case in hand neither anybody has got killed nor the claim is under the Indian Fatal Accidents Act, 1855. Therefore, this court is of an opinion that the said Article is not attracted towards the facts and circumstances of the present case.

44. In the case in hand plaintiff has approached the Hon''ble High Court through Writ Petition No. 2609 of 2005. Plaintiff has produced and proved on record the copy of the Order passed by the Hon''ble High Court on 17.2.2005 Ex. P357 as per which the Hon''ble High Court directed the needful to be done within a period of two months from the date of receipt of the copy of that order regarding the payment of compensation and the Hon''ble High Court further directed that if the petitioner is entitled to any relief, the same shall be released in his favour within one month thereafter.

45. In the case in hand admittedly no compensation stood paid to the plaintiff. This has left the plaintiff to approach the Hon''ble High Court again through Civil Writ Petition No. 11534 of 2005. The plaintiff has produced and proved on record copy of the Order dated 22.5.2006 Ex. P358 passed in the said Civil Writ Petition whereby the Hon''ble High Court relegated the plaintiff to seek his remedy before the Civil Court, if so advised, as the controversy raised required determination of disputed question of facts."

17. The trial Court got swayed by the fact that since the High Court had relegated the plaintiff to seek remedy in the civil Court therefore it was within limitation. The appellate Court too wrongly held that the limitation would start from 18.10.2003 when he was discharged from the hospital. The exclusion of limitation would only be available if a party was pursuing his remedies before a wrong forum bona fide. The plaintiff was not pursuing any of the remedies before any Court upto 9.2.2005. With just 4-5 days left for the limitation to expire, he approached the High Court with a writ petition which was disposed of within a week. He approached the department with a representation. The period he had spent there could not be excluded as it would not be a remedy which he was pursuing before a Court. The limitation had expired much earlier when he approached the High Court with the second writ petition. The suit was barred by limitation. The findings given by the trial Court on issue No. 2, however, has to be set aside as the plaintiff could not claim exclusion for the reasons given above.

The findings recorded on issue No. 2 are set aside. The appeal is allowed.