
(2009) 06 J&K CK 0014
In the Jammu And Kashmir High Court

Man Dai	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 05-06-2009

Acts Referred:

Limitation Act, 1963 — Article 22, 14

Citation : (2009) 2 JKJ 606

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, J.—Facing trial before the District and Sessions Judge, Udhampur, the deceased, son of the appellant was killed by inmates of

the Jail on 10-12-1991. The alleged occurrence took place within the premises of Central Jail Udhampur. Failure on part of the jail authorities to

protect the life of the deceased, prompted the present appellant to seek compensation to the tune of Rs. 5.00 lacs from the respondents. Her initial

efforts to seek protection under article 226 failed on account of the fact that the dispute was a question of fact which could only be decided by the

Civil Court. While disposing of the writ petition, appellant was advised to approach the civil court for the same. Suit in the form of pauperis came

to be filed before the Principal District Judge, Jammu. After the conclusion of the trial, the District Judge found the appellant entitled to the

compensation of Rs. 2.00 lacs while deciding issue No. 4 framed in the case. He, however, dismissed the suit of the appellant on account of

latches invoking Article 22, First Schedule of Limitation Act which provides limitation for filing the suit for compensation within a period of one

year. It is revealed from the finding of the Learned District Judge that the date of occurrence was 10.12.91 and the suit was filed on 27.01.93.

According to the finding of the District Judge, there was delay of 48 days in filing, the present suit. Feeling aggrieved of the decree passed by the

Learned District Judge, the present appeal has been filed.

2. I have heard Learned Counsel for the parties and perused the record.

3. The only question for determination in this appeal, is whether the suit was barred by limitation. Reliance has been placed on Article 22 by the

Trial Court relates to compensation for any other injury to the person. This injury has been construed as physical injury. This, in my opinion, would

not be a correct interpretation. The injury referable under Article 22 relates to mental injury on account of breach in contract or liability arising out

of torts. This clearly does not cover any injury, which is physical in nature. The schedule does not provide any limitation for claiming compensation

on account of death caused due to the act of the State. In the present case, Entry 119 of the schedule clearly states that where no period of

limitation is provided elsewhere, six years of time is provided from the date the right to sue accrues. The trial court has fallen in error in holding that

one year limitation was provided in the present case.

4. The trial court did not examine the plea of the petitioner that before filing the suit, writ petition was filed and delay if any, in filing the present suit

within the limitation period was on account of perusing the remedy in good faith. Least the trial court could have done, was to examine the import

of Section 14 of the Limitation Act. Section 14 of the Limitation Act enumerates that time spent in prosecuting with due diligence another civil

proceeding has to be excluded while computing the period of limitation. This has not been done by the trial court.

5. Once it is established that fundamental right of a prisoner guaranteed to him under Article 21 of the Constitution has been violated by the

functionaries of the state, it cannot exclude the respondent to grant monetary relief to him. It cannot exclude the state under the doctrine to avoid

liability from paying monetary relief to the family of the deceased who died in the premises of Central Jail. Respondents having failed to protect the

life of the deceased, cannot be permitted to deny the compensation to the family by taking the plea of limitation. In essence, where a party seeks

enforcement of fundamental right to life, the state cannot be permitted to deny the compensation to the family of the deceased who was killed

within the premises of the Central Jail. Even though deceased was facing the trial, yet the authorities were not absolved from ensuring the safety of

his life in the jail. The deceased was entitled to the protection. Since the occurrence took place when he was in jail, resulted deprivation of his life.

Undoubtedly death of the deceased deprived the appellant of his accompany and affection. Entitlement of the appellant to receive compensation is

on account of failure on part of the respondent to protect the life of the deceased. In essence, the enforcement of fundamental right entitled the

appellant being the mother of the deceased to receive compensation. The fundamental rights will have over riding effect on any statutory right which

impedes the entitlement of the appellant. This aspect of the matter has not been considered by the trial court.

6. For what has been stated above, the judgment and the decree of the trial court is reversed in respect of Issue No. 1 and I hold that the suit was

within time. The appellant would be entitled to compensation awarded by the trial court. She will be also entitled to the interest at the rate of 9%

from the date of decree. As a consequence, the suit of the plaintiff (appellant) is decreed.

Petition allowed.