

(2014) 10 DEL CK 0250
In the Delhi High Court
Case No : CMI No. 5 of 2013

Ram Saran

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Employees Compensation Act, 1923 — Section 10, 12
Limitation Act, 1963 — Section 14

Citation : (2015) 1 ACC 359

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : K.K. Bhuchar, P.K. Jha, Advocates and Party-in-Person, Advocates for the Appellant; Aakash D. Pratap, Advocates for the Respondent

Judgement

Valmiki J. Mehta, J.

CM Nos. 16888-91/2013

All these pending applications are allowed with the observation that appellant is entitled to file this appeal and is treated as a pauper and need not file the Court fee with respect to this appeal. CMs stand disposed of.

CMI 5/2013

1. The challenge by means of this first appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 8.9.2009 dismissing the suit for recovery of damages of Rs. 20 lacs on account of being barred by limitation. The facts of the case are that appellant/plaintiff is the father of one Sh. Kamal Kishore. Sh. Kamal Kishore is said to have died on 11.9.2001 while cleaning a safety/septic tank/sewer line at the CRPF Camp, Bawana, Delhi. Appellant/plaintiff alleges negligence because Sh. Kamal Kishore's son died on account of poisonous smell given out of the septic tank/safety tank/sewer line and hence the subject suit for tort of damages was filed.

2. Since the subject suit was filed on 23.9.2005, and the death had taken place on 11.9.2001 when the cause of action accrued as per Article 113 of the Limitation Act, 1963 by the impugned judgment dated 8.9.2009, the suit has been dismissed as barred by limitation.

3. The present case is a very hard case. There has been death of the son of a poor person, and who was supporting the family. So far as the present suit as also the present appeal is concerned, the same have to be dismissed because suit was filed beyond the period of three years of limitation, however, I may note that possibly the appellant/plaintiff can file a claim under the Employee's Compensation Act, 1923 in view of Section 12 of the Employees Compensation Act, 1923 as per which even if Sh. Kamal Kishore was not an employee of the respondent/Union of India but since he was working for the job being done for the Union of India/CRPF, the Union of India/CRPF will be a principal as per Section 12 of the Employees Compensation Act and may be required to pay compensation if and once the provisions of the Employees Compensation Act, 1923 come into play and apply.

4. I may note that the period of limitation for filing of claim under the Employees Compensation Act is two years from the date of death but the limitation period can be extended in view of the fifth proviso to Section 10 of the said Act which allows extension of time.

5. I may note that possibly the appellant/plaintiff may also take benefit of the spirit of provision of Section 14 of the Limitation Act and which provides that if a case is filed in a wrong Court or a Court which does not have jurisdiction, issue of limitation may be considered as an issue of jurisdiction, then the period taken with respect to the present suit and the present appeal, time taken with respect to these proceedings, can be excluded or be taken as a reason for condoning of the delay under the fifth proviso to Section 10 of the Employee's Compensation Act, 1923. Similar reasoning will apply with respect to an earlier suit for damages filed by the appellant/plaintiff which was dismissed for non-payment of Court fee. In view of the above, the present CMI petition, and which is a first appeal under Section 96, CPC is dismissed, of course subject to the aforesaid observations. In case, the appellant files a claim petition under the Employee's Compensation Act, 1923, and if provisions of that Act are satisfied for the appellant herein to succeed before the Commissioner acting under the Employee's Compensation Act, the Commissioner under the Employees Compensation Act can sympathetically consider an application for condonation of delay in filing of the case under the Employees Compensation Act, 1923.