
(2012) 01 MAD CK 0282

In the Madras High Court

Case No : Second Appeal No. 8 of 2004 and C.M.P. No. 23 of 2004

Rasipuram Municipality

APPELLANT

Vs

Soosaimary

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Citation : (2012) 01 MAD CK 0282

Hon'ble Judges : V. Periya Karupiah, J

Bench : Single Bench

Advocate : M. Leagat Ali, for the Appellant; P. Mani, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and decree passed by the first appellate Court in A.S. No. 127 of 1998 dated 21.02.2002, which confirmed the judgment and decree passed by the trial Court in O.S. No. 441 of 1993 dated 09.06.1993. The appellant before the first appellate court and this court is the defendant and the respondent in both the forums is the plaintiff.

2. The brief facts of the plaintiffs case before the trial Court would be as follows:-

On 21.09.1992, at about 6.00 a.m., one of the sons of the plaintiff, by name, Vijayakumar went to answer the call of nature in the public lavatory in the Krishna Street where the plaintiff is residing. At that time, the wall of the lavatory collapsed and due to the same the plaintiff's son Vijayakumar and another person died on the spot. The occurrence took place on account of the failure of the defendant to maintain the public lavatory in a proper manner. No proper foundation has been laid for the lavatory, while constructing the same and the defendant also did not maintain the lavatory in good condition and only due to their negligence and carelessness, the wall of the lavatory collapsed and thus, the occurrence had taken place and the plaintiffs son lost his life. Therefore, the defendant is liable to pay suitable damages to the plaintiff. At the time of incident, the plaintiffs son was aged 24 years and was earning a sum of Rs. 50/-

per day as a painter and he used to give a sum of Rs. 800/- to the plaintiff, for family expenses. If the plaintiff's son Vijayakumar was alive, he would have lived for another 46 years and would have supported the plaintiff and her family to a great extent. But due to the sudden demise of her son Vijayakumar, the plaintiff is put to great loss and hardship. The plaintiff issued notice dated 19.01.1993 claiming damages from the defendant, but the defendant sent a reply notice containing false allegations, stating that the defendant is not liable to pay the damages. The defendant is bound to maintain and provide basic necessities to the people, but on account of its failure to maintain the public lavatory and also to provide a suitable lavatory, the defendant is liable to pay damages to the plaintiff on account of the death of her son, Vijayakumar. Therefore, the plaintiff claimed a sum of Rs. 1,40,000/- as damages.

3. The contentions of the defendant raised in the written statement are as follows:

The suit is not maintainable either in law or on facts. It is false to state that the deceased son of the plaintiff Vijayakumar was engaged in painting job and earning a sum of Rs. 50/- per day and giving a sum of Rs. 800/- to the family. It is false to state that on account of failure of the defendant to maintain the public lavatory in dispute, Vijayakumar met with the accident. The amount of compensation claimed by the plaintiff is excessive. Hence, the defendant is not liable to pay the compensation to the plaintiff. For the notice issued by the plaintiff, the defendant has given a proper reply containing true facts. The public lavatory in Krishna Street was constructed about 60 to 70 years ago and the same was only provided with four walls without any roof. The municipality was maintaining the lavatory now and then and also envisaged a scheme, to replace the existing public lavatories by providing the public with modern lavatories with all facilities and in continuation of the scheme, the public were warned and informed not to use the lavatories and in order to prevent the public from utilising the same, stones and thorns were put inside the toilet. Prior to the occurrence, there was heavy rain in the locality and due to the incessant rain, the walls of the lavatory got soaked and despite the warnings given and the precautionary steps taken by the defendant to prevent the people from using the lavatory, the deceased son of the plaintiff Vijayakumar, at his own risk, used the lavatory and met with the accident. Therefore, the death is only due to the act of God and not on account of the negligence or carelessness on the part of the defendant. The walls collapsed owing to the heavy rain and not on account of poor maintenance of the defendant. The deceased met with the death on account of his own negligence and the defendant is in no way connected with the same. Hence, the plaintiff is not entitled to compensation. Hence, the suit is liable to be dismissed.

4. The trial court had framed necessary issues and had come to the conclusion of decreeing the suit for a sum of Rs. 1,40,000/- with subsequent interest and costs.

5. The aggrieved defendant filed an appeal before the learned second Additional

District Judge, Salem in A.S. No. 127 of 1998 against the judgment and decree passed by the trial Court. After hearing both the parties, the said appeal was dismissed with costs by confirming the judgment and decree passed by the trial court. Aggrieved by the judgment and decree passed by the first appellate court, the defendant has come forward with this Second Appeal before this Court.

6. On admission, this Court has framed the following questions of law for being decided in the appeal.

1. Whether the suit is not maintainable u/s 350(2) of the District Municipalities Act, 1920 and is liable to be rejected.

2. Whether the Courts below are correct in decreeing the suit for damages, when the damage was caused due to natural causes.

7. Heard Mr. M. Leagat Ali, learned counsel for the appellant / defendant and Mr. P. Mani, learned counsel for the respondent / plaintiff.

8. The learned counsel for the appellant / defendant would submit in his arguments that the first appellate Court has confirmed the judgment and decree passed by the trial court for a sum of Rs. 1,40,000/- together with interest at 12% p.a., which is excessive. He would further submit that the deceased was also negligently used the abandoned lavatory and the defendant was not responsible for the negligence of the deceased person. He would further submit that the falling of wall on the deceased person was due to the act of God and the fury of nature had caused huge neigh and therefore, the abandoned wall had fallen down and thereby, the deceased caught into it and died, which could not be fastened with the defendant for payment of compensation. He would further submit that whenever the toilets or lavatories were abandoned, the public notice were affixed with the warning to the public not to use the said toilets and lavatories and despite the same, the deceased had used the abandoned lavatory and the cyclone caused heavy rain and havoc and due to the said nature's calamity, the wall fell down and the deceased was caught in the debris. He would further submit that even otherwise the claim ought to have been made by the plaintiff or legal representatives of the deceased persons within six months as per the provisions of Sections 350(1) and (2) of the District Municipalities Act, 1920 and the claim has been laid after the lapse of six months period and therefore, the suit filed by the plaintiff for compensation beyond six months period is hopelessly barred by Law of Limitation. He would further submit that the plaintiff was alleging negligence on the part of the defendant in keeping the abandoned wall without being demolished and that had fallen on the deceased person and caused his death and therefore, negligence has been pleaded, which would certainly attract Section 350 of the District Municipalities Act. He would, therefore, request the Court that the claim of the plaintiff was barred by the Law of Limitation. He would further submit that the Courts below have not considered the application of Law of Limitation u/s 350(1) and (2) of the District Municipalities Act, and therefore, the present Second Appeal may be allowed and

thereby, the judgment and decree passed by the first appellate court and the trial court may be set aside. He would, therefore, request the Court to allow the Second Appeal and thus, dismiss the suit filed before the trial Court with costs.

9. The learned counsel for the respondent / plaintiff would submit in his arguments that the death caused to the son of the plaintiff was not due to the act of God or natural calamity, but it is due to the omission on the part of the defendant municipality, who left the abandoned walls without demolishing them. He would further submit that the said act would be clearly amounting to tortious liability and it would not be attracted by the provisions of Sections 350(1) and 350(2) of the District Municipalities Act and it would clearly warrant the negligence in excluding the duties cast upon the defendant under the said Act. He would categorically submit that the tortious liability of the defendant is entirely different from the liability to pay compensation for violation of the provisions of the District Municipalities Act, to which Sections 350(1) and 350(2) of the District Municipalities Act would apply. He would cite a judgment of the Hon'ble Apex Court reported in *The Municipal Corporation of Delhi Vs. Smt. Sushila Devi and Others*, in support of his arguments and had submitted that the facts discussed in the said appeal is squarely applicable to the present set of facts in this appeal. Therefore, the general Law of Limitation is only applicable to the present case and it would be three years from the date of accident. He would, therefore, submit that the suit filed by the plaintiff was well within time and the amount of compensation decreed by the trial Court as well as the first appellate Court are quite nominal and therefore, the judgment passed by both the Courts below need not be disturbed. He would, therefore, request the Court that the Second Appeal may be dismissed.

10. I have given anxious thoughts to the arguments advanced on either side.

11. The admitted facts are that the plaintiffs son namely one Vijayakumar was using the abandoned toilet at 6.00 a.m. on 21.09.1992 and the walls of the said abandoned lavatory suddenly collapsed and fell on him and he was caught in the debris and died on the spot due to the injuries sustained by him in the said accident. The said abandoned toilet was belonging to the defendant municipality. The plaintiff had filed the suit for damages due to the loss of his son, who died in the said accident. The trial Court had calculated all the necessary aspects including the age of the deceased as 24 years and had come to the conclusion of awarding a sum of Rs. 1,40,000/- which was claimed in the plaint. However, the trial Court had calculated the compensation at Rs. 1,92,000/- and since the plaintiff had asked for a sum of Rs. 1,40,000/-, it had decreed the suit as prayed for by the plaintiff. The said calculation of compensation in consideration of the young age and on the minimum earning likely to have earned by the deceased have not been disputed and the first appellate court had therefore, affirmed the said calculation.

12. The only point stressed before me, which could be considered in the Second Appeal is the question of law framed as "Whether the suit claim is within time or

barred u/s 350(2) of the District Municipalities Act".

13. The provisions of Sections 350(1) and 350(2) of the District Municipalities Act run as follows:-

350. Institution of suits against municipal authorities, officers and servants:-

(1) No suit for damages or compensation shall be instituted against the municipal council, any municipal authority, officer or servant, or any person acting under the direction of the same, in respect of any act done in pursuance or execution or intended execution of this Act or any rule, by-law, regulation or order made under it or in respect of any alleged neglect or default in the execution of this Act, or any rule, by-law, regulation, or order made under it until the expiration of one month after a notice has been delivered or left at the municipal office or at the place of abode of such officer, servant or person, stating the cause of action, the relief sought, and the name and the place of abode of the intending plaintiff; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be commenced within six months after the date on which the cause of action arose or in case of a continuing injury or damage during such continuance or within six months after the ceasing thereof.

14. On a careful perusal of the said provisions, I could see that the negligence on the execution of the duties and obligations cast upon the District Municipality, if violated, compensation would be awarded and such compensation should be claimed within six months from the date of cause of action. As far as this case is concerned, the plaintiffs son caught in an accident and he died and the claim was based upon tortious liability. The judgment of the Hon"ble Apex Court reported in The Municipal Corporation of Delhi Vs. Smt. Sushila Devi and Others, is the clear answer. The relevant portion, which would be applicable to the present case runs thus:-

7.... The causa proxima, i.e., the immediate cause of action is the fall of the branch of the tree over the head of the deceased. The fall of the branch of the tree cannot be attributed to any act done or purporting to have been done in pursuance of the Act etc., by the Municipal Corporation or any officer or employee thereof. The liability has arisen and has been sought to be enforced by the claimants under the law of torts. The finding recorded in the suit and in the Letters Patent Appeal is one of negligence on the part of the Municipal Corporation. To such an action Section 478 does not apply at all. The suit filed within a period of two years from the date of accrual of cause of action was governed by Article 82 of the Limitation Act, 1963 and was well within limitation. The plaintiffs' action was founded in tort. The plaintiffs' have not rested their case on any statutory duty on the part of the Corporation and failure or negligence in performing such duty.

15. The provisions of limitation as provided in Municipal Corporation Act of Delhi

is akin to the District Municipalities Act of the State and both the Sections 478 and 350 are identical in nature. In the said circumstances, the fall of tree on the deceased person was considered to be amounting to a tortious act of the Municipal Corporation of Delhi. Here, it is the fall of wall on the deceased person. Therefore, the said judgment of the Hon"ble Apex Court is squarely applicable to the present facts of the case and as per the dictum laid down therein, the limitation for launching the suit would be two years from the date of accident as per Article 82 of the Limitation Act. The date of accident was on 21.09.1992 and the suit was filed on 09.06.1993. As far as the filing of this suit is concerned, it is well within two years of time and therefore, there is no question of any bar of limitation. In the said circumstances, the question of law framed by this Court at the time of admitting the Second Appeal is not in favour of the appellant. For the foregoing discussions, I am of the considered view that the judgment and decree passed by the first appellate court dated 21.02.2002 in A.S. No. 127 of 1998 confirming the judgment and decree of the trial Court dated 09.06.1993 made in O.S. No. 441 of 1993 are in no way liable to be disturbed and therefore, the Second Appeal deserves dismissal and accordingly, the Second Appeal is dismissed. In the peculiar circumstances of the case, no order as to costs.