

(1975) 09 AHC CK 0033
In the Allahabad High Court
Case No : Second No. 363 of 1971

The Electricity Board, U.P. State

APPELLANT

Vs

Sheo Nath Singh and Another

RESPONDENT

Date of Decision : 08-09-1975

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A, 2
Hindu Minority and Guardianship Act, 1956 — Section 8
Limitation Act, 1963 — Section 6, 7

Citation : AIR 1976 All 118

Hon'ble Judges : T.S. Misra, J

Bench : Single Bench

Advocate : S.C. Mathur, for the Appellant; M.M. Lal, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Misra, J.—This appeal arises out of a suit for recovery of Rs. 20,000/- as compensation under the Indian Fatal Accidents Act (XIII of 1855).

2. On 26-2-1966 one Sheo Ham Singh came in contact with a bare live overhead conductor of 11 K.W. which was lying on the ground having got snapped earlier in the night and got electrocuted. He was survived by his widow Smt. Bari Bitia and a minor son, Sheo Nath Singh. They filed a suit for recovery of the said compensation on the ground that the defendant Electricity Board, was negligent in maintaining the electric installation and in allowing the said overhead conductor to remain lying live for a long period. This suit was filed on 30-11-1968, that is, beyond the period of limitation. Sheo Nath Singh, minor, however, claimed the benefit of Section 6 of the Limitation Act.

3. The suit was resisted by the Electricity Board on a variety of grounds. It was pleaded by the defendant Board that it was not guilty of any negligence, that the amount of compensation claimed was too excessive, and that the suit was barred by limitation.

4. The trial court on an appreciation of the evidence found that the accident occurred on account of the negligence of the Board, and that the amount claimed by way of compensation was not excessive. It, however, held that the suit was barred by time and consequently dismissed it.

5. Against that decision an appeal was preferred by the plaintiffs urging that the trial court had erred in holding that the suit was barred by time. Before the appellate court below the Board contended that it was not guilty of any negligence and the amount claimed by the plaintiffs was excessive. During the pendency of the First Appeal the plaint was got amended by deleting the name of Smt. Ban Bitia from the array of the plaintiffs. The appellate court below held that the suit was within time inasmuch as the minor son of the deceased was entitled to the benefit of Section 6 of the Limitation Act. It, however, concurred with the trial Court that the Board was guilty of negligence. It further held that a sum of Rs. 15,000 was an adequate compensation and that the widow and the minor son of the deceased were entitled to share that sum equally.

6. Aggrieved by that decision the Electricity Board has come up to this Court on second appeal. For the appellant it was urged that the said minor son of the deceased was not entitled to the benefit of Section 6 of the Limitation Act and the appellate court below, therefore, erred in holding that the suit was not barred by limitation. The accident as mentioned above occurred on 26-2-66 whereas the suit was filed on 30-11-1968. It was obviously filed beyond limitation unless the plaintiffs were given the benefit of Sec- 6 or the Limitation Act. Learned counsel for the appellant, however, urged that inasmuch as Sheo Nath Singh, minor and Smt. Ban Bitia his mother were jointly entitled to institute the suit and Smt. Bitia could give a discharge without the occurrence of Sheo Nath minor, the time would run against both of them from the date of the accident in view of the provisions of Section 7 of the Limitation Act and Section 6 of the Act would not apply.

7. The suit was filed under The Indian Fatal Accidents Act. Both the courts below have concurrently held that the appellant Board was negligent and the death of Sheo Bam Singh was caused by the neglect of the appellant. Section 1A of the Indian Fatal Accidents Act provides that every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the deceased person and shall be brought by and in the name of the executor, administrator or representative of the person deceased. It further provides that in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties or any o? them, in such shares as the Court by its judgment or decree shall direct.

8. Section 2 of the said Act provides that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint.

9. Section 3 provides that the plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered. The damages are thus recoverable for the benefit of the persons mentioned in Section 1A, and the plaint should disclose full particulars of the persons for whom and whose behalf the suit is brought. It is evident that not more than one suit can be instituted in respect of the same subject-matter of complaint.

10. In the instant case the suit was originally filed by the widow of the deceased as well as the minor son. But subsequently, during the pendency of the First Appeal, the plaint was amended by deleting the name of the widow from the array of the plaintiffs and disclosing in the body of the plaint that the suit was filed also for the benefit of Smt. Bari Bitia, the widow of the deceased. The suit was thus brought in conformity with the provisions of The Indian Fatal Accidents Act. The plaintiff Sheo Nath Singh was a minor both on the date of the accident and the date of the institution of the suit. Hence unless the provisions of Section 7 of the Limitation Act were applicable, the suit filed on his behalf during the continuance of the disability but after the expiry of the ordinary period of Limitation will be saved under the provisions of Section 6.

11. The relevant portion of Sub-section (1) of Section 6 of the Limitation Act reads as follows:--

"Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefore in the third column of the Schedule."

Section 7 of the Limitation Act runs as follows:

"where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased."

A combined reading of Sections 6 and 7 of the Act makes it quite manifest that the benefit of Section 6 will not be available where several persons are jointly entitled to institute a suit, and any of them is under a legal disability as is mentioned in Section 6 and a discharge can be given by one of those several persons without the concurrence of the person under legal disability. The time shall run as against all those several persons if any of them has a capacity to give a discharge without the concurrence of the person under disability. The disability referred to in Section 7 is the disability mentioned in Section 6 of the

Limitation Act, namely, minority, insanity or idiocy. The term "persons jointly entitled to institute a suit" connoted persons whose substantive right is joint and not persons whose substantive rights are several. It is immaterial that persons who have distinct several substantive rights arising out of the same cause of action may join together instituting a suit under Order I, Rule 1 of the Code of Civil Procedure. Similarly, it would also not make any difference that in view of the provisions of Section 2 of the Indian Fatal Accidents Act only one suit may be filed. For recovery of compensation a suit can no doubt be filed in a representative capacity for the benefit of all the persons who are entitled to compensation, but they would not be covered by the term ""persons jointly entitled to institute a suit" u/s 7 of the Limitation Act, if the substantive right of those persons is not joint but several. Under the Indian Fatal Accidents Act, the substantive right of the wife, husband, parent and child, if any, of the deceased person is not joint. Each of them has a distinct several right, and the Court while passing a decree in a suit filed under The Indian Fatal Accidents Act has to apportion the amount payable to each of those persons. Such persons are, therefore, not "jointly entitled to sue" within the meaning of Section 7 of the Limitation Act. Consequently, the question as to whether one of them can give a valid discharge in such a case would not arise. However, where the liability is based on tort none of the persons jointly entitled to sue can give a valid discharge without the concurrence of others, inasmuch as these persons are in the position of tenants-in-common and not joint tenants--each of them having a distinct interest in the substantive right. The fact that only one suit can be filed for recovery of compensation is not conclusive of the question that a discharge can be given by one of those persons without the concurrence of the other person who is under disability. The discharge contemplated by Section 7 of the Act is a discharge given by a joint claimant in his own right as such joint claimant.

12. Learned counsel for the appellant submitted that u/s 6 of the Hindu Minority and Guardianship Act, 1956 (Act XXXII of 1956) the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property are in the case of a boy or an unmarried girl the father, and after him, the mother. In the instant case since the father had met with a fatal accident the minor's mother Smt. Ban Bitia was therefore the natural guardian of Sheo Nath Singh minor. She had therefore, the power to do all acts which are necessary, reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate vide Section 8 of that Act. True it is that Smt. Bari Bitia had, therefore, the power to take action to realise the amount of compensation, and to file a suit in the name of the minor as his next friend. But the discharge contemplated by Section 7 of the Limitation Act is a discharge given by a joint claimant in his own right as such joint claimant. The power which a joint claimant has as a guardian of another claimant to give discharge on the latter's behalf is not the same as the power to give discharge as contemplated by Section 7 of the Act. The minor son of the deceased had no joint claim with the widow of the deceased who was also the mother of the

minor. Each of them was entitled to such amount, of compensation as might be determined by the Court u/s 1-A of the Indian Fatal Accidents Act by reason of the status of each one of them and their respective relationship with the deceased. The provisions of Section 7 of the Act did not, therefore, apply to such a case. The appellate court below was thus correct in holding that the minor plaintiff was entitled to the benefit of Section 6 of the Limitation Act and the suit was not barred by time.

13. It was next urged that as the name of Smt. Bari Bitia was deleted from the array of the plaintiffs she was not entitled to any decree. I find no merits in this contention. The plaint as amended states that Smt. Bari Bitia widow of Sheo Ram Singh deceased is also entitled to compensation for whose benefit the present suit is being filed as provided by Section 1-A of the Indian Fatal Accidents Act, The appellate court below has decreed the suit for Rs. 15000 by way of compensation and has apportioned the amount of compensation between Sheo Nath Singh, plaintiff and his mother Smt. Bari Bitia allowing a sum of Rs. 7500 to each of them. This decree is quite in consonance with the provisions of Section 1-A of the Indian Fatal Accidents Act.

14. No other point was urged before me.

15. In the result, the appeal fails and is dismissed with costs.