Arbitration Act. That being so, it must be held that the execution application filed by the decree-holder on 14th August, 1950, is barred by time.

Bishan Narain, J.

In this view of the matter it is not necessary to discuss the legal effect of the fact that the order of dismissal by the Lahore High Court was made after 15th of August, 1947.

For the reasons given above I would accept this appeal and dismiss the execution application as barred by time. In the circumstances of the case, however, I would leave the parties to bear their own costs throughout.

CHOPRA, J.—I agree. Chopra, J.

B.R.T.

APPELLATE CIVIL.

Before Falshaw and Mehar Singh, JJ.

UNION OF INDIA,—*Defendant-Appellant.*

versus

HARBANS SINGH AND OTHERS,—*Respondents.*

Civil Regular First Appeal 52-D of 1953.

1957

Sept., 14th

Tort—Union of India—Whether liable to damages for any act of its servant done in pursuance to the exercise of its sovereign powers—Sovereign powers—Meaning of—Employee of the Military Department engaged on duty to distribute meals to Military personnel on duty committing tort—Union of India, whether liable.

Held, that the Union of India is not liable to damages for any act of its servant done in pursuance to the exercise of its sovereign powers.

Held, that Sovereign powers are powers which cannot be lawfully exercised except by a sovereign or a private individual to whom the exercise of such powers is delegated by the sovereign.

Held, that the Union of India is not liable for a tortious act committed by an employee of its Military Department who was engaged on the duty of distributing meals to Military personnel on duty at different places as (a) it was the vehicle of the Military Department of the Union of India that was being used, (b) it was being used by the driver under orders of his superiors of the Defence Forces, and (c) it was being used under these orders to supply meals to military personnel on duty while they were carrying on their duty which must necessarily be that what was being done in exercise of the sovereign powers of the Union of India.

The P. and O. Steam Navigation Company v. *The Secretary of State for India* (1) and *Secretary of State* v. *The Moment* (2), relied on.

Regular First Appeal from the decree of the Court of Shri Gyan Dass Jain, Sub-Judge, 1st Class, Delhi, dated the 27th day of April, 1953, ordering that defendants 1 and 2 do pay to the plaintiffs and defendant No. 3 the sum of Rs. 10,000 and do also pay Rs. 99-12-0 the proportionate costs of this suit since the suit is in forma pauperis for Rs. 50,000. The plaintiffs and defendant No. 3 shall pay out of the amount decreed, the Court fee of Rs. 1,987-8-0 on the balance, i.e., Rs. 40,000. The decree to be satisfied within three months. The persons entitled to the damages are the widow (Defendant No. 3) of the deceased and the plaintiffs. The allocation of the damages awarded, among all these persons is not done at this stage, because the plaintiffs did not suggest in the plaint any mode or criteria for distribution, and there is no sufficient material to equally distribute the same.

BISHAMBER DAYAL and KESHAV DAYAL, for Petitioner.

RADHE MOHAN LAL, for Respondent.

JUDGMENT

Mehar Singh, J. MEHAR SINGH, J.—This is an appeal by the Union of India, defendant, from the decree, dated July, 1953, of the First Class Subordinate Judge

(1) (1868-69) V., Bom. High Court Reports Appendix-A.
(2) I.L.R. (1913) 40 Cal. 391.

of Delhi. The plaintiffs Nos. 1 to 3 are the sons and No. 4 is the daughter of Khushhal Singh deceased and defendant No. 3 is his widow. The plaintiffs brought a suit to recover an amount of Rs. 50,000 as damages on account of the death of their father resulting from defendant No. 2 (Sohan Chand) a driver of the Military Department of defendant No. 1 (Union of India), knocking him down and running over him when he was riding his cycle. The plaintiffs alleged that it was the rash and negligent act of defendant No. 2 in driving the military vehicle in such a manner as to cause the accident that resulted in the death of their father. The accident took place, at about 9.30 a.m. on September 27, 1949. The suit was permitted to be brought in forma pauperis. It was mainly contested by defendant No. 1 and a number of defences were taken, among them being, that defendant No. 1 (Union of India) is not liable to damages for any act of its servant done in pursuance to the exercise of the sovereign powers of this defendant.

The learned trial Judge has found against defendant No. 1 and granted a decree in the amount of Rs. 10,000, with proportionate costs, to the plaintiffs and defendant No. 3.

In this appeal no other question is raised, not even as to the quantum of the damages allowed, except the one as regards the liability of the Union of India for damages for the act of defendant No. 2, its driver in the Military Department, in running over the father of the plaintiffs and husband of defendant No. 3 and causing his death.

It is stated in para No. 8 of the plaint that as defendant No. 2 was on duty and was driving the

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military truck during the course of his employment, defendant No. 1 is liable for the damages claimed by the plaintiffs. In its written statement defendant No. 1 pleads that it is not liable for the tort committed by its driver defendant No. 2 and accepts that on the particular morning defendant No. 2 was driving the military vehicle from the Town Hall, Delhi, towards Lahori Gate. When the vehicle was just approaching Novelty cinema, the accident took place. Tanwar Sharma D.W. 1, a military engineer, was travelling on the truck at that time and he has deposed that the truck had brought meals from the Cantonment and it was going about distributing the same where military personnel were working. It is obvious from this material that a truck of the military Department of defendant No. 1 was driven by defendant No. 2, its employee, and that truck was used for distribution of meals to military personnel, and when it was being thus used that the accident took place resulting in the death of the father of the plaintiffs and husband of defendant No. 3. The learned trial Judge, while appreciating that defendant No. 1 is not liable for the tort of its servants when the act is done in exercise of its sovereign power came to the conclusion that distribution of meals for the employees of the Government could hardly be said to be an act done in exercise of any sovereign power. So the learned trial Judge repelled the one contention on behalf of defendant No. 1, that is now the main contention on its behalf, and decreed the suit.

The learned counsel for defendant No. 1 takes the same position in this respect as was done on behalf of this defendant in the trial Court and urges that there is no cause of action against that defendant. The reply of the learned counsel for

the plaintiffs and defendant No. 3 is that the act of the military driver in running over the father of the plaintiffs and causing his death cannot be said to have been occasioned by him when he was doing work which may be described as some thing that was done in exercise of sovereign powers of defendant No. 1. He relies, in this behalf, on *The P. and O. Steam Navigation Company* v. *The Secretary of State for India* (1), of which the head-note says that—

> "The Secretary of State in Council of India is liable for damages occasioned by the negligence of servants in the service of the Government if the negligence is such as would render an ordinary employer liable."

The Union of India, defendant No. 1, can be sued according to Article 300(1) of the Constitution in relation to its affairs in the like cases in which the Dominion of India could be sued. When the various Government of India Acts are referred to, ultimately it is found that defendant No. 1, can be sued on the same basis as the East India Company could be. Section 32 of the Government of India Act, 1915, provided:—

> (1) "The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council as a body corporate.
>
> (2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, and this Act had not been passed."

(1) (1868-69) V., Bomb. High Court Reports Appendix A.

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It was in relation to similar provisions of the Government of India Act of 1858 that the learned Chief Justice was considering the liability of the Secretary of State for India in the case already referred to above. The learned Chief Justice observes—

> "But where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by sovereign, or private individual delegated by a sovereign to exercise them no action will lie. ..... There is a great and clear distinction between acts done in exercise of what are usually termed sovereign powers, and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them."

In that particular case, as it appears from the head-note and also from the main body of the judgment, the learned Judges came to the conclusion that the act was the type of act that could be carried on by private persons without reference to any delegation of powers by the sovereign for carrying it out. A few subsequent cases have been referred to by the learned counsel on both sides but all follow the dictum of Sir Barnes Peacock in the above case which was approved by the Privy Council in *Secretary of State* v. *The Moment* (1), and no authority taking any different view has been referred to.

(1) I.L.R. (1913) 40 Cal. 391.

The learned counsel for the plaintiffs and defendant No. 3, urges the same view of the circumstances of the case as adopted by the learned trial Judge that the distribution of meals to the military personnel was not an act done by an employee of defendant No. 1, in the exercise of the latter's sovereign powers, and that it is the type of act which without any delegation of sovereign powers to him, might just as well be done by a private individual employing his driver on a private motor vehicle. The contention is obviously untenable and unsound for (a) it was the motor vehicle of the Military Department of defendant No. 1, that was being used, (b) it was being used by the driver, defendant No. 2, under orders of his superiors of the Defence Forces, and (c) it was being used under these orders to supply meals to military personnel on duty, as has been admitted by the plaintiffs even in their plaint. It is obvious that what was being done was that while the military personnel of defendant No. 1, were carrying on their duty, which must necessarily be that what was being done in exercise of the sovereign powers of defendant No. 1, and it was in those circumstances, that they were being supplied with their meals, again an act done by another military man in pursuance to his duty and under orders of his superiors. Obviously that is what could not be described as some thing which could be done by a private individual. In fact in the very case upon which the learned counsel for the plaintiffs and defendant No. 3, has placed reliance the learned Chief Justice at pages 14 and 15 of Appendix-A, observes—

> "It is clear that the East India Company would not have been liable for any act done by any of its naval officers or soldiers in carrying on hostilities, or for the act of any of its naval officers

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in seizing as prize property of a subject, under the supposition that it was the property of an enemy, nor for any act done by a military or naval officer, or by any soldier or sailor, whilst engaged in military or naval duty, nor for any acts of any of its officers or servants in the exercise of judicial functions."

It is thus evident that the act of defendant No. 2 was done whilst he was engaged on military duty in supplying meals to military personnel on duty and for tort committed by him while performing that duty, the East India Company could not have been liable and could not be sued. The position of defendant No. 1, is in this respect the same and thus no action lies against it.

The appeal, therefore succeeds on this, what may be described as a somewhat technical plea, and the suit of the plaintiffs has to be dismissed. But it is obvious that it was the negligence of the driver of defendant No. 1, which caused the death of the father of the plaintiffs and husband of defendant No. 3, and, but for the technical rule of law of which advantage has been obtained by defendant No. 1, their claim was unanswerable. Now that their suit fails, and as it has been brought in forma pauperis, the plaintiffs would be liable for the amount of the court-fee, but in the circumstances of the case, though this Court cannot pass an order in this respect, we recommend to the authorities that they may forbear recovery of the court-fee from the plaintiffs. With this recommendation the appeal of defendant No. 1, is accepted and the suit of the plaintiffs in so far as defendant No. 1 is concerned is dismissed, though the decree remains against defendant No. 2, but there is no order as to costs in this appeal.

Falshaw, J.

FALSHAW J.—I agree.

B.R.T.