

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
* THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI**

+ CIVIL MISCELLANEOUS APPEAL (SR).No.9643 of 2026

% 29.04.2026

Between:

Birendra Prasad Jain

.....PETITIONER

AND

Matcha Rama Krishna and 3 others

.....RESPONDENTS

! Counsel for the Petitioner : G. Ramesh Babu

Counsel for the Respondents :

< Gist :

> Head Note:

? Cases Referred:

1. AIR 2007 Gauhati 76
2. AIR 1933 PC 63
3. 1948 SCC OnLine All 51
4. 1959 SCC OnLine AP 139
5. 1977 SCC OnLine All 233
6. (1976) 3 SCC 800
7. 1991 SCC OnLine Kar 147
8. 2002 SCC OnLine All 194
9. (2014) 9 SCC 129
10. (1994) 4 SCC 99

HIGH COURT OF ANDHRA PRADESH

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DATE OF JUDGMENT RESERVED : 01.04.2026***DATE OF JUDGMENT PRONOUNCED : 29.04.2026*****DATE OF JUDGMENT UPLOADED : 29.04.2026*****SUBMITTED FOR APPROVAL:***

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

- 1. Whether Reporters of Local newspapers may be allowed to see the Judgments?* Yes/No
- 2. Whether the copies of judgment may be marked to Law Reporters/Journals* Yes/No
- 3. Whether Your Lordships wish to see the fair copy of the Judgment?* Yes/No

RAVI NATH TILHARI, J

BALAJI MEDAMALLI, J

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
&
THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI
CIVIL MISCELLANEOUS APPEAL (SR).No.9643 of 2026

JUDGMENT:- (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri G.Ramesh Babu, learned counsel for the appellant and perused the material on record.

I. FACTS:

2. The petitioners – respondent Nos.1 & 2 herein filed Fatal Accident Original Petition No.55 of 2018(FAOP) in the Court of learned Principal District Judge, Visakhapatnam (in short the court) under Section 1-A of the Fatal Accidents Act, 1855 (in short 'the Act, 1855) claiming compensation/damages in the death of their son in an accident which occurred on 05.10.2016. The compensation claimed was Rs.20,00,000/- with subsequent interest and costs. The claim was filed against the respondent Nos.1 to 3 in FAOP.

3. The FAOP was allowed granting compensation of Rs.20,00,000/- with costs and with interest @ 9% per annum from the date of the FAOP to the date of realization, vide judgment & decree dated 19.11.2025 passed by the learned Principal District Judge, Visakhapatnam which reads as under:

"Decree

i) that the claim application in FAOP.No.55/2018 be and the same is hereby allowed against respondent Nos.1 to 3 by granting compensation of Rs.20,00,000/- (Rupees twenty lakhs only) with costs and with interest @ 9% per annum from the date of this petition to the date of realization; and

ii) that respondents 1 to 3 do pay to the petitioners a sum of Rs.NIL towards costs of the petition.”

4. Respondent No.1 in FAOP has filed the present appeal [CMA(SR)]. The respondent Nos. 2 & 3 in FAOP are the present respondent Nos.3 & 4.

II. Office Objections:

5. The appellant initially filed CMA(SR).No.9643 of 2026. The same was returned with the office objections regarding the maintainability/entertainability of the CMA under Order 43 Rule 1 of the Code of Civil Procedure (in short ‘CPC’). Another objection was with respect to the valuation and the Court fee. The appellant resubmitted CMA(SR) correcting Civil Miscellaneous Appeal (CMA) as Appeal Suit (AS) under Section 96 CPC r/w. Order 41 with an ad valorem court fee of Rs.37,299/- paid on the value of the appeal, including the interest awarded by the learned Court. The Registry was not satisfied.

6. The matter has been placed before this Court ‘for orders’ on the point of entertainability of AS(SR) as also the court fee payable, with the office report.

7. The office objection appears to be that as the respondent No.1 filed FAOP and not the suit, so the objection is regarding maintainability of the appeal under Section 96 CPC which lies against a decree in a suit.

III. Submission of the learned counsel for the Appellant:

8. Sri G. Ramesh Babu, learned counsel submitted that the FAOP was filed by respondent No.1 under Section 1A of the Act, 1855. The Principal District Judge, Visakhapatnam has allowed the same and a decree has been

drawn on 19.11.2025. So, there being a decree against the appellant an appeal (AS) shall lie to this Court under Section 96 CPC r/w. Order 41. The appeal is maintainable and the objection raised by the Registry regarding the entertainability deserves to be rejected with a direction to the Registry to register the AS. He relied in ***Smt.Maya Rani Ghosh v. State of Tripura***¹.

9. Learned counsel for the appellant further submitted that the *ad valorem* court fee has been paid on the entire valuation of the appeal.

IV. Points for determination:

10. The points for determination are as follows:

A) Whether an appeal under Section 96 CPC would lie against a decree passed by the learned Principal District Judge, Visakhapatnam in Fatal Accident Original Petition (FAOP) under Section 1A of the Fatal Accidents Act, 1855 ? and

B) About the court fee payable?

V. Consideration:

11. We have considered the office objections and the submissions advanced by the learned counsel for the appellant.

i) Section 96 CPC - Appeal against Decree in a suit:

12. The Civil Miscellaneous Appeal (SR) later on resubmission as AS(SR) has been filed under Section 96 CPC which reads as under:

¹ AIR 2007 Gauhati 76

“96. Appeal from original decree.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, **an appeal shall lie from every decree passed by any Court exercising original jurisdiction** the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.”

13. An appeal under Section 96 lies against a decree passed by any Court exercising the original jurisdiction. This is subject to otherwise expressly provided in the CPC or by any other law for the time being in force. So to maintain an appeal under Section 96 CPC there should be a ‘decree’ passed by a Court in the exercise of its original jurisdiction.

14. Section 2(2) CPC defines “decree” as under:

“2. Definitions – In this Act, unless there is anything repugnant in the subject or context, -

(1).....

(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the **matters in controversy in the suit** and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;.....”

15. A decree as defined under Section 2(2) of CPC contains three essential conditions:

- i) that the adjudication must be given in a suit, determining the rights of parties
- ii) that the adjudication must be final given by a civil court and
- iii) that the determination is conclusive as regards the Court expressing it.

ii) Section 9 CPC – Jurisdiction of Civil Court:

16. We also reproduce Section 9 CPC as under:-

“9. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I — A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II — For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.”

17. Section 9 of CPC provides that the Courts shall, subject to the provisions contained in CPC, have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of the Courts is very wide with respect to the nature of the suit to be tried by it and that is that all the suits of a civil nature, unless the cognizance thereof is expressly or impliedly barred. If the cognizance of a suit

of a civil nature is barred, expressly or impliedly, then only the civil Court shall have no jurisdiction to try such a suit.

18. Suit for damages under the Fatal Accidents Act, 1855 is not barred either expressly or by necessary implication. Rather, it is so provided under Section 1A of the Act, 1855, before a Court, which suit for damages, undoubtedly, is of a civil nature.

iii) Suit:

19. Section 9 also uses the expression suit, like in Section 2(2) CPC.

20. The expression suit has not been defined in CPC.

21. In ***Hansraj Gupta v. Official Liquidators of the Dehra Dun – Mussorie Electric Tramway Company limited***², the Privy Council considered the meaning of expression 'suit' in Section 3 its explanation of the Indian Limitation Act, 1908 for the applicability of limitation to an application made by the liquidators and question was whether such an application was a 'suit instituted' or 'an application made'. It was observed that there was no definition of suit in the Limitation Act beyond the provision, contained in Section 2 that, unless there is anything repugnant in the subject or context, "suit" does not include an appeal or an application. It was held that the word "suit" ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint. Para Nos.5 to 7 in ***Hansraj Gupta*** (supra) reads as under:

² AIR 1933 PC 63

“5. The material section of the Indian Act is Section 3, which runs thus: " Subject to the provisions contained in Sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefore by the first schedule, shall be dismissed, although limitation has not been set up as a defence.

Explanation.--A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

6. Unless the application which the liquidators made on March 26, 1928, was a "suit instituted" or an "application made," for which a period of limitation is prescribed by the first schedule, no question of limitation in regard thereto can arise.

7. There is no definition of suit in the Act, beyond the provision, contained in Section 2, that unless there is anything repugnant in the subject or context, "suit" does not include an appeal or an application. The word "suit" ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint. The application of the liquidators would not be a suit within Section 3, if that section stood alone, unaccompanied by the explanation.....”

22. In *Balram Singh v. Dudh Nath*³, in an application for redemption of a mortgage under Section 12 of the United Provinces Agriculturists' Relief Act the trial Court had appointed an arbitrator who gave an award. An objection to the validity of the award was dismissed and a decree was passed in terms of the award, against which the appeal was filed in the appellate Court, which was allowed taking the view that the Trial Court had no jurisdiction to refer the matter to arbitrator. Challenging the same, Revision was filed in the High Court. It was urged that a proceeding under Section 12 of the Agriculturists'

³ 1948 SCC OnLine All 51

Relief Act was not a suit as it was on application and so the arbitrator could not be appointed, which under Section 21 of the Arbitration Act could be appointed in a suit only. The Allahabad High Court observed that the word suit had not been defined either in the General Clauses Act or in the Arbitration Act and though there was also no definition of term 'suit' in Civil Procedure Code, but Section 26 of the Code, provided that "every suit shall be instituted by the presentation of plaint or in such other manner as may be prescribed". The words 'in such other manner as may be prescribed' in Section 26 of the Code, it was held, were wide enough to include an application under Section 12 of the Agriculturists' Relief Act. The Allahabad High Court observed that the various provisions in Agriculturists' Relief Act made it clear that the proceedings under Section 12 resembled in every respect a suit. In **Balram Singh** (supra) it was further observed that the question whether the proceeding under Section 12 of the Agriculturists' Relief Act were 'suits' or not, would not depend merely on the fact that the proceedings under Section 12 were initiated by an 'application'.

23. In **Kalakota Varalakshmi v. Kalakota Veerareddi**⁴, it was observed that Section 96 CPC confers the right of appeal against the decrees passed by a Court in the exercise of its original jurisdiction. It should be a decree within the meaning of Section 2(2) of CPC. One of the pre-requisite of a decree was that the proceeding which results in an adjudication should start in a 'suit'. 'Suit' was not defined in the CPC but some help was derived from Section 26

⁴ 1959 SCC OnLine AP 139

of the CPC that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. This Court held that Section 26 CPC gave a clue as to what a suit was, namely that, it was a proceeding initiated by the filing of a plaint. With respect to the expression “or in such other manner as may be prescribed” under Section 26 CPC it was observed that some proceedings might be started in applications and they could still be regarded as suits for the purposes of those enactments, provided it was specially provided for therein and in the absence of such provision, any proceeding, except the one started by presentation of a plaint, and an adjudication given therein would not be a decree for the purposes of Section 96 CPC. Paras 5 to 9 in ***Kalakota Varalakshmi*** (supra) read as under:

“5. It is immediately clear that an appeal is competent under that section only from a decree passed by a Court in the exercise of its original jurisdiction. In other words, it should be a decree within the connotation of Section 2 (2) of the Code. Decree as defined in that section is:

“‘Decree’ means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144, but shall not include –

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default. ”

* * * * *

6. Thus, the pre-requisite of a decree is that the proceeding which results in an adjudication should start in a suit.

‘SUIT’ is not defined in the Civil Procedure Code, but some help could be derived from Section 26 of the Code which says :

"Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed".

7. This section gives a clue to the problem as to what a suit is, namely, that it is a proceeding which is initiated by the filing of a plaint.

8. A reference to some of the statutes would establish that a proceeding though not started by a plaint could be regarded as a suit, provided that a specific provision is made in that behalf, as in the case of Section 20 (2) of the Arbitration Act, 1940 (X of 1940) which recites:

"the application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or if otherwise, between the applicant as plaintiff and the other parties as defendants".

9. This shows that though some proceedings might be started in applications, they could still be regarded as suits for purposes of those enactments, provided it is specially provided for therein. In the absence of such provision, **any proceeding except the one started by presentation of a plaint and an adjudication given therein will not be a decree for purposes of Section 96.** This position is incontrovertible, especially in view of the decision of the High Court of Madras in *Rajagopala Chettiar v. H. R. E. Board*, ILR 57 Mad 271. It was there laid down by a Full Bench that an order under Section 84 of the Madras Hindu Religious Endowments Act (II of 1927) was not appealable as it was not a decree within the purview of Section 2 (2) Civil Procedure Code, notwithstanding that it had most of the postulates of a decree in that it finally determined the rights of parties."

24. In *Jagdishwar Sahal v. Surjan Singh Pal*⁵ it was held that the word suit was not defined but it must be taken to mean a civil proceeding instituted by a plaint. For the existence of the suit it was enough if a party approached the court and sought its assistance by presenting a plaint. The relevant part in para-5 in *Jagdishwar Sahal* (supra) reads as under:

⁵ 1977 SCC OnLine All 233

“.....On the date of its institution the suit was certainly barred by Section 20 but nonetheless it was a suit. Merely because it was barred under the Act it is not right to contend that the suit was non-existent. A suit may be barred under the law of limitation or it may be barred by any other enactment or it may not be maintainable because the plaintiff may not be competent to institute it yet it cannot be held that no suit comes into existence. **The word 'suit' has not been defined but it must be taken to mean a civil proceeding instituted by a plaintiff. For the existence of the suit it is enough if a party approaches the court and seeks its assistance by presenting a plaintiff.** If the plaintiff fails to satisfy the court on the validity of his claim or it is found to be barred by any enactment or the court has no jurisdiction to grant the relief claimed for, the claim will meet the fate that it deserves. It cannot, however, be contended that no suit was instituted. A suit barred on the ground of limitation, incompetency or any other preliminary ground is nonetheless a suit. **If such a suit is dismissed the plaintiff would have a right of appeal to the superior court.** That right cannot be denied on the ground that the suit was incompetent or was barred by law of limitation or any other enactment or that the court had no jurisdiction to entertain it.....”

iv) Statutory Provisions under Fatal Accidents Act:

25. In the light of the aforesaid legal provision; Section 26 of CPC which provides that “every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed and in every plaint, facts shall be proved by affidavit”, and the judgments on the expressions ‘decree’, ‘suit’ we shall proceed to consider if the proceedings for compensation under Section 1A of Fatal Accident Act, 1855 are ‘suit’ or not.

26. Sections 1A, 2 & 3 of the Fatal Accident Act, 1855 read as under:

[1A.] Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.—Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if

death had not ensued, **shall be liable to an action or suit for damages**, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;

and **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 of them, in such shares as **the Court by its judgment or decree shall direct**.

2. Not more than one suit to be brought. - Provided always that not more than **one action or suit** shall be brought for, and in respect of the same subject-matter of complaint.

Claim for loss to the estate may be added. - Provided that, in any such **action or suit**, the executor, administrator or representative of the deceased may insert a claim for, and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

3. Plaintiff shall deliver particulars, etc.—The plaint in any such action or suit shall give a full particular of the person or persons for the 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.”

27. Section 1A of the Act, 1855 thus provides that whenever the death of a person shall be caused by wrongful act, neglect or default and the act, negligence or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the

person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime. As per the second para (unnumbered) of Section 1A, every such action or suit shall be for the benefit of the wife, husband parent and child if any, of the person whose death shall have been so caused, and shall be brought by and in the name of executor, administrator or representative of the person deceased. The third para (unnumbered) of Section 1A provides inter-alia that in 'every such action' the Court may give such damages etc., and also specify the share or divide amongst the claimants as the Court may determine and direct by its judgment or decree.

28. A reading of Section 1A shows that it uses the expressions "an action or suit" in first two paras, and in 3rd para it uses only 'action' but also uses 'judgment or decree'. Section 2 provides that "not more than one action or suit shall be brought for". Section 2 also uses the expression "action or suit". Section 3 provides that the 'plaint' in such action or suit, shall give 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. So, the initiation of the 'action' or 'suit' is by filing a 'plaint'. It is also evident that such 'action or suit' shall be before a 'Court' and the Court has to pass its judgment or 'decree'.

29. The Act, 1855 confers the substantive right for damages and provides for the remedy by way of an 'action' or 'suit'. So, two expressions have been used "action" or "suit". Both are to be before the 'Court'. Any special forum like

Tribunal or Court, other than the regular civil Courts, has not been provided for nor constituted for adjudication of 'action' or 'suit' for the relief under Section 1A of the Act, 1855. The expressions 'suit', 'action', 'plaint', 'decree' & 'Court' have not been defined by the Act, 1855. Rules have not been framed, laying down any procedure to be followed in such 'suit' or 'action' by the 'Court', except that Section 3 of the Act, speaks about, 'plaint' and provides that the plaint in any such action or suit shall give certain particulars as mentioned therein. So, the proceedings before a Court, whether by way of an 'action' or 'suit', are by presentation of the 'plaint'.

30. In a proceedings under Section 1A of the Act, 1855, either by way of action or suit, there is **i)** an adjudication, on liability and entitlement for the compensation due to death caused by wrongful act, neglect or default; on the amount of damages; and its apportionment/division of shares amongst claimants; **ii)** such adjudication is based on the evidence led by the parties; **iii)** such determination is by the 'Court' and **iv)** so far as the Court expressing it is concerned such adjudication is the conclusive determination.

31. The FAOP was filed in the Court of the Principal District Judge. The respondents in FAOP filed counter. The learned Principal District Judge framed the point for consideration. The claim petitioners examined PWs.1 to 6 and the respondents therein examined RW1 & RW2. The documentary evidence Ex.A1 to A12 for the petitioners and further documents as Ex.X1 to X3 through the PWs.4 & 5 were marked. The learned Principal District Judge on consideration, recorded the findings and allowed the FAOP vide judgment,

followed by the 'decree'. A decree has been drawn by the learned Court in FAOP which is so provided by Section 1A (para 3) of the Act, 1855.

32. In the FAOP, adjudication has been made on the points for determination, under Section 1A of the Act, 1855; such an adjudication is between the parties with regard to the disputes involved; and so far as the Court of the Principal District Judge making adjudication is concerned, it is a conclusive determination. The Court has drawn a 'decree' as well.

33. The present issue has arisen because FAOP was filed and not the suit. So, though a 'decree' has been passed the question requiring consideration is whether a decree passed in FAOP can be said to be decree in a 'suit' within the meaning of Section 2(2) of CPC which uses the expression 'decree in a suit' for the purpose of appeal under Section 96 CPC.

v) 'Action' and 'suit' whether same or different:

34. We have already discussed in the earlier part of this judgment that if the proceedings in a civil court start by presentation of plaint such proceeding will be a suit. But then it still requires consideration as to why expressions 'action' or 'suit' both have been used in the Act, 1855. Whether 'action' is different from 'suit'.

35. Before proceeding further to consider the above question, we observe that no distinction can be made in the meaning of the expression 'suit' or 'decree' as used in Fatal Accident Act and the CPC. In ***Diwan Brothers v.***

Central Bank of India, Bombay⁶ the Hon'ble Apex Court held that it is well settled principles of interpretation of statute that where the legislature used the expression bearing a well-known legal connotation it must be presumed to have used the said expression in the sense in which it has been so understood. The Hon'ble Apex Court held that when the Court Fees Act uses the word decree which had a well-known legal significance or meaning then the legislature must be presumed to have used this term in the sense in which it has been understood, namely, as defined in the Code of Civil Procedure, even if there has been no express judicial interpretation on that point. Para Nos.22 & 23 in **Diwan Brothers** (supra) reads as under:

“22. Apart from the above considerations, it is a well-settled principle of interpretation of statutes that where the Legislature uses an expression bearing a well-known legal connotation it must be presumed to have used the said expression in the sense in which it has been so understood. *Craies on Statute Law* observes as follows:

“There is a well-known principle of construction, that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted, unless a contrary intention appears.”

23. In *Barras v. Aberdeen Steam Trawling and Fishing Company* [1933 AC 402, 411] Lord Buckmaster pointed out as follows:

“It has long been a well-established principle to be applied in the consideration of Acts of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context must be construed so that the word or phrase is interpreted according to the meaning that has previously been ascribed to it.”

⁶ (1976) 3 SCC 800

Craies further points out that the rule as to words judicially interpreted applies also to words with well-known legal meanings, even though they have not been the subject of judicial interpretation. Thus applying these principles in the instant case it would appear that when the Court Fees Act uses the word "decree" which had a well-known legal significance or meaning, then the Legislature must be presumed to have used this term in the sense in which it has been understood, namely, as defined in the Code of Civil Procedure even if there has been no express judicial interpretation on this point."

36. 'Action' has been defined in the Law Lexicon Fourth Edition as follows:

"Action. (Actio). Is the form of a suit given by law for recovery of that which is one's due; or it is a legal demand of a man's right. (*Co. Lit.* 285. *Tomlin*. See to the same effect *Justinian Inst.* 4, 6).

The vital idea of an action is a proceeding on the part of one person as actor against another, for the infringement of some right of the first, before a court of justice, in the manner prescribed by the court of the law. Subordinate to this is now connected in a quite common use, the idea of the answer of the defendant or person proceeded against, the adducing evidence by each party to sustain his position; the adjudication of the court upon the right of the plaintiff; and the means taken to enforce the right or recompense the wrong done, in case the right is established and shown to have been injuriously affected. (*Bouvier*)

"An action", according to the legal meaning of the term, is "a proceeding by which one party seeks in a Court of Justice to enforce some right against, or to restrain the commission of some wrong by another party." "More concisely, it may be said to be the legal demand of a right... It implies the existence of parties, of an alleged right, of an alleged infringement thereof (either actual or threatened) and of a Court having power to enforce such right." [*Sir Dinshaw Marockji Petit v. Sir Jamsetji Jeejeebhoy*, 2 Ind. Cas. 701 (732) : 11 Bom LR 85 : 33 B 509 (Daver, J)]

The word "action" has three distinctive meanings. It means sometimes the act of resorting to authority to vindicate one's rights or, in a metaphorical sense, the right to such resort, or **may mean the form of such resort.** [*Desouza v. Coles*, 3 MHCR 384(407)].

A counterclaim cannot be deemed an 'action', it not being commenced by writ of summons. [*Mc Gowan v. Middleton*, (1883) QBD 464]

ACTION, generally means a litigation in a civil Court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the Crown. [*Bradlaugh v. Clarke*, (1883) 52 LJOB 508; 8 App. Cas. 354 p. 361]

The term 'action' takes in an appeal or a second Appeal. *Velayudhan Ramkrishnan v. Rajeev*, AIR 1989 Ker 12, 19. [Benami Transaction (Prohibition of the Right to Recover Property Ordinance (1988), S. 2(2)]

Failure of the National Coal Board to pay wages at the increased rates constituted action, short of dismissal. For an act to constitute 'action' there does not need to be any reasonable expectation by

the employee that the employer would not so behave. No notion of duty of obligation attaches to the concept of action. *National Coal Board v. Ridgway*, (1987) 3 All ER 582, 594, 595, 605 (CA). [Employment Protection (consolidation) Act, 1978, S. 23(1)]

"Action means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules" of Court, but does not include a criminal proceeding. " *China v. Harrow Urban District Council*, (1954) 1 QB 178 **as referred in** *Velayudhan Ramkrishnan v. Rajeev*, AIR 1989 Ker 12, 19.

A petition for the compulsory winding up of a company does not fall within this definition. *Re Simpkin. Marshall Ltd.*, (1958) 3 All ER 611, 613 (Ch D).

(ALL) ACTIONS. "Where one releases to another all actions" not only action depending, but also causes of actions are released". (*Altham's Case*, 8 Rep. 153-a, 153-b)

ACTION, SUIT, REMEDY. A distinction has been drawn between the word "action" as importing the right or power to enforce an obligation, and the word "suit" meaning the proceeding in which the right is enforced. The distinction is not however generally observed in common usage....."

37. It is evident that action is the form of a suit given by law for recovery of that which is one's due; or it is legal demand of a man's right. An 'action', is a proceeding by which one party seeks in a Court of Justice to enforce some right against or to restrain the commission of some wrong by another party. It may be said to be the legal demand of a right and implies the existence of parties, of an alleged right, of an alleged infringement thereof and of a Court having power to enforce such right. 'Action' generally means a litigation in a civil Court for the recovery of individual right or redress of individual wrong. It also means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of Court. 'Action' is a form of a suit given by law for recovery of that which is one's due or it is a legal demand of one's right. The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a suit.

38. In *V.T.Krishnamoorthy v. State of Karnataka*⁷, the Karnataka High Court referred the meaning of the expression 'action' from the words and phrases – legally defined by Butterworths Third Edition Volume I in para – 12, the relevant part of which reads as under:

“.....

In 'words and phrases - legally defined' (Butterworths) Third Edition, volume I, page 31, it is said:

ACTION means any civil proceedings commenced by writ or in any other manner prescribed by Rules of Court. It has a wide signification as including any method prescribed by those rules of invoking the Court's jurisdiction for the adjudication or determination of a lis or legal right or claim or any justiciable issue, question or contest arising between two or more persons or affecting the status of one of them. In its natural meaning 'action' refers to any proceeding in the nature of a litigation between a plaintiff and a defendant. It includes any civil proceedings in which there is a plaintiff who sues and a defendant who is sued, in respect of some cause of action, as contrasted with proceedings, such as statutory proceedings which are embraced in the word 'matter' [37 Haisbury's Laws (4th edition)], para 17. "

Again in page-33 it is stated:

". . . . 'Action' in the sense of a judicial proceedings includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined....."

39. From the aforesaid also, 'action' means any civil proceedings commenced by writ or in any other manner prescribed by Rules of Court. It has a wide signification as including any method prescribed by rules of invoking the Court's jurisdiction for the adjudication or determination of a lis or

⁷ 1991 SCC OnLine Kar 147

legal right or claim or any justiciable issue, question or contest arising between two or more persons or affecting the status of one of them.

40. In *Sanjay Somani and others v. State of U.P. and others*⁸, in the context of word 'case' it was observed as under:-

"8. Law Lexicon By P. Ramanatha Aiyer:

9. In a legal sense a state of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice:

10. A subject on which the judicial power is capable of acting and which has been submitted to it by a party in the forms required by law:

11. A state of fact involving a question for discussion, especially a cause or suit in Court:

12. A question contested before a court of justice in an action or suit brought before it.

13. The definition of 'case' is wider than that of a 'suit' or 'criminal prosecution', or a 'proceeding in rem', although in law it usually applies to one of them. It may embrace, however, any state of facts involving matters for decision.

14. In common parlance, it has a more extended meaning than the word 'suit', or 'action'.

BLACK'S LAW DICTIONARY:

15. A general term for an action, cause, suit or controversy, at law or in equity; a question contested before a court of justice; an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a Court of justice. A judicial proceeding for the determination of a controversy between parties wherein rights are enforced or protected, or wrongs are prevented or redressed; any proceeding judicial in its nature."

41. So, a general term for an 'action', 'cause', 'suit', or controversy, at law or in equity; is a question contested before a court of justice; an aggregate of

⁸ 2002 SCC OnLine All 194

facts which furnishes occasion for the exercise of the jurisdiction of a court of justice A judicial proceedings for the determination of a controversy between parties wherein rights are enforced or protected, or wrongs are prevented or redressed; any proceedings judicial in its nature.

42. In ***Dashrath Rupsingh Rathod v. State of Maharashtra***⁹, the Hon'ble Apex Court held that the word 'action' has traditionally been understood to be synonymous to "suit", or as ordinary proceedings in a court of justice for enforcement or protection of the rights of the initiator of the proceedings. "Action", generally means a litigation in a civil court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits. Relevant part of para 16 in ***Dashrath Rupsingh Rathod*** (supra) is as under:

"16. The word "action" has traditionally been understood to be synonymous to "suit", or as ordinary proceedings in a court of justice for enforcement or protection of the rights of the initiator of the proceedings. "Action", generally means a litigation in a civil court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the Crown. (*Bradlaugh v. Clarke* [(1883) LR 8 AC 354 : (1881-85) All ER Rep Ext 1582 (HL)] , AC p. 361):"

43. We are of the view that any 'action' brought under Section 1A or 'suit' filed under Section 1A of the Act 1855, both are initiated by filing a plaint. It is so provided by Section 3 that, the plaint in any such action or suit shall give a full particulars etc. So, the presentation is by way of a plaint. The action or suit

⁹ (2014) 9 SCC 129

is brought in the Court of Principle District Judge. The adjudication is made in the action brought or the suit filed. The adjudication is made in the same manner, may it be an action 'FAOP' or Original Suit (OS). Points for determination are framed in FAOP, which may be termed as issues in the suit, when an action is brought by way of FAOP and not numbered as original suit. Parties lead evidence. They have opportunity of cross examination as also of the arguments. On consideration and appreciation of the evidence on record, the Court decides the matter by recording the specific findings. The nature of the dispute under Section 1A is same irrespective of whether the remedy chosen is by way of an action (FAOP) or suit (OS). In an action (FAOP) as also in suit (OS) the Court has to pass a decree.

44. At this stage we may mention that Section 1A (3rd para) clearly states of a 'decree'. In start, it speaks of 'in any such action'. So from a first look it appears that 'decree' is to be passed in an 'action'. The expressions 'action or suit' have been used in first two paragraphs of Section 1 A but in the third para only 'action' has been used and not 'suit'. So, prima facie a question arises as to why 'suit' has been omitted in 3rd para. Whether a 'decree' is to be passed only in an 'action' and not in a 'suit'. We do not think so. Decree is to be passed, it may be an action (FAOP) or a suit (O.S.). The reason for omission of 'suit' in the 3rd para appears to be obvious that, when it is a 'suit' filed, and there is a final adjudication on disputes, the civil Court shall draw a 'decree' as per Order XX CPC, but when it comes to an 'action' (FAOP) a 'decree' may not be drawn in terms of order XX CPC. So, to make it clear, that a decree is

to be passed even in an action 'FAOP', the word 'decree' has been specifically used for an 'action'. This also gives support to our view that for the purposes of Section 1A of the Fatal Accidents Act, 1855, the 'action' and 'suit' are to be treated alike.

45. We should not make a distinction between an adjudication made in a suit (OS) and an adjudication made in an action (FAOP), by the Civil Court, for the purpose of an appeal under Section 96 CPC. All the attributes of the 'decree' as defined under Section 2(2) CPC are fulfilled. No distinction can be made simply on the basis of the proceedings being registered as 'suit' (OS) or 'an action' (FAOP), under Section 1A the Fatal Accidents Act, 1855.

46. The Act, 1855 does not provide a different forum for an action. It does not provide that if action is brought, it shall be filed before a particular forum like 'Tribunal' and if the 'suit' is filed, it would be before the Civil Court. So, in the absence of any such provision under the Act, 1855 for filing an action before a forum different than the Civil Court and either of the proceedings is to be before a Court. For this reason as well it cannot be that if an 'action' is brought then the decree passed in that action would not be appealable and if only the 'suit' is filed under the same provision before the Civil Court, the decree would be appealable under Section 96 CPC.

47. In **Smt. Maya Rani Ghosh** (supra), the Gauhati High Court also considered if there is any distinction between a 'suit' and an 'action'. It observed that though FAOP was filed but as the claim applications satisfied the requirements of a plaint, the suits should have been registered and on the

basis of such claim applications, the learned District Judge had the jurisdiction to try the suits and indeed tried the suits and finally awarded the compensation. The decision of the learned District Judge was held to be a decree. The Gauhati High Court observed that these two expressions 'suit' or 'action' gradually became synonymous. Suit has become a generic term and action one of its species. It was observed that in England two types of Courts functioned simultaneously, namely Courts of Common Law and Courts of Equity. An aggrieved person could have gone to a Court of Equity or he could have gone to a Court of Common Law. The choice depended on which of the two Courts had jurisdiction. If both had concurrent jurisdiction, the option was left to the aggrieved person to choose the Court. If a proceeding was initiated by an aggrieved person in the Court of common law it was called 'action' and when a proceeding was initiated by an aggrieved person in a Court of equity, it was called 'suit'. It was thus observed that the origin of suit lies in the Courts of equity, whereas the origin of action lies in the Courts of common law but with the passage of time, the distinction between the two started becoming narrower and with the abolition of the Courts of common law and Court of Chancery by the Judicature Act, 1873, a suit has become generic term and action one of the species thereof. The words 'suit' and 'action' thus became gradually synonymous. The Indian Fatal Accident Act, 1855 was based on the English Fatal Accidents Act, 1846. In India, the system of administration of justice consisted of civil courts and criminal courts. All civil actions entered into and tried in the civil Courts; whereas all criminal actions ended in criminal

Courts. The English Fatal Accidents Act, 1846 made it clear that a person could either initiate an action, for damages in the Court of common law, or a suit for damages in the Court of equity, on the strength of the substantive right to claim damages having been given under the English Fatal Accidents Act. Because of the fact that there was a firm, though subtle distinction between action and suit, Section 2 of the English Fatal Accidents Act, 1846 made it clear that either a person could initiate an action or a suit for damages, but not both. Because of the fact that the Indian Act, 1855 is based on the English Fatal Accidents Act, 1846, Section 2 of the Act, 1855 also makes it clear that a person can either institute a 'suit' or an 'action', but not both. In India with the introduction of the Codes of Civil Procedure, all civil actions became amenable to the civil Courts.

48. From **Smt. Maya Rani Ghosh** (supra) also it can be said that the expression 'action' or 'suit' has been used synonymous and the adjudication made in the proceedings is in a suit and so the decision therein is a decree.

49. We are of the considered view that, it may be a case either for an action (FAOP) or suit (OS); the forum being the same, the Civil Court; the initiation being with the plaint; the procedure followed being the same; the determination or adjudication being final with regard to the Court expressing it; and a decree following the judgment in 'action' (FAOP) or in 'suit' (OS), the decree passed in either kinds of proceedings FAOP or O.S., would be appealable under Section 96 of the CPC unless such an appeal is expressly barred either by CPC or by such other law for the time being in force. In **Deep**

Chand v. Land Acquisition Officer¹⁰, the Hon'ble Apex court held that where a legal right of a party to a dispute, has to be adjudicated by Courts of ordinary civil jurisdiction ordinary rules of civil procedure become applicable and an appeal lies, if not otherwise provided by such rules, that is to say, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer right of appeal an appeal lies. It was further held that decree means a formal expression of an adjudication which the court conclusively and finally determines, the rights of the parties with regard to all or any of the matters in controversy in the suit. The relevant part of para-5 in **Deep Chand** (supra) reads as under:

“.....the question, therefore, is whether the decision by the Civil Court on a reference under Section 49(1), second proviso of the Act is a decree within the meaning of Section 2(2) of CPC. **There can be no doubt that where a legal right of a party to a dispute, has to be adjudicated by courts of ordinary civil jurisdiction ordinary rules of civil procedure become applicable, and an appeal lies, if not otherwise provided for by such rules, that is to say, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer right of appeal an appeal lies.** Decree means a formal expression of an adjudication which the court conclusively and finally determines the rights of the parties with regard to all or any of the matters in controversy in the suit. We need not decide whether a reference under Section 49(1) is a suit.....”

50. The Fatal Accident Act, 1855 neither prescribes an appeal nor expressly bars an appeal against the judgment or decree passed in any action or suit brought under Section 1A of the Fatal Accident Act.

¹⁰ (1994) 4 SCC 99

51. In view of all the aforesaid circumstances it cannot be said that simply because the presentation under Section 1A was registered as FAOP that the decree passed in such FAOP would not be a decree in a suit under Section 2(2) CPC so as not to attract Section 96 CPC for an appeal.

VI. Conclusions:

52. To sum up, an appeal under Section 96 CPC lies against the decree as defined under Section 2(2) of CPC. The decree must have been passed in a suit by the Civil Court. The suit is initiation of the proceedings in the civil Court by presentation of a plaint or such other mode as may be prescribed by law. Section 1A of the Act, 1855 provides for an action or suit to enforce the right under that Section. In either of the cases "action" (Fatal Accident Original Petition) or suit (original suit), plaint has to be filed as per Section 3. Either of these proceedings is to be before the Court. Court has not been defined under the Act, 1855. So, it is to be understood in the same way as the Court of Civil jurisdiction, the Civil Court. Different forum or tribunal has not been provided for adjudication of the claims under Section 1A by the Act, 1855. Any different procedure to be followed in action or suit has also not been prescribed. In either case FAOP or OS the same procedure as under CPC is followed. There is adjudication on the matter of dispute with respect to the rights and liabilities of the parties. Such determination is made based on the evidence led by the parties and such determination is final, so far as the Court expressing it is concerned. The decision is by a judgment, and a decree follows. So, all the attributes of a decree are satisfied. If a suit (O.S.) is filed, there is no dispute

that the adjudication by the Civil Court in such a suit is a decree in a suit and therefore appealable under Section 96 CPC. However, if an action FAOP is taken under the provisions of the same Act, for which also the forum is same, the procedure is same and a decree has also to follow in terms of Section 1A of the Act, 1855 itself, no distinction can be made based on the registration of the case as FAOP. The word “action” has traditionally been understood to be synonymous to suit or as original proceedings in a Court for enforcement or protection of the rights of the initiator of the proceedings. Under Section 1A of the Act, 1855 suit and “action” have been used as synonymous and action is not different from suit. So a decree passed in FAOP under Section 1A of the Act, 1855 is a decree within a meaning of Section 2(2) CPC and it is a decree in a suit. An appeal lies under Section 96 CPC.

53. We are of the view that such proceedings under Section 1A of the Fatal Accident Act shall be instituted in the Court of the Civil jurisdiction, as per the territorial and pecuniary jurisdiction. Such proceedings be registered as OS and not as FAOP, so as to give rise to such questions in future and the claimant shall pay the Court fee, as per the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (for short ‘the Act, 1956’), unless a specified court fee has been fixed or is otherwise provided on the suits of the nature under Section 1A of the Act, 1855, and unless otherwise provided the forum for institution of such suit shall be the Court of civil jurisdiction having territorial and pecuniary jurisdiction as per the Code of Civil Procedure read with Andhra Pradesh Civil Courts Act, 1972.

54. The court fee in the present appeal shall be determined by the Registry as per the Andhra Pradesh Court Fees & Suit Valuation Act, 1956 and in case of any deficiency, such deficiency shall be made good by the appellant.

VII. Result on office objections:

55. In the result, we hold that the appeal under Section 96 is maintainable and it shall be so registered. The appellant shall make good the deficiency of the court fee, if any, in this appeal, to be so calculated by the Registry in terms of the Andhra Pradesh Court Fees & Suits Valuation Act, 1956.

56. We consider it appropriate to issue further general directions considering the nature of the controversy having arisen, as follows:

i) the proceedings claiming compensation or damages under Section 1A of the Fatal Accident Act, 1855 shall be instituted in the Civil Court having territorial and pecuniary jurisdiction; as per the Code of Civil Procedure, 1908 read with Section 16 of the Andhra Pradesh Civil Courts Act, 1972.

ii) Such proceedings shall be registered as Original Suit (O.S.) and not as Fatal Accident Original Petition; (FAOP)

iii) the FAOP shall not be entertained.

iv) The pending FAOP(s) shall be converted into OS and assigned a number.

v) The Court fee payable in such suit (OS) shall be as per the Andhra Pradesh Court Fee and Suit Valuation Act, 1956 unless a specified court

fees is fixed or is otherwise provided in the suit of the nature under Section 1A of the Fatal Accident Act.

vi) The applicants in pending FAOPs shall be granted the opportunity to make good the deficiency of the court fee, if any.

57. The Registrar (judicial) of this Court shall take necessary steps in regard to the aforementioned directions, for the learned Trial Courts, after seeking necessary orders from the Hon'ble the Chief Justice.

58. List before appropriate Bench after registration.

59. We make it clear that so far as the question of payment of the court fee by the respondents in FAOP before the Principle District Judge is concerned it shall to be considered later on in due course of time.

60. A copy of this judgment shall be sent to all the learned Principal District Judges.

RAVI NATH TILHARI, J

BALAJI MEDAMALLI, J

Dated: 29.04.2026
Note: L.R. copy be marked
B/o.
AG

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
&
THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**

CIVIL MISCELLANEOUS APPEAL (SR).No.9643 of 2026

Dated: 29.04.2026
Note: L.R. copy be marked
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