

1967 Present : H. N. G. Fernando, C.J., and Siva Supramaniam, J.

S. M. WEERASOORIYA ARACHCHI and another, Appellants, and
THE SPECIAL COMMISSIONER, GALLE MUNICIPALITY,
Respondent

S. C. 435/64—D. C. Galle, 3110/M

*Municipal Councils Ordinance—Scope of Section 307(2)—Limitation of action against
a Municipal Council—Requirement of specific issue—Electricity Act, s. 16.*

An action in tort against a Municipal Council should not be dismissed on the ground of non-compliance with section 307 (2) of the Municipal Councils Ordinance by reason of failure to institute the action within three months after accrual of the cause of action, unless there is a specific issue raising the question whether section 307 (2) has been observed.

Section 307 (2) of the Municipal Councils Ordinance is not applicable to a case where the cause of action arose from an act which was done under section 16 of the Electricity Act and which a Municipal Council has no power to perform under any of the provisions of the Municipal Councils Ordinance.

APPEAL from a judgment of the District Court, Galle.

D. R. P. Goonetilleke, for the plaintiffs-appellants.

C. Ranganathan, Q.C., with *P. Nagendran*, for the defendant-respondent.

May 20, 1967. H. N. G. FERNANDO, C.J.—

In this case, in which the plaintiff sued the Municipal Council of Galle as the next friend of two minor children for damages suffered by the death of the mother of the two children through the negligence of the servants of the Council, the learned District Judge found in favour of the plaintiffs on all the issues except issue No. 14. That issue was whether due notice of the action had been given in terms of Section 307 of the Municipal Councils Ordinance.

The provision for giving due notice of action occurs in Sub-section 1 of Section 307 and the learned Judge held that the plaintiff had in fact given notice which would comply with the provisions of that sub-section ; but he found against the plaintiff on the ground that the action was not commenced within three months after accrual of the cause of action, and that therefore the plaintiff had failed to comply with the provisions of Sub-section (2) of Section 307.

The main point relied on by plaintiffs' Counsel in appeal is that there was no issue raising the question whether Sub-section (2) of Section 307 had been observed. The failure to frame the issue may not have been important if it could have been decided purely as a question of law. But it seems to us that the question whether the action taken by the Municipal authorities which has given rise to this dispute was something done under the Municipal Councils Ordinance is one concerning which the

plaintiff may have been in a position to lead some relevant evidence, if an issue had been raised. On that ground we would hold that the learned trial judge was wrong in deciding against the plaintiff on an issue which was not specifically raised in the pleadings or at the time of the framing of issues.

In addition, it would appear *prima facie* that the act which led to the death of the mother of the minors was one done under Section 16 of the Electricity Act, and one which a Municipal Council had no power to perform under any of the provisions of the Municipal Councils Ordinance. We are, therefore, inclined to the view that this action is not one against the Council for anything done under the provisions of the Municipal Councils Ordinance. On that ground Section 307 of that Ordinance was not applicable. We would allow the appeal and direct that decree be entered for the payment by the defendant of a sum of Rs. 6,000 to each of the plaintiffs or Rs. 12,000 in all. The sum will be deposited in Court to the credit of this action.

The decree will also provide for the payment to the plaintiff of the costs of the action in both Courts.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.

