

RSA No. 2149 of 2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 2149 of 2015 (O&M)

Date of Decision: November 26, 2015

Sky City Hotels Pvt. Ltd. & antoher

...Appellants

Versus

Twinkle & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vinod S. Bhardwaj, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.5613-C of 2015

Prayer in this application is for making good the deficiency of Court fee. At the time when the appeal was filed, there was some deficiency in the Court fee which has been made good during the pendency of the appeal.

For the reasons mentioned in the application which is duly supported by an affidavit of Ravi Chikara, Owner/Director of Sky Hotels Private Limited, the same is allowed. The deficiency in Court fee which has been made good, is taken on record.

CM No.5615-C of 2015

Prayer in this application is for condonation of delay of 152 days in re-filing the appeal.

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For the reasons mentioned in the application which is duly supported by an affidavit of Ravi Chikara, Owner/Director of Sky Hotels Private Limited, the same is allowed. Delay of 152 days in re-filing the appeal stands condoned.

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Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Gurgaon, dated 30.04.2013, by which, the suit for compensation/damages under Sections A-1 and 2 of the Fatal Accidents Act, 1955, on account of death of Shri Bhupender Singh son of Shri Chand Singh, caused by the wrongful acts, negligence and default of the appellant-defendants, has been decreed to the extent of granting compensation amounting to ₹13,88,000/- alongwith 6% interest per annum from the date of filing the suit till payment actually made, appeal against which preferred by the appellant-defendants has been dismissed by the learned Additional District Judge, Gurgaon, on 08.05.2014.

It is the contention of the learned counsel for the appellants that the Courts below have totally overlooked the fact that respondent-plaintiffs were required not only to assert that the death of Shri Bhupender Singh has occurred due to an act of rash and negligence on the part of the appellants but were also required to prove the pleadings as well. No evidence except for the bald

statement has been produced which would show such an act of rash and negligence on the part of the appellants. He, thus, contends that the judgments and decree passed by the Courts below deserve to be set aside.

I have considered the submissions made by the learned counsel for the appellants and with his assistance have gone through the impugned judgments apart from that the learned counsel for the appellants has also read out to me the statement of the respondent-Twinkle widow of late Shri Bhupender Singh.

On considering the submissions made by the counsel for the appellants, I find no merit in the same as the respondents have not only asserted that the death of the deceased has taken place because of the inaction on the part of the appellants which clearly establishes their rash and negligent act, copy of the FIR, charge-sheet in the criminal case apart from her statement which has gone un-rebutted, clearly establishes the rash and negligent act of the appellant-defendants. It is not in dispute that the deceased-Bhupender Singh was employed with the appellant-defendants as a Draftsman and had died in an accident which has taken place on 16.08.2007 while on duty under the employment of the appellant-defendants. The other aspects with regard to his salary and qualifications etc. are not in dispute. In any case, the respondent-plaintiffs have been able to produce on record the evidence proving

the deceased to be duly qualified Draftsman. The evidence, which has been placed on record, clearly establishes the competence, the employment and the nature of duties being performed by him. That apart, in the statement it has been given by the respondent-plaintiff in the form of affidavit Ex.PW1/A, the details whereof have been referred to by the learned Lower Appellate Court as well, the pleadings as have been made by the respondent-plaintiffs in their plaint have been duly proved. It would not be out of way to mention here that the appellant-defendants did not step into witness-box to produce any evidence in support of their assertions. The evidence of the plaintiffs having gone un-rebutted as has been discussed above and in the absence of any evidence on the part of the appellant-defendants, the findings as recorded by the Courts below cannot be said to be either not in consonance with law or on non appreciation of the pleadings and the evidence on record.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

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In view of the order passed in the main appeal, the present application for staying the operation of the impugned judgments passed by the Courts below, has become infructuous.

Disposed of as such.

November 26, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**