

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

I.

Regular Second Appeal No.843 of 2011 (O&M)
Date of decision: 29.8.2016

Fateh Chand and another

... Appellants

Versus

M/s Vijay Dying Limited and others

... Respondents

II.

Regular Second Appeal No.844 of 2011 (O&M)

Mishri Lal and another

.. Appellants

Versus

M/s Vijay Dying Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.N.S.Shekhawat, Advocate,
for the appellants.

Mr.D.K.Mittal, DAG, Haryana.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two regular second appeals,
i.e., RSA No.843 of 2011 and RSA No.844 of 2011 at the instance of the
plaintiff-appellant who have remained unsuccessful before the learned trial
court much less before the lower appellate court. The case set up by

Mr. Shekhawat is that both the minor children i.e. Bal Chand and Titoo were playing near the factory premises of respondents No.1 and 2. The factory of the respondents were discharging water mixed with chemicals. The container containing chemical exploded. Unfortunately both the children died and an FIR No.238 dated 25.2.1998 under Section 338 and 304A IPC was lodged but the same went untraced. In order to lend support to the aforementioned averments submits that in suit claiming compensation on the basis of Fatal Accident Act, 1885 was filed. The doctor, person from the police station, plaintiff and other witnesses have been examined to show that the accident had occurred near the factory premises of the respondent but the courts below dismissed the same on the ground of no evidence. He submits that the learned lower appellate court being the last court of fact and law has erroneously not discussed the point of determination and disposed of the appeal in a most coronary and unreasonable manner without discussing oral and documentary evidence threadbare in essence there is no discussion of the evidence (oral and documentary) as such the plaintiff-appellant has been deprived of the statutory right of appeal and urges this Court for setting aside the impugned judgments and decrees under challenge.

Mr. Mittal learned counsel appearing on behalf of the State submits that both the courts found it is a case of no evidence. The plaintiff has miserably failed to discharge the onus. The concurrent findings of fact cannot be interfered with until and unless there is gross and grave perversity.

I have heard the learned counsel for the parties and appraised

the paper-book.

No reasoning has been assigned by the lower appellate court.

For the sake of brevity, paragraphs 18, 19, 20 and 21 are reproduced below :

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“18. The case law cited by the learned counsel for appellants reported as Smt.Darshan's case (supra) is not applicable to the facts of the present case as in the said case the State was held responsible on account of death of a person by falling in manhole. The manhole remained uncovered due to negligence of instrumentalities of State and the Hon'ble Delhi High Court in Civil Writ Petition while invoking Article 226 of the Constitution of India has directed the State of pay compensation to the widow and minor children of deceased and the compensation was awarded on the basis of Motor Vehicle Act. No doubt under Article 226 of Constitution of India a duty is caste upon the State or its instrumentality to discharge on the part of defendants no.3 and 4 in the discharge of their duties which warrants the payment of compensation on their behalf. The other authorities cited by learned counsel for the appellants reported as Ms.Gaurabai's case (supra) and Govindbhai's case (supra) are also not applicable to the facts of the present case. That was based upon Principle of res ipsa loquitur and doctrine of sovereign immunity.

19. In the light of my above discussion and observations, I have no hesitation in holding that from any point it cannot be said that the defendants No.1 and 2 and that of defendants No.3 and 4 were responsible in any manner in causing death of Bal Chand, aged 13 years and Titu Ram aged 14 years. Hence, the findings of learned Civil Judge on all issues under adjudication are affirmed.

20. Nothing else was argued.

21. Resultantly, there is no merit in the appeal. The same fails and is hereby dismissed with costs. Decree sheet be

prepared accordingly. Lower court file along with a copy of judgment be sent back. Appeal file be consigned to record room after compliance.”

In my view, finding lacks application of mind which is not the scope and ambit of the provisions of Section 96 of the Act and the lower appellate court is enjoined upon an obligation to discharge obligation by framing points of determination. The reasoning had to be backed by certain substance and material. In view of the aforementioned discussion, I set aside the impugned judgment and decree and remit the matter to decide the appeal afresh in accordance with law after after affording opportunity of hearing to the parties preferably within a period of 4 months from the date of receipt of a certified copy of this order.

Parties through their counsel are directed to appear before the lower appellate court on 27.9.2016.

Appeal stands disposed of.

(AMIT RAWAL)
JUDGE

August 29, 2016

Paritosh Kumar

Whether speaking/reasoned : Yes

Whether reportable : No