

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-8685-2015

Date of decision: 03.07.2017

Kishan Lal

..... Petitioner

Versus

Smt. Renu and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Kunal Mulwani, Advocate for the petitioner.

Mr. JP Sharma, Advocate for respondents No. 1 and 2.

None for respondents No. 3 to 5.

RAMENDRA JAIN, J. (ORAL)

1. Challenge has been laid in the instant Civil Revision under Article 227 of the Constitution of India, to the impugned order dated 17.09.2015 passed by the trial Court rejecting the application under Order 7 Rule 11 CPC filed by the petitioner.

2. Briefly stated, respondents No. 1 and 2 filed a suit for recovery of ₹ 20,00,000/- along with interest @ 18% per annum under Section 1A of the Fatal Accident Act, 1855, (for short 'the Act'), as compensation against the death of their son. Upon notice, the petitioner and his co-defendants moved an application under Order 7 Rule 11 CPC for rejection of the plaint, on the ground that the respondents have not affixed the ad valorem Court fee upon the amount claimed. The impugned order dated 17.09.2015 reads

as under:-

“This order shall dispose of an application U/o 7 Rule 11 CPC preferred by Defendant No. 2 seeking rejection of the plaint on account of deficient court fee.

On behalf of defendant, it has been submitted that the present suit has been filed by the plaintiff for recovery of compensation/damages to the tune of Rs.20,00,000/- along with interest @ 18 percent per annum from the date of alleged accident i.e. 01.11.2013 upto final realization.

It has been averred that since the amount of Rs.23,60,000/- including interest is sought to be recovered by the plaintiffs by way of decree for recovery against defendants, the plaintiffs were required to affix Court fee to the tune of Rs.1,17,800/- on the plaint. Since the plaintiffs have affixed only Rs.25/- court fee, the suit was liable to be rejected.

On notice written reply on behalf of the plaintiffs have been filed wherein it has been mentioned that the present suit has been filed under Indian Fatal Accidents Act, 1855 for compensation and the plaintiffs were not require to file court fee as per the provisions of the Act. The cost and expenses of the suit shall be deducted from the amount recovered with these submissions dismissed of the application has been sought.

A perusal of Section 1A of Fatal Accident Act, 1855 mentions that 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 amount so recovered after deducting all costs and expenses including the costs not recovered from the defendant, shall be divided amounts the before mentioned parties or any of them in such shares as the court by its Judgment and decree shall direct.

Fatal Accidents Act, 1855 is beneficial legislation.

In this backdrop, interpretation of Section 1A of the Act implies that the amount of court fee shall be recovered from the amount recovered from the defendant. The damages shall be granted to the plaintiff or the persons entitled only after deducting all the costs and expenses. In these circumstances the plaintiffs are not require to affix ad-valorem Court fee. The application is accordingly, dismissed.”

3. Learned counsel for the petitioner contends that since the suit of respondents No. 1 and 2, was for recovery under Section 1A of the Act, therefore, they were required to pay the ad valorem court fee. In support of his contentions, reliance has been placed upon **The State of Tripura and another Vs. Sridhan Choudhury and anothers, 2003 AIR (Gauhati) 66** and **Sheo Nath through LRs and another Vs. Banwari lal, 2001 (2) Rajasthan LR 190.**

4. On the other hand, learned counsel for respondents No. 1 and 2 has vehemently opposed the submissions made by learned counsel for the petitioner.

5. I have given anxious consideration to the submissions made by learned counsel for the parties.

6. For ready reference Section 1A of the Act is reproduced 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.”*

7. From the above provision, it is clearly evident that the amount so recovered shall be disbursed to the claimants after deducting all costs and expenses, including the costs not recovered from the defendant. It is needless to mention that “costs and expenses” includes the court fee also. It has rightly been mentioned by the trial Court that Fatal Accidents Act, 1855 is a beneficial legislation.

8. In **Sridhan Choudhury's case (supra)**, the case was remanded back for decision afresh by framing a specific issue regarding court fee, whereas the decision in **Sheo Nath's case (supra)** case relates to the State of Rajasthan, where there is specific provision of Section 21 in the Rajasthan Court Fees and Suit Valuation Act, 1961, to affix a court fee of ₹ 10/- in a suit filed by the representative of the deceased under Section 1A of the Fatal

present case. The suit has been filed by the legal heirs of the deceased.

9. I have gone through the impugned order and find no illegality or perversity in the same. Resultantly, the same is upheld and the instant revision having no merit is dismissed.

July 03, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No