

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

RSA No. 2266 of 2011 (O&M)

Date of decision : 25.08.2017

State of Punjab and others

....Appellants

versus

Babli and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok K. Singla, DAG, Punjab

Mr. Surinder Sharma, Advocate
for the respondents

RITU BAHRI, J. (Oral)

C.M. No. 3260-C-2016

Application is allowed as prayed for.

Accordingly, reply filed on behalf of respondent Nos. 1 to 3 is
taken on record.

R.S.A No. 2266-2011

The present appeal is against the judgment and decree dated
10.01.2011 passed by the Appellate Court setting aside the judgment dated
18.08.2009 whereby the suit of the plaintiffs-respondents was dismissed.

Brief facts of the case are that on 10.10.2004, the minor sons of
the plaintiffs-respondents (for short 'respondents) aged about 12 years and
08 years were missing from the house. The respondents searched the minor
from the colony as well as from other places, but they were not found
anywhere and the matter was reported to the police, Jalandhar Cantt vide

rapat No. 11 dated 11.10.2004. On 11.10.2004, the minor sons of the respondents were found dead in the swimming pool of PAP and the information was received by the plaintiffs. Thereafter, the plaintiffs along with other relatives visited the spot and identified the dead bodies.

Plaintiffs then filed a civil suit against the defendants i.e appellants for damages and compensation in respect of the death of the minor children namely Vivek Kumar, aged about 12 years and Aman Kumar, aged 8 years, who died due to negligence on the part of the appellants on 10.10.2004 and dead bodies were found in the swimming pool on 11.10.2004.

The suit filed by the respondents was dismissed by the trial Court on the ground that security in the PAP complex is only to save the complex from intrusions by the un-wanted persons. To guard and keep a check on the activities of the children is a formal duty of their parents. The son of the respondents went out of the house and trespassed in to the PAP complex and then entered the pool by scaling the wall of the swimming pool complex and the parents have not taken care of their children. The death of the children was held not to be act of negligence on the part of the appellants.

Aggrieved against the above said judgment, the respondents preferred an appeal, which was allowed and the judgment passed by the trial Court was set aside. The suit was partly accepted by giving damages to the to the tune of Rs.2.5 lacs for loss of life of each of their children i.e Rs.5 lacs. Hence, the present appeal.

The question for consideration before this Court would be

whether the son of the respondents, who died in the swimming pool of the

PAP complex died due to negligence on the part of the appellant and if yes, whether they are entitled for damages, as given by the lower Appellate Court.

As per appellants, the sons of the respondents entered into swimming pool by scaling the wall of swimming pool and have not entered through gate. An enquiry was also conducted by DSP Gurmail Singh and he has examined Sumit, who was allegedly accompanying with Vivek Kumar and Aman Kumar when they were drowned on 11.10.2004. The outer boundary wall of PAP Complex is 12 feet height. The wall around the swimming pool is 8 feet height. DSP Gurmail Singh has admitted that no child about 12 years and 08 years can scale the boundary wall which is about 12 feet high and wall of swimming pool which is 08 feet height. The appellants have not examined Sumit who was allegedly accompanying the children.

Thus, once there was outer boundary wall around the PAP complex which was about 10-12 feet height and on the main gate, there always remained security guard. Thus, the guard which was present on the duty on the fateful day, has the moral duty as well as official duty to save the children to enter into the complex. Both the children were minor. There is a clear cut negligence of the officials of the appellants. This mis-happening could have been avoided and valuable lives of minors child could have been saved. Even though the parents of the child should also remain careful but sometimes it is impossible for the parents to keep track on the child aged about 12 years and 08 years

Reference at this stage can be made to *CWP No. 7882-2003*,

decided on 06.02.2014 titled as Sat Paul and others vs. Chandigarh

Administration and anr whereby this Court on account of negligence on the part of Chandigarh, had awarded Rs.7 lacs to each parent as compensation on account of death of their respective sons who died in pond due to callous attitude of the respondents in not filling the same.

Accordingly, the concurrent findings of fact recorded by the Lower Appellate Courts does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

Since the appellants have deposited the decretal amount with the Executing Court and the Executing Court was directed to invest the amount in the shape of FDR in a nationalised Bank, the Executing is directed to release the FDR to the respondents, within a period of one month from the date of receipt of certified copy of this order.

August 25, 2017
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : ***Yes***
Whether reportable : ***No***