

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

RSA No.1111 of 2017 (O&M)

Date of Decision: 28.3.2017

The Executive Engineer, Operation Division Dakshin Haryana Bijli
Vitran Nigam Limited, Hansi and another

...Appellants

Versus

Smt.Sunita and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Deepak Manchanda, Advocate for the appellants

RAJIV NARAIN RAINA, J. (Oral)

1. Indisputably on the date of fatal accident, the Insurance Policy with the appellants-Nigam had expired. The lower appellate court has decreed the suit by upholding the decree of the trial court awarding ₹ 15.00 lakhs as compensation to be shared by the widow and the children of the victim. The lower appellate court has disbelieved the record of the appellants-Nigam regarding casual leave application (Ex.P-3) in the following words:-

“Had Gajender (since deceased) informed the head clerk for extension of his leave for 12.02.2015 by telephonic message then his attendance would have been marked as “T” as in the case of Anil Kumar and Sunil Yadav. Further document Ex.DW1/1 which is sanction order for two days casual leave of Gajender is inconsistent with Ex.P-3 and oral evidence since on the one hand it is the stand of the defendants that casual leave application

Ex.P3 was sanctioned on 10.02.2015 itself for 11.02.2015 and on the other hand document Ex. DW1/1 shows that casual leave for 11.02.2015 and 12.02.2015 was sanctioned on 15.02.2015. The aforesaid anomalies in the official record of the defendants creates doubt in the story of the defendants and strengthen the case of the plaintiff that he was on duty on 12.02.2015 and after he met with a fatal accident then aforesaid records were manipulated in order to defeat the legitimate claim of the plaintiffs.”

2. In this appeal, the Nigam argues that its record should not have been disbelieved by the courts below. I find that there is sufficient evidence discussed by the lower appellate court expressing serious doubts in the story propounded by the defendants/appellants whether casual leave was sanctioned before the material day or *ex post facto*. There is no absolute certainty that on the date of the fatal accident, the deceased husband of respondent no.1 was on leave, and therefore, the Nigam was not vicariously liable and responsible financially on account of the death or there was no causal connection between the employment and the injury sustained leading to death in an accident.

3. The finding of fact recorded after appreciating the materials on record is that the husband of respondent no.1 was on duty on the fatal day of accident and I have no reason to substitute my opinion and overwrite the concurrent findings of fact recorded by the courts below after weighing the evidence on record in the scales of

substantial question of law would not be entertained on the Regular Second Appeal side of this Court in the limited jurisdiction exercised by it under Section 100 of the Code of Civil Procedure and Section 41 of the Punjab Courts Act, 1918. No question of law arises in this case for consideration or opinion since the entire fabric of the case lies in the narrow compass of a pure finding of fact recorded in favour of the plaintiff claimants that the deceased was on duty on the fateful day and not on leave to die by himself and not arising out of and in the course of employment. The story of the Nigam has been disbelieved and discredited on a point of fact after examining the leave record. I would, therefore, not interfere in this appeal only to superimpose another view on the evidence, both oral and documentary which exercise has been performed admirably by two courts fairly and properly and in accordance with law. Consequently, this appeal fails and is dismissed.

28.3.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No