

RSA No. 5413 of 2014 (O&M)

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

RSA No. 5413 of 2014 (O&M)

Date of Decision: 28.3.2017

Rajender Kumar

....Appellant

Vs.

Smt. Luxmi Devi and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. S.K. Yadav, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant regular second appeal, at the hands of defendant No.7- Rajender Kumar, is directed against the impugned judgment and decree dated 21.12.2013 passed by the learned first appellate court, whereby impugned judgment and decree dated 6.4.2010 of the learned trial court were upheld, partly allowing first appeal of the defendants.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that Yashpal son of Dev Raj Arya aged 37 years, resident of mohalla Purani Sarai Shivaji Nagar, Narnaul temporary address house No.288/9 Shivpuri, Gurgaon, was the son of defendants No.9 and 10, husband of plaintiff No.1 and father of plaintiffs No.2 and 3, who was working as Field Officer in Priya Financiers Pataudi, District Gurgaon. He also used to help his father in his crockery business at Narnaul by way of purchase and supply of goods and was earning ₹6,000/-

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per month as salary and ₹2,000-2500/- per month from the crockery business, as such he used to earn ₹8,000-8,500/- per month. The plaintiffs were fully dependent upon Yashpal for their livelihood and maintenance. Plaintiffs No. 2 and 3 were minors and were studying in MLS DAV Public School, Narnaul, in 7th and 3rd standard respectively. On 2.9.2012 at about 8:00/8:30 P.M., when Yashpal (since deceased) was returning to his house from the shop of his father situated near Azad Chowk, Narnaul, he halted on Novelty Pan & Juice Corner, Mahabir Market, near Talab Bahadur Singh, Narnaul, being run by defendant no.5, for taking paan after parking his scooter No.HR-31A-0713 LML NV there. It was drizzling at that time and unluckily his hand touched the iron shutter of adjoining shop of Shree Shyam Mineral Water Agency and he sustained electric shock and fell down on the spot. They evacuated Yashpal to GH Narnaul but he died in the way on account of electrocution. Defendant No. 5 had allowed the unauthorized use of electric energy from his electric installation to the shop of Shree Shyam Mineral Water Agency belonging to defendants No.6 and 7 and defendant No.8 had been managing its affairs, by the side of its iron shutter and that electric wire was defective and electric current was passing in the shutter. This illegal and unauthorized arrangement of consumption of electric energy was continuing for the last many years. The electric wire was visible to all and it was open being installed in front portion of the shop. FIR No.199 dated 2.9.2002 under Section 304A IPC was also registered against defendants No.5 to 8. Defendants Nos. 1 to 4 and their employees failed to perform their duty also in checking and restricting such illegal and unauthorized use of electricity. There also exist main electric supply and transformer of defendants No.1 to 4 in vicinity. All the defendants were

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responsible and liable for the death of aforesaid Yashpal by electrocution and were also jointly and severally liable for the payment of damages. The post-mortem examination of dead body of Yashpal was conducted vide PMR No.10/PS/GHN/2002 dated 3.9.2002. Yashpal was sole bread earner of his family and he used to contribute ₹7,000/- approximately per month to the plaintiffs for their household expenses etc. They also spent a sum of Rs.20,000/- on his last rites and funeral. Plaintiff No.1 had become widow in her prime youth. As such, plaintiffs and proforma defendants were entitled to get the damages of ₹15,00,000/- along with interest @ 18% per annum from the defendants.

Having been served, defendant Nos. 1 to 4 filed their joint written statement. Defendant No.5 filed his separate written statement. Similarly, defendants No. 6 and 8 filed their written statement. Defendant No.7 also filed his written statement on similar lines. All the defendants raise more than one preliminary objections. On completion of pleadings of parties, learned trial court framed the following issues.

1. Whether plaintiff deserve for the damage to the tune of Rs.15,00,000/- as claimed? OPP
2. If issue no.1 is proved then whether plaintiff deserve for any interest, if so at what rate? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff is estopped from filing the suit by his own act and conduct? OPD
6. Whether the suit is barred by limitation? OPD
7. Whether the plaintiff has no cause of action to file the present suit? OPD

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8. Whether the suit of the plaintiff is bad for misjoinder and non-joinder of necessary parties?

OPD

9. Whether the suit has not been properly valued for the purpose of court fee? OPD

10. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have duly proved their case. Accordingly, suit was decreed with costs, vide impugned judgment and decree dated 6.4.2010. Defendants felt aggrieved. As many as four appeals were filed, which came to be partly allowed by the learned first appellate court vide impugned judgment and decree dated 21.12.2013, reducing the amount of damages from ₹15 lacs to ₹11,30,000/-. Hence this regular second appeal at the hands of defendant No.7.

Heard learned counsel for the appellant.

A bare combined reading of the impugned judgments and decrees would make it crystal clear that the learned courts below examined, considered and appreciated all the relevant aspects of the matter in the correct perspective, before passing their respective impugned judgments and decrees. Facts of the case are hardly in dispute. Appellant-Rajender, alongwith defendant No.6-Sanjay Kumar, were owners of a shop and defendant No.8-Shyam Lal was managing the affairs of Shree Shyam Mineral Water Agency. As per the case of the plaintiff, defendant No.5-Arvind Sharma was the owner of Novelty Pan and Juice Corner. He allowed unauthorised use of electric energy from his shop to defendants No. 6 to 8

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namely Sanjay Kumar, Rajende Kumar-present appellant and Shyam Lal, respectively.

It is also not in dispute that Yashpal-husband of Smt. Luxmi-plaintiff and father of Manoj Kumar and Mohit (both minors), died due to electrocution. It had been proved on record that death of Yashpal occurred due to electrocution. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It is also pertinent to note here that two identical regular second appeals bearing **RSA No. 2589 of 2014 (Haryana Vidyut Parsaran Nigam Limited and others Vs. Smt. Luxmi Devi and others)** and **RSA No. 4881 of 2014 (Arvind Sharma VS. Luxmi Devi and others)** have already been dismissed by this Court, upholding these very impugned judgments and decrees rendered by the learned courts below. RSA No. 2589 of 2014 was dismissed vide order dated 13.5.2014 whereas RSA No. 4881 of 2014 was dismissed vide order dated 22.9.2014. In spite of the dismissal of these two regular second appeals against the same impugned judgments and decrees, learned counsel for the appellant was heard at length on merits, but he was unable to distinguish the present appeal from the abovesaid two identical appeals, which have already been dismissed by this Court.

Further, during the course of hearing, learned counsel for the appellant could not put any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this

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Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

28.3.2017
Ak Sharma

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