

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

**RSA No.2690 of 2017 (O&M)
Date of Decision:17.07.2017**

The Divisional Forest Officer, Pul Taran Wala

... Appellant

Versus

Baljit Kaur and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Pawan Sharda, Sr. DAG, Punjab
for the Appellant.

ANIL KSHETARPAL, J.

The Divisional Forest Officer - defendant No.1 has filed the present appeal against the judgement and decree passed by the trial Court, confirmed in appeal by the first Appellate Court.

In brief, the facts are that the plaintiffs filed a suit for recovery of Rs.10 lakhs as compensation on account of death of Sh. Kashmir Singh son of Sh. Bua Singh, who expired on 30.6.2007 on account of falling of the tree. It was pleaded that the defendants failed to take care and caution. It was pleaded that late Sh Kashmir Singh, who was doing the job as a security guard at Novelty Sweets, Lawrence Road, Amritsar, died as one branch of the tree fell on his head while he was moving on a road. Defendants apart from taking usual objections, pleaded that it was an act of God and the officers were not responsible for the alleged death as there was no negligence on the part of the defendant – Department.

Learned trial Court after appreciating the evidence available on the record, decreed the suit filed by the plaintiffs to the extent of Rs.8,40,000/-. Learned trial Court recorded a finding that Kashmir Singh had died as one branch of the tree had fell on his head when he was going on bicycle on a road. Learned Court further found that the death was not caused by an act of God as it is not the case of defendants that because of earthquake, storm or lightening, branch of the tree fell on the head of late Kashmir Singh. So, in these circumstances, it is safe to assume that the Forest Department did not take adequate precautions and ensured the safety of the public at large. It was further found that it was incumbent on the part of the Department to take care of the trees and to see whether all the trees are in healthy condition and public safety is not put to risk. The Department should have carried out periodical inspection of the trees. It was further found that it was the duty of the Department to carry out periodical inspection of the trees and take safety precautions to ensure that the roads are safe for its users.

It may be significant to mention here that the issue with regard to suit being not maintainable for want of legal notice under Section 80 CPC, was not pressed by the defendants during the arguments and hence, it was decided against the defendants.

The appellant filed the first appeal, which has also been ordered to be dismissed for the same reasons as given by the trial Court.

This second appeal has been filed by the appellant and two contentions have been raised:-

- (i) that falling of the branch of tree is an act of God and, therefore, the State is not liable.

(ii) in the absence of notice under Section 80 CPC, the suit was not maintainable.

As far as first contention is concerned, both the Courts have appreciated the evidence available on the file. Both the Courts have recorded that the defendants cannot escape from their liability by taking the plea of act of God could not be recorded as there was neither any earthquake, nor storm nor lightening, which could have resulted into falling of branch of a tree. In a normal condition when a branch of the tree falls on a user of road, the State cannot take a defence that it is an act of God. It is the duty of the State to ensure that the roads are safe for its users. It is the duty of the Forest Department to ensure that the trees planted along side the roads are periodically inspected and properly maintained so that the safety of the road users is not jeopardised. Once it is established on the file that there was neither any earthquake nor storm nor lightening, the State cannot be permitted to plead that it was an act of God. Learned first Appellate Court has relied upon the judgement reported as 1999(2) Apex Court Journal 586, titled as *The Municipal Corporation of Delhi Vs. Smt. Sushila Devi and others*. The Hon'ble Supreme Court has held that if a branch of a tree standing on the road fell on a scooterist causing his death then the Municipal Corporation is negligent in discharging its duty and, therefore, liable to pay damages. The present appeal is also similar in nature. Even the facts are similar.

Second contention of the counsel for the appellant is that in the absence of notice under Section 80 CPC, the suit is not maintainable. In this respect, it is submitted that no doubt such an objection was taken and the learned trial Court framed Issue No.2 to that effect. However, during the

course of arguments, counsel representing the defendants did not press this issue and learned trial Court specifically recorded that Issue Nos.2 and 3 have not been pressed. Learned first Appellate Court has recorded a finding that notice was served on the representative of the State i.e. the Collector and service of notice on the Collector is sufficient compliance. Counsel for the appellant has not been able to prove that the finding of the first Appellate Court is erroneous. Taking into consideration the fact that before the trial Court issue of non-service of notice under Section 80 CPC was not pressed, whereas the first Appellate Court has recorded a finding that notice was, in fact, served upon the Collector, in my opinion, there is sufficient compliance of Section 80 CPC. Therefore, there is no merit in the contention of the appellant.

For the reasons stated above, judgements passed by the trial Court as well as the first Appellate Court are affirmed. There is no merit in the appeal. The same is order to be dismissed.

(ANIL KSHETARPAL)
JUDGE

17.07.2017
sk

Whether speaking/reasoned	Yes
Whether Reportable	No