

HIGH COURT OF CHHATTISGARH AT BILASPURFA No.65 of 2005

Ashok Jain S/o Shri Uttam Chand Jain, aged about 24 years, Proprietor
- Jhoomer Traders, R/o Oswal Line, Rajnandgaon, Tahsil & District
Rajnandgaon (C.G.).

---Appellant/Defendant

Versus

1. Jamuna Bai Wd/o Radhe Lal Sahu, aged about 38 years.
2. Jitendra Kumar S/o Radhe Lal Sahu, aged about 15 years.
3. Rikhi Ram S/o Radhe Lal Sahu, aged about 12 years.
4. Ku.Sukhwanti D/o Radhe Lal Sahu, aged about 10 years.

Respondents No. 2 to 4 being minors through their legal Guardian
mother - Jamunabai Wd/o Radhe Lal Sahu.

All are R/o village Baputola, Tah. & District Rajnandgaon
(Chhattisgarh).

---Respondents/Plaintiffs

For appellant	:	Shri Anurag Verma on behalf of Shri Ashish Shrivastava, Advocate.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/01/2018

1. Present is an appeal by the defendant assailing the judgment and
decree dated 15/02/2005 passed by the learned District Judge,
Rajnandgaon in Civil Suit No. 1-B/2001. Vide the said impugned judgment
and decree, the learned Court below has awarded a compensation of
Rs.1,56,000/- with interest @ 6% per annum.

2. The facts of the case in brief is that, the deceased in the instant case
namely Radhe Lal Sahu was working as a Hamaal under the present
appellant. On 26/03/1999, when the deceased was working in the godown of

the present appellant and was removing the bags of pulses, the bags which were stored inside the godown fell upon Radhe Lal Sahu as a result of which he had received grievous injuries to which he was immediately taken to the District Hospital, Rajnandgaon and from there, he was referred to the Medical College at Rajnandgaon. Further in the course of treatment, the said Radhe Lal Sahu died on 28/03/1999.

3. The legal heirs of the deceased-Radhe Lal Sahu filed a suit for compensation before the Court below where the suit was registered as a Civil Suit No.1-B/2001.

4. It was the pleading by the plaintiff that, the deceased was working for the present appellant in there godown and while discharging his duties as a hamaal, an accident occurred where the bags of pulses which were stored in the godown of the appellant fell upon the deceased as a result of which he had received grievous injuries to which he later succumbed.

5. After the pleadings were complete, the learned Court below passed an order in favour of the plaintiff allowing the suit and ordered for payment of compensation of Rs.1,56,000/- with interest @ 6% per annum.

6. The counsel for the appellant/defendant submits that, it is a case where there is absolutely no evidence led by the plaintiff before the trial Court to establish the employer-employee relationship. Nor has it been conclusively proved that, the accident occurred at the premises of the present appellant. He further contended that, there is no evidence to show that, the deceased died on account of any negligence on part of the present appellant. It was

also argued by the counsel for the appellant that, the police had also registered an F.I.R. against the present appellant and he was prosecuted for the offence under Section 304-A of I.P.C. and that the trial Court finally vide its order dated 23/10/2004 had acquitted the appellant of the charges levelled against him holding that, he would not either responsible or negligent for the accident which took place on 26/03/1999. He further contended that, the plaintiff in their evidence not been able to prove and establish there case so far as there claim for compensation from the present appellant is concerned and thus prayed for setting aside of the judgment and decree.

7. None appears for the respondents even though they have been served.

8. Having heard the contentions of the counsel for the appellant and on perusal of record what clearly reflects is that, there is only an oral submission made by the four witnesses examined on behalf of the plaintiffs namely Jamuna Bai - PW/1 - the widow of the deceased, Sundar Lal - PW/2 - the brother of the deceased, Ramsher Sahu - PW/3 - the brother-in-law of the deceased and Anup Vishwakarma - the neighbour of the place where the other claimants are residing. None of these witnesses were an eye-witness to the accident. Nor they have been able to produce any documentary evidence to substantiate the employment of the deceased with the present appellant.

9. So far as the criminal case is concerned, it has resulted in acquittal which goes in favour of the present appellant. The defendant in support of

there contention had recorded the statement of the appellant himself as well as one Shailendra Kothari, a reporter of a daily newspaper "Sabera Sanket" both of whom have categorically denied any accident to have occurred in the premises of the appellant's godown. They have also categorically denied any employment of the deceased with the present appellant.

10. Having gone through the evidences which have come on record, undisputedly, the appellant in the instant case was prosecuted in a criminal case and he was charged for the offence under Section 304-A. Nowhere from the evidence of the appellant is it reflected that, the deceased had died not within the premises of the present appellant but at a different place. It is also not been proved by the present appellant that, the deceased met with an accident other than being in employment of the present appellant.

11. So far as the acquittal of the present appellant in the criminal case is concerned, it is well settled law by now that the standard of proof for conviction in a criminal case has to be proof beyond all reasonable doubts, whereas in Civil Suit, the standard of proof would not be as strong as is required in a criminal case. It would be the doctrine of preponderance of probability also which would come into play for hearing the case of the claimant.

12. Thus, this Court does not find any strong case made out by the counsel for the appellant to interfere with the impugned award. However, from perusal of the judgment it appears that, the Court below has not given any mode of calculation for reaching to the amount of Rs.1,56,000/-, though the

income of the deceased were assessed at Rs.1,500/- per month at the relevant point of time on the basis of the statement of the plaintiff.

13. Given the facts and circumstances of the case, this Court modifies the judgment and decree to the extent that, the total amount of compensation payable to the plaintiff is brought down at a lump sum amount of Rs.1,00,000/- instead of Rs.1,56,000/-. The claimants shall however will be entitled for the interest at the same rate as has been decreed by the trial Court i.e. 6% per annum from the date of filing of the suit i.e. from 23/06/1999.

14. With the aforesaid modification, the appeal of the appellant stands allowed in part and disposed off.

15. Let decree be drawn accordingly.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE