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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3354-1996 (O&M)
Date of decision : 16.04.2018

Parvinder Kaur and others

... Appellant(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harpal Singh Sirohi, Advocate
for the appellants.

Ms. Devaki Anand Sullar, AAG, Punjab.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is preferred against the judgment and decree of the Lower Appellate Court dated 03.09.1996, whereby the judgment and decree of the trial Court dated 09.04.1992 decreeing the suit, has been set aside.

Succinctly, the facts as emanated from the pleadings of the parties are that the suit for claiming damages to the tune of ₹3,00,000/- was filed by plaintiffs on account of death of Ajit Singh. It was pleaded that he was M.A. B.Ed and was working in the school and was drawing basic salary of ₹1500/- per month and gross salary was ₹1800/- per month. On 23.01.1988, he was coming on his motor-cycle bearing Registration No. HNL-1187 from Nilokheri to Sangrur and while crossing the bridge i.e. bridge over the road near Nadampur over Nadampur Distributary at 7.30 p.m., due to the negligence of the officers of the PWD (B&R) and Irrigation Department as the left side of the road, over the bridge being narrow, fell

into the dry bed of the distributary, therefore, the plaintiffs claimed damages aforementioned.

The suit was contested by the defendants/State on the ground of non-maintainability, non-joinder of proper and necessary parties and want of cause of action. On merits, it was stated that the parapet made over the said culvert had not totally fallen, but it explained that some portion of the parapet had fallen, which was clearly shown by installing empty bitumen drums filled with earth and loose bricks stacked in between them in the shape of the wall. The drums and bricks were whitewashed to make visible for a longer distance. The arrangement served as a parapet wall. The Police Authorities might have written to the XEN, B&R, Sangrur, but the area did not fall under their jurisdiction and fell under the jurisdiction of Executive Engineer, National Highway Division PWD (B&R), Patiala. It was also pleaded that he had died owing to the negligence as he was driving motor-cycle rashly and negligently.

Since the parties are at variance, the trial Court framed the following issues:-

- 1. Whether the plaintiff Nos.3 and 4 are the minors and plaintiff is their mother and natural guardian? OPP*
- 2. Whether Ajit Sind son of Kartar Singh, husband of plaintiff No.1 and father of other plaintiffs died on 23.1.1988 due to the negligence of PWD (B&R) and other defendants while coming on the motor cycle HNL-1187 make Rajdoot from Nilokheri to Sangrur on the bridge? OPP*
- 3. Whether the plaintiffs are entitled to damages? If so, to what amount? OPD*
- 4. Whether the suit is not maintainable? OPD*
- 5. Whether the plaintiffs have no cause of action to file the*

suit? OPD

6. *Whether the plaintiffs have no locus standi to file the suit?*

OPD

7. *Whether the suit is bad for non-joinder of necessary parties? OPD*

8. *Whether the civil court has no jurisdiction to try the present suit? OPD*

9. *Whether the suit is time barred? OPD*

10. *Whether the notice u/s 80 CPC is invalid? OPD*

11. *Relief*

The plaintiffs in support of their evidence have examined the following witnesses; PW-1 Jarnail Singh, PW-2 Jeet Singh, PW-3 Hamir Chand, PW-4 Jagmer, PW-5 Gurdip Singh, PW-6 Anil Kumar and PW-7 Parvinder Kaur as one of the plaintiffs and brought on record last pay certificate of Ajit Singh, deceased Ex.P-1, death certificate Ex.PW-6/A, post-mortem report Ex.PW-6/B, copy of notice under Section 80 CPC Ex.PW-6/C, postal receipts Ex.PW-6 and ADs Ex.D-1 to D-4. On the other hand, the defendants examined DW-1 Jangir Singh Mete, DW-2 Karnail Singh and DW-3 Ramesh Chand JE and also proved on record copy of DDR, Ex.D-1.

The trial Court on the basis of the evidence brought on record, assessed the compensation of the deceased as ₹5,00,000/-, but since the claim was only laid to the extent of ₹3,00,000/-, decreed the suit. However, the lower Appellate Court reversed the findings holding that necessary precautions had been taken by the respondents/defendants and, therefore, there was no negligence on their part.

Mr. Harpal Singh Sirohi, learned counsel appearing on behalf of the appellants submitted that the lower Appellate Court has committed

illegality and perversity in reversing the findings as no documentary evidence had been placed on record to establish that empty bitumen drums containing earth and loose bricks had been kept as parapet wall with a white wash. It was a self-serving statement of the defendants. The Government Department is not expected to divulge orally in the absence of any evidence. On the contrary, PW-5 Gurdip Singh, ASI, Police Station Lehra Gaga, who visited the spot, deposed that there was no bitumen drums or bricks and the bridge laid in a broken condition. Even the other witnesses had also stated that the parapet had fallen, but no action was taken by the officials. The Canal Distributaries are always subject to the patrol duty. The lower Appellate Court was required to go into all these facts, but without noticing the fact that the defendants miserably failed to discharge the onus in support of their defence, erroneously set aside the judgment. No evidence had been led that the deceased was travelling at a high speed. The findings are based upon the surmises and conjectures, thus, urges this Court for setting aside the judgment and decree of the lower Appellate Court as it suffers from gross illegality and perversity.

On the contrary, Ms. Devaki Anand Sullar, AAG, Punjab on instructions from Mr. Sanjeev Sharma, SDE o/o Executive Engineer, Central Works Division, PWD (B&R), Sangrur at Patiala, submitted that the findings of the lower Appellate Court being the last Court of fact and are perfectly legal and justified and do not call for interference. It has come on record that the deceased-Ajit Singh was driving motor-cycle at a high and fast speed, which had hit the parapet and as a result thereof, he fell into the dry bed of the distributary and succumbed into injuries. Had he been coming at a slow speed, he would not have fallen on a dry bed and survived.

The testimony of the DW-1 has gone un-rebutted, thus, urges this Court for dismissal of the present regular second appeal by maintaining the findings under challenge.

I have heard the learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that there is force and merit in the submissions of Mr. Sirohi, for, the lower Appellate Court gravely abdicated in reversing the findings by relying upon the testimony of DW-1-Jangir Singh. The aforementioned statement was not supported by any documentary evidence on record. No proof of laying down any bitumen drums containing earth and loose bricks with whitewash had been proved on record, so as to put warning to the travellers or not to take the route owing to the fact that some portion of the bridge had broken. Such a careless attitude had gone unnoticed. No evidence has also come on the record except for assumption that Ajit Singh was driving rashly and negligently. It was an accident of January 1988 at 7.30 p.m, when the sun sets too early. Statement of PW-5 has also gone un-rebutted viz-a-viz statement of the defendants. The trial Court on appreciation of the evidence found that the defendants had been negligent in not taking the precaution measures. Even other witnesses had also deposed that the bridge had broken, where Ajit Singh-deceased had fallen on the dry bed of the distributary. DW-1 Jagir Singh feigned ignorance regarding the date and repair of the bridge. In my view, the defendants miserably failed to discharge the onus, for, there was a categoric admission in the written statement that some portion had fallen/broken, thus, there is a gross illegality and perversity.

No doubt, this Court, on earlier occasions had been framing the

substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in “**Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213**”, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in “**Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others**” 2001(4) SCC 262, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in “**Pankajakshi 's case**” (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the

Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law and the same is hereby set aside and that of trial Court is restored. Accordingly, the present regular second appeal is allowed.

16.04.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No