

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

**RSA No.1606 of 2012 (O&M)
Date of decision: 04.07.2018**

Ashok Kumar and others

.....Appellants

Versus

Uma Kapila

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. H.S. Dhandi, Advocate,
for the appellants.

Mr. O.P. Kamboj, Advocate,
for the respondent.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 07.11.2011 passed by the Additional District Judge, Jalandhar, dismissing an appeal filed by defendant-appellants against the judgment and decree dated 02.09.2009 passed by the Additional Civil Judge (Senior Division), Nakodar whereby suit for recovery filed by plaintiff-respondent, has been partly decreed.

Uma Kapila-plaintiff (respondent herein) filed a suit for recovery of Rs.8,00,000/- by way of damages on account of murder of her husband Balram Kapila. It was pleaded in the plaint that on 21.05.2000, at about 12.30 P.M., Balram Kapila (husband of plaintiff), his brother Krishan Chand Kapila and son Sudhir Kapila had gone to see their house situated at Mohalla Jain, Nakodar in a van bearing registration No. PCH-24. When they alighted from the van, all the defendants (appellants herein) reached

there. Ashok Kumar-defendant No.1 raised a slogan to catch hold Balram Kapila and his brother in order to teach them a lesson for opening ventilators towards the house of Pardeep Kumar (defendant No.4). Thereafter, defendant Nos. 2 and 4 caught hold of Balram Kapila and defendant No.5 inflicted injury with a sword on the head of Balram Kapila. Pardeep Kumar attacked Sudhir Kapila with a sickle. Defendants Yog Raj and Sunil Kumar gave beatings to Sudhir Kapila with wooden handle. Upon raising alarm, a number of persons gathered at the spot, due to which, the defendants ran away from the spot along with their respective weapon. Injured Balram Kapila died in the way to hospital. With regard to the occurrence, FIR No.25 dated 21.05.2000, under Section 302 IPC was registered against the defendants. As per plaintiff, defendants were solely responsible for causing death of Balram Kapila. Hence, the suit.

Upon notice, defendant (appellants) filed written statement taking preliminary objection with regard to the maintainability of the suit as criminal case was still pending adjudication. On merits, it was stated that they were not liable for causing the death of Balram Kapila. In fact, Balram Kapila had tried to demolish the wall constructed by defendant-RAmesh Kumar in his own house and in that process, he (Balram Kapila) received certain injuries, which resulted into his death. It was denied that Balram Kapila was having an income of Rs.2,50,000/- per annum. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for recovery of Rs.8,00,000/- by way of damages, as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Relief.

Trial Court, after hearing learned counsel for the parties, returned a finding on issue No.1 in favour of plaintiff-respondent keeping in view that vide judgment Ex.PX-3, defendants had been convicted for causing the death of Balram Kapila. Further, the plaintiff had examined Sandeep Kumar (PW-3) and Sudhir Kumar (PW-4), who were eye witnesses of the occurrence. They have categorically deposed regarding inflicting of injuries by the defendants on the person of Balram Kapila. On the basis of this evidence, trial Court came to a conclusion that death of Balram Kapila was caused by the defendants on 21.05.2000. In the absence of any income tax return, income of Balram Kapila (deceased) was taken as Rs.5000/- per month and lump sum compensation of Rs.4,00,000/- was awarded in favour of plaintiff-respondent.

The lower appellate Court dismissed the appeal on the ground that a criminal case had been registered against the defendants vide FIR Ex.PX1. They were tried for commission of the offences under Sections 304/323/148/149 IPC and vide judgment dated 15.05.2005 Ex.PX3, they were held guilty and convicted. It was observed that such judgment of conviction passed by the Criminal Court could be used as a corroborative evidence to the aforesaid oral and medical evidence on record, from which the plaintiff had been able to prove that Balram Kapila was killed by the defendants by way of forming an unlawful assembly and causing injuries with a common object.

Learned counsel for the appellants has argued that death of

had been filed on 04.10.2002. Under the Fatal Accidents Act, 1855, a suit for damages has to be filed within two years, however, the present suit was filed after a period of two years of death of Balram Kapila. Learned counsel has referred to the judgments passed in **State of Gujrat vs. M/s Kothari and Associates**, 2015 (4) RCR (Civil) 893, **Sipra Banik and others vs. Chairman-cum-Managing Director, Tripura State Electricity Corporation Limited and others**, 2015 AIR (Tripura) 90, **Soniya Bai Ramswaroop Morya vs. Pramod Sharma and others**, 2012 AIR (M.P.) 21 and **Shaitan and others vs. Ajmer Vidyut Vitran Nigam Ltd. and others**, 2010 (1) AICJ 273.

Heard.

The judgments referred to by learned counsel for the appellants would not be applicable to the facts of the present case because in those cases, deaths had taken place on account of electrocution or medical negligence. Therefore, Fatal Accidents Act, 1855 would be applicable in those cases and under Article 82 of the Limitation Act, 1963, the suit filed beyond the period of two years from the date of death, would be barred by limitation.

In the present case, reference can be made to a judgment passed by this Court in **Partap Singh Vs. Gurdial Kaur**, 1998 (4) RCR (Civil) 375, where a question with regard to the intentional killing of a person came up for consideration. It was held that in a suit for compensation, where the wife had lost her husband, provisions under the Fatal Accidents Act would not be applicable. In para 9 of the judgment, it was further observed as under:-

“9. No doubt, an issue was framed by the trial Court whether the suit is not within time. The trial Court categorically stated that the said issue has not been pressed by the learned counsel for the defendants.

During the course of arguments, the same was also not raised by the appellant in the lower Appellate Court. Since the said issue has been given up by the defendants, it is not open to the appellant to raise the same. Apart from that I am of the opinion that the provisions of the Indian Fatal Accidents Act are not applicable to the present case as the plaintiff has not brought any action under the Fatal Accidents Act. It is a suit claiming damages for the intentional killing of the husband of the plaintiff by the defendants. It is not a case of any accidental death due to the wrongful act, neglect or default on the part of the Ist defendant-appellant. The death of the husband of the plaintiff was homicidal, but not accidental.”

In the facts of the present case, the plaintiff (respondent) has not filed this suit under the Fatal Accidents Act, 1855. Therefore, provisions of this Act would not be attracted in this case.

After going through the impugned judgments and documents relied upon by the parties, no illegality, much less perversity, has been found therein, warranting interference by this Court. The suit has been rightly decreed by the Courts below. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

04.07.2018
ajp

(RITU BAHRI)
JUDGE

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