

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

Date of decision: 05.09.2018

1. RSA No.2325 of 2014 (O&M)

Kulvir Singh @ Khira and othersAppellants
Versus

Pritam SinghRespondent

2. RSA No.4569 of 2014 (O&M)

Pritam SinghAppellant
Versus

Kulvir Singh @ Khira and othersRespondents

3. RSA No.4570 of 2014 (O&M)

Pritam SinghAppellant
Versus

Kulvir Singh @ Khira and othersRespondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Y.P. Singla, Advocate,
for the appellant (in RSA-2325-2014) and
for the respondent(s) (in RSA-4569-2014 & RSA-4570-2014).

Mr. Rakesh Chopra, Advocate,
for the appellant(s) (in RSA-4569-2014 & RSA-4570-2014) &
for the respondents (in RSA-2325-2014)

Ritu Bahri, J.

CM No.5611-C of 2014

In view of the averments mentioned in the application, same is
allowed and delay of 23 days re-filing of the appeal is condoned.

Main Appeals

This judgment shall dispose of RSA Nos.2325 of 2014, 4569 of
2014 and 4570 of 2014 together as common questions of law and facts are

involved in all the appeals. For reference, facts are being taken from RSA

No.2325 of 2014.

RSA No.2325 of 2014 has been filed against the judgment dated 29.10.2013 passed by the Additional District Judge, Fatehgarh Sahib, partly allowing the appeal filed by the defendants (appellants herein) against the judgment & decree dated 29.05.2008 passed by the Civil Judge (Senior Division), Fatehgarh Sahib, whereby suit filed by plaintiff (respondent herein) for recovery had been decreed.

Pritam Singh-plaintiff (respondent herein) filed the aforesaid suit for recovery of Rs.4,30,000/- for damages/compensation, alleging therein that he was resident of village Behrampur, Tehsil Bassi Pathana and his brother-Chamba Singh (since deceased) owned four acres of land. He was an agriculturist. Both the brothers i.e. plaintiff and Chamba Singh were unmarried. Chamba Singh being younger to the plaintiff was quite hale and hearty. He used to maintain buffaloes for the purpose of dairy farming and his monthly income was Rs.4000/-, out of which, he used to spend about Rs.2000/- per month on plaintiff being his elder brother. As per plaintiff, he himself was unable to work and was fully dependent upon the income of his younger brother-Chamba Singh. It was further pleaded that Chamba Singh and other brother of the plaintiff namely Lachman Singh had exchanged 16 Kanals of land with the defendants (appellants herein) about 6-7 years ago and possession was also exchanged at that time. However, after sometime, defendants started alleging that their share of land was less than the actual exchanged land. On 11.05.1995, defendants got the land measured through Patwari and Kanungo without informing the plaintiff and his brothers namely Chamba Singh and Lachhman Singh. They had also cultivated the land illegally and raised a *thada* point in the

absence of the plaintiff and his brothers. On coming to know with regard to the said fact, plaintiff and his family members visited the spot in a jeep and found that all the defendants, armed with *dangs, tangli and kulharies*, were present there. They suddenly attacked Chamba Singh and his nephew Kesar Singh son of Lachhman Singh. Kulbir Singh and Jaswinder Singh (defendants) caused injuries to Chamba Singh with *dang* and *kulhari*. Gurdev Singh and Jaswinder Singh caused injuries to Kesar Singh with *Tangli* and *Kulhari* respectively. Harinder Singh @ Happy tried to give *kulhari* blow on the head of Kesar Singh, but he managed to escape by running away upto some distance. Lachhman Singh, Kesar Singh, Pala Singh and Kulwant Singh raised an alarm, upon which, defendants ran away from the spot along with their respective weapons. They had also caused damage to the jeep of the plaintiff. Due to the injuries given by defendants, Chamba Singh became unconscious and was taken to Civil Hospital, Bassi Pathana. With regard to the incident, DDR No.22 dated 11.05.1995 was registered at Police Station, Bassi Pathana on the statement of Pal Singh. Chamba Singh was referred to Civil Hospital, Fatehgarh Sahib, however, due to critical condition, plaintiff took him to Rajindra Hospital, Patiala. Rs.20,000/- were spent on the treatment of Chamba Singh, but unfortunately, he succumbed to the injuries. Thereafter, FIR No.24 dated 14.05.1995, under Sections 302, 324, 323, 427 read with Section 34 IPC was registered against the defendants. After facing trial, defendant Nos. 1 to 3 were sentenced to undergo life imprisonment. As per plaintiff, he spent Rs.30,000/- on prosecution and Rs.20,000/- on the treatment of Chamba Singh. Apart from this, he claimed a sum of Rs.3,50,000/- as compensation for the loss suffered on account of death of Chamba Singh, who was

murdered by the defendants. Hence, the suit.

Upon notice, defendants (appellants therein) filed written statement taking preliminary objections with regard to maintainability, locus standi etc. It was submitted that the suit had not been instituted in the name of executor, administrator, representative of the deceased for the benefit of the wife, parents and children, therefore, plaintiff did not fulfill the requirement of Section 3 of the Fatal Accident Act. It was further stated that as per Sections 1 and 2 of the Act, suit can only be filed by legal heirs enumerated in Section 1A of the Act. On merits, relationship of plaintiff with Chamba Singh was denied. It was alleged that age of the deceased was about 65-70 years and he was not doing any work of agriculture because he was not hale and hearty. It was also denied that Chamba Singh was having buffaloes for the purpose of dairy farming and was earning Rs.4000/- per month. It was further submitted that Chamba Singh was not spending any amount on the plaintiff. A false case was registered against them, in which, defendant No.4 had been acquitted. Although, other defendants had been sentenced by the trial Court, but appeal against the judgment of conviction is pending before the High Court. It was further alleged that deceased-Chamba Singh was got admitted in general ward of the hospital, where medicines, treatment and meals were given free of costs. It was denied that Chamba Singh had died due to any wrongful act of the defendants. All other allegations levelled by the plaintiff 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 defendants caused murder of deceased Chamba Singh? OPP

2. Whether the plaintiff is entitled to damages from the defendants and interest as prayed for? OPP
3. Whether suit on behalf of plaintiff is not maintainable under Section 1A of the Fatal Accident Act? OPD
4. Whether the suit in the present form is not maintainable? OPD
5. Whether suit filed by plaintiff does not fulfill the requirement of Section 3 of the Fatal Accident Act? OPD
6. Whether suit of plaintiff is vexatious, if so, whether defendants are entitled to special costs? OPD
7. Whether Gurdev Singh and Jaswinder Singh defendants caused injuries as mentioned in para No.3 of the plaint? OPP
8. Whether plaintiff has cause of action to file the present suit? OPP
9. Whether a false case has been registered against the defendants? OPD
10. Relief.

Trial Court, after going through the evidence led by the parties, came to a conclusion that plaintiff (respondent herein) was doing agriculture and dairy farming (milk work) with Chamba Singh and they both were residing together. On issue Nos.1 and 2, trial Court has given a finding in favour of the plaintiff, as sufficient evidence was led by him to show that after registration of FIR No.24 dated 14.05.1995, under Sections 302/324/323/427 IPC at Police Station, Bassi Pathana, accused-defendants were convicted vide judgment dated 23.12.1995 and their conviction has been upheld up to the Hon'ble Supreme Court in SLP (Crl.) No.2874 of 2003. In order to pursue this litigation, Pritam Singh-plaintiff has been spending money, as he had to engage a counsel as well. On issue Nos.3, 4 and 5, it was held that suit was maintainable under Section 2 of the Fatal Accidents Act, as it did not fall in the definition of Clause 1A of the Act.

As per Section 2 of the Act, compensation goes to the benefit of estate and

person other than the wife, husband, parents and child can move a petition for compensation under this clause. Since, plaintiff was the brother of deceased-Chamba Singh and was dependent upon him, the suit was held to be maintainable under Section 2 of the Act.

The trial Court assessed the compensation by taking the age of deceased as 55 years and his income was taken as Rs.3600/- per month. It was observed that the deceased used to save at least, Rs.2000/- in order to spend the same upon the plaintiff. Therefore, the plaintiff was getting Rs.24,000/- per annum from the deceased, who died at the age of 55 years. It was further observed that the deceased could be expected to live another 15 years at least. Therefore, multiplier of 15 was applied. After applying this multiplier, total amount came to be Rs.3,60,000/- (Rs.24,000/- x 15). In addition to this, Rs.20,000/- were awarded on account of treatment of deceased, Rs.30,000/- towards prosecution of the case and Rs.20,000/- as funeral expenses of deceased. Ultimately, the suit was decreed and plaintiff was held entitled to a total compensation of Rs.4,30,000/- from the defendants.

On appeal, the first Appellate Court modified the compensation awarded by the trial Court in view of the judgment passed by Hon'ble the Supreme Court in **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 Lawsuit (SC) 613 and applied the multiplier of 11 according to the age of the deceased. After applying the multiplier of 11, amount of compensation came to Rs.2,64,000/- (Rs.24,000 x 11). Further, the first appellate Court reduced the amount of funeral expenses from Rs.20,000/- to Rs.5000/-. However, the amount awarded by the trial Court for medical treatment of deceased and prosecution

(Rs.20,000/- and Rs.30,000/-) was upheld. Ultimately, while accepting the appeal partly, compensation was reduced to Rs.3,19,000/-.

Heard.

Reference, at this stage, can be made to a judgment passed by the Division Bench of this Court in **Dhyan Singh and another vs. Union of India and others**, 2009 (2) RCR (Civil) 26. In that case, the Court was considering a case, where two sisters had died in a Railway accident and the minor brother was claiming compensation. In para No.11 of the judgment, it was held as under:-

“11. The provisions of the Motor Vehicles Act, 1939, unauthorised a legal representative of the deceased to claim compensation. Under the Railway Act, the legal representatives have not been specifically made eligible to apply for compensation. The Railway Act being a Central Act, as also Fatal Accidents Act, can be deemed to supersede such provisions of the Fatal Accidents Act for which corresponding provision is made under the Railways Act. Since there is no corresponding provision in the Railway Act in respect of compensation for the loss of estate and the person entitled to claim compensation, would continue to be governed by the provisions of Fatal Accidents Act, 1855. Therefore, loss to the estate falling within Section 2 of the Fatal Accidents Act, 1855 could be claimed by the legal representatives of the deceased. The Railways Act will only supersede the provisions of Section 1A of the Fatal Accidents Act, 1855, whereas loss to the estate computable under Section 2 of the Fatal Accidents Act can be claimed by the legal representatives but from a forum created under the RCT Act in view of the bar of jurisdiction of civil Court. The provisions of Section 2 of the Fatal Accidents Act, 1855, cannot be deemed to be superseded by enactment of Railways Act and the Railway Claims Tribunal Act, 1987. The substantive right created by the Fatal Accidents Act, 1855, cannot be deemed to have been curtailed in any manner by the enactment of the aforesaid Acts. The subsequent enactment has only changed the forum from the Civil Court to Tribunal constituted under the Railway Claims Tribunal Act, 1987. Thus, the compensation on account of loss of estate could be claimed by the eligible legal representatives from the Railway Claims Tribunal in accordance with the procedure prescribed under the Railways Act.”

In the present case, Chamba Singh was younger brother of the plaintiff. Chamba Singh was 55 years of age at the time of his death. The plaintiff has led sufficient evidence to show that he (plaintiff) was dependent upon Chamba Singh. Hence, claim of plaintiff has been rightly entertained by the Courts below under Section 2 of the Fatal Accidents Act. Ratio of the aforesaid judgment is squarely applicable to the facts of the present case.

After going through the impugned judgments, this Court is of the view that the first Appellate Court has rightly assessed the compensation in favour of plaintiff (respondent) by taking the age of deceased as 55 years. The compensation awarded is not on the higher side and the suit has been rightly decreed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgment passed by the first Appellate Court, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Resultantly, all the appeal i.e. RSA No.2325 of 2014, RSA No. 4569 of 2014 and RSA No.4570 of 2014 are dismissed.

05.09.2018
ajp

(RITU BAHRI)
JUDGE

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