

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

RSA No.1656 of 2018 (O&M)

Date of decision : 20.11.2018

Ram Pal and others

...Appellants

Versus

Managing Director Haryana Vidyut Prasaran Nigam and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Robin Dutt, Advocate for the appellants.

ANIL KSHETARPAL, J.

Arguments were heard and the judgment was reserved on 15.11.2018. The judgment is being released.

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below dismissing their suit seeking compensation beyond ₹1,50,000/- which was awarded by the High Court as ex-gratia.

Kartara Ram aged about 65 years died on account of electrocution on 03.08.2010. He was drawing old age pension under Old Age Allowance Scheme, 2005. His widow is also getting separate old age pension. It has come in evidence that he had left behind plaintiff No.1-major son, plaintiff No.2-widow, plaintiff Nos.3 to 5 are widow and children of a pre-deceased son. When plaintiff No.1 appeared in evidence, he admitted that his father was owner of five acres of land which had been bequeathed in the name of his grand children.

Both the Courts on appreciation of the evidence have found that the deceased-Kartara Ram was not doing any work and was not earning any other income except getting old age pension. Thus, the Courts below have dismissed the suit filed by the plaintiffs.

Damages in such cases are governed by the Indian Fatal Accidents Act, 1855 (hereinafter to be referred to as “the Act of 1855”). Language of the Act of 1855 is different from the compensation to be assessed under the provisions of the Motor Vehicles Act, 1988. Section 1A of the Act of 1855 is extracted as under:-

“[1A.] Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.—

Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased; and in every such action, the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not

recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the court by its judgment or decree shall direct.”

This aspect has already been considered in detail by Hon'ble the Supreme Court in various judgments. Reference in this regard can be made to one of the celebrated judgment of Hon'ble the Supreme Court in the case of **M/s Helen C. Rebello Vs. Maharashtra State Road Transport Corporation, AIR 1998 Supreme Court 3191**. Hon'ble the Supreme Court has held that under the Act of 1855, while assessing the compensation payable, the assessment has to be restrictive in nature as compared to the compensation to be assessed under the Motor Vehicles Act. In the aforesaid judgment, Hon'ble the Supreme Court was dealing with the provisions of the Motor Vehicles Act, 1939 and analyzed the difference between the compensation assessable under the Act of 1855 and the Motor Vehicles Act, 1939.

Since, in the present case, no reliable evidence has come on record that the deceased was doing any work, therefore, the Courts have rightly held that the calculation for damages cannot be worked out on the basis of the minimum wages payable.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

20.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No