

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

**(1) RSA No.6038 of 2014 (O&M)
Date of Order:01.03.2018**

Uttar Haryana Bijli Vitran Nigam and another ..Appellants

Versus

Kamlesh Devi and others ..Respondents

(2) RSA No.6042 of 2014 (O&M)

Uttar Haryana Bijli Vitran Nigam and another ..Appellants

Versus

Kamlesh Devi and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pardeep Singh Poonia, Advocate,
for the appellants.

Mr. Parveen Sharma, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

By this judgment, Regular Second Appeal Nos.6038 and 6042 of 2014 are being decided as both the appeals arise out of the same suit filed by the plaintiffs-respondents claiming recovery of unliquidated damages.

Plaintiffs, who are widow, three children, out of them two are minors and father of the deceased, filed a suit for recovery claiming that Late Sh. Krishan Dutt had died on 11.06.2009, after being involved in a motor vehicular accident on 08.06.2009.

Both the courts after appreciation of the evidence available on the file have found that the electricity line maintained by the defendants-appellants were hanging precariously near the road and deceased Krishan

Dutt while going on a motorcycle came in contact with the live electricity wire. Late Sh. Krishan Dutt got entangled and resultantly fell on the road sustaining serious injuries on the head, which ultimately resulted into his death. Krishan Dutt remained admitted in Dr. Prem Hospital, G.T. Road, Panipat, from 08.06.2009 to 11.06.2009 where he succumbed to his injuries.

Two appeals were preferred before the first appellate Court, one by the plaintiffs and second by the defendants-appellants.

Learned trial court assessed the unliquidated damages to the tune of Rs.7,00,000/-, whereas learned first appellate court has enhanced the same to Rs.15 lacs.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments and decrees passed by the courts below.

Learned counsel for the appellants has vehemently argued that from the reading of post mortem report, Ex.P5, it is proved that Krishan Dutt died due to injury on the head and lungs. He submits that these injuries can be result of fall on the road without coming into contact with a live electricity wire or in accident involving other vehicle. He has further submitted that enhancement of compensation by the learned first appellate court was erroneous as learned first appellate court has not given any reason to enhance the compensation as damages.

On the other hand learned counsel for the respondents-plaintiffs has defended the judgment passed by the learned courts below and has submitted that the defendants-appellants did not lead any positive evidence

to prove that the live electricity wire was not hanging loose on the road or the Nigam had taken any precaution or maintained the electricity wires in a proper manner. He has further submitted that immediately after the accident, a DDR was recorded and in the DDR, it is clearly mentioned that Krishan Dutt died due to the fact that he came in contact with the live electricity wire and thereafter fell down. He further submitted that police investigation, Ex.P4, also supports this fact.

In view of the argument of learned counsel for the respondents-plaintiffs, it is apparent that the defendants-appellants did not lead any positive evidence to prove that the wire was not hanging loose near the road. Defendants-appellants have only examined Naresh Kumar Batra as DW1. Even the police investigation, which is Ex.P4, proves that Krishan Dutt died on account of having come in contact with the live wire and consequently fell on the road. Krishan Dutt was traveling on a motorcycle. The injuries in the post mortem report also supports the case of the plaintiffs. Post mortem report shows that Krishan Dutt suffered these injuries after falling down on the road. No evidence has been produced on file to prove that the motorcycle being driven by the deceased was met with an accident with the other vehicle or had slipped. In view thereof, there is no substance in the first argument of learned counsel for the defendants-appellants.

Second argument of learned counsel in first brush appears to be very effective. However on close scrutiny, this court does not find any merit therein.

Krishan Dutt was 40 years of age at the time of accident . He was employed as Junior Chargeman with the Indian Oil Corporation. He

was drawing a salary of Rs.45,760.92/- per month from Indian Oil Corporation. Krishan Dutt had left behind 5 dependents including widow, three children, out of them two were minors and father of the deceased. If the compensation payable is calculated as per the principles prescribed under the Motor Vehicles Act, 1988 the compensation would turn out to be much more. If dependency on account of his personal expenses, 1/4th of the salary is deducted, the monthly dependency comes to Rs.34,344/- approximately and yearly dependency comes to Rs.4,12,128/-. Even if conservative multiplier is applied, keeping in view the age of the deceased, the amount arrived at would be much more than what has been awarded already. However, since the plaintiffs have not filed any cross appeal, therefore, this court does not opt to proceed in this direction. The exercise has been carried out only to verify whether the compensation enhanced by the first appellate court is based on sound principles or not.

In view of the above, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

Both the regular second appeals are dismissed.

C.M.No.14361-C of 2014 &
C.M.No.14389-C of 2014

The applications are for condonation of delay of 58 days and 458 days in filing the appeals.

In view of the fact that this court has examined the case on merits and decided the same, therefore, no order is required to be passed.

March 01, 2018

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Whether speaking/reasoned

Whether reportable

(ANIL KSHETARPAL)
JUDGE

: Yes/No

: Yes/No