

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-5734-2017 (O&M)
Date of Decision: 17.10.2018

Range Forest Office & others

--Appellants

Versus

Smt. Basanti Devi & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Pawan Kumar Garg, A.A.G., Haryana.

TEJINDER SINGH DHINDSA.J (Oral)

CM-16004-C-2018

In view of the averments made in the application duly supported by an affidavit dated 18.9.2018 of the Divisional Forest Officer, Panipat, prayer is allowed.

Date in the main appeal, which is otherwise fixed for 9.3.2019 is preponed and the same is taken up on Board today itself.

Application is disposed of.

Main Appeal

Basanti Devi filed a suit against the officials of the Forest Department, State of Haryana claiming compensation to the tune of Rs.16,80,000/- on account of death of her husband namely Jony. It was claimed that Jony had died on 4.8.2007 due to injuries sustained on account of a dry *Kikar* tree standing near the main gate of Grain Market, Panipat having fallen upon him.

Trial Court dismissed the suit on 16.10.2013. A civil appeal having been preferred, the Lower Appellate Court vide judgement dated 28.8.2015 has accepted the same, set aside the judgement and decree of the Trial Court and has awarded a compensation amount of Rs.2,88,000/-.

Resultantly, the defendants/appellants are in second appeal before this Court.

Learned State counsel has argued that the Lower Appellate Court has erred in reversing the well reasoned judgement rendered by the Trial Court and wherein it had been held that the accident had taken place on account of a **natural mishappening** and as such, nobody was at fault. Further urged that the *Kikar* tree in question did not belong to the State Forest Department and nor was it standing on land classified as forest land. Further submitted that the police authorities had conducted investigation in the matter and had concluded that the death of Jony had occurred on account of an unfortunate natural mishappening and no one is to blame. It is urged that on the fateful day high velocity winds had blown and which had resulted in the *Kikar* tree getting uprooted and it was a mere coincidence that the same fell upon husband of plaintiff-respondent while he was proceeding to the Grain Market, Panipat. Yet another submission raised by counsel is that if such award of compensation were to be upheld, it would set a wrong precedent and open up a Pandora's Box and new cases would emerge and in which Forest Department would be penalized for no fault.

Having heard counsel for the appellants and having perused the pleadings on record, this Court does not find any merit in the instant appeal and the same is liable to be dismissed.

During the course of hearing, learned State counsel has read out the testimony of DW-1 Pawan Kumar, Range Forest Officer as also DW-2 Chaturbhuji, Forest Guard.

The testimony of the witness of the Forest Department DW-2 would be crucial and the same was to the following effect:-

“I have seen the place of occurrence. Said place falls within the supervision of our department. Volunteered that the trees standing along the gate at the place of occurrence were falling under the control of our department.”

Trial Court had dismissed the suit by adopting a reasoning that Basanti Devi, PW-1 had failed to adduce any evidence as regards the area of occurrence belonging to the Forest Department or not. Such reasoning is erroneous. Plaintiff-respondent was the widow of a laborer. The documents with regard to forest area as also with regard to the place of occurrence being under the jurisdiction and control of the Forest Department were in possession and in control of the appellants. State counsel has conceded that no documentary evidence had been led to show that tree in question was standing on land not under the jurisdiction of the State Govt. To the contrary their own witness has testified in favour of the plaintiff/respondent. The reasoning adopted by the Lower Appellate Court in this regard is to the following effect:-

“The record concerning the area falling under the control of Forest Department was available with the defendants and therefore it was obligatory on the defendants to adduce documentary proof to prove that the tree in question was not under their control for maintenance and that the statement made by their witness was factually incorrect.”

Such reasoning is well founded and is affirmed.

Learned State counsel does not dispute that the death of husband of the plaintiff/respondent had occurred on account of falling of a tree/dead tree. It goes without saying that it was the duty of the appellants

to have removed any such deadwood/dry tree and which was otherwise standing on the side of the road. The appellants having failed to discharge their duty and the dead tree having fallen upon Jony (since deceased), they would certainly be liable to pay compensation.

This Court finds that the Lower Appellate Court has been rather conservative while awarding compensation. The plaintiff-respondent had claimed compensation to the tune of Rs.16,80,000/-. The date of death is 4.8.2007. The Lower Appellate Court has assessed the monthly income of the deceased to be Rs.2400/- only. The deduction of 1/3rd i.e. Rs.800/- has been made towards personal and living expenses of the deceased. Accepting the age of the deceased to be 37 years as reflected in the Post Mortem Report Ex. P-8, a multiplier of 15 has been applied. The compensation amount, as such, has been worked out to be Rs.2,88,000/-. No amount has been awarded under the conventional heads i.e. loss of consortium etc. A meager amount of Rs.2,88,000/- has been awarded in favour of the widow and two minor children.

This Court does not find any valid basis that would warrant interference in the impugned judgement dated 28.8.2015 passed by the learned District Judge, Panipat.

The instant appeal is accompanied by an application i.e. CM-15171-C-2017 filed under Section 5 of the Limitation Act seeking condonation of delay of 605 days in filing the instant second appeal.

In the application it has been averred that after the passing of the impugned judgement by the Lower Appellate Court the District Attorney, Panipat has given his opinion on 14.10.2015 that it is a fit case for filing of the RSA. Thereafter, opinion was sought from the Legal

Remembrancer, State of Haryana and whereupon opinion was given on 18.11.2015 that it is not a fit case to file RSA. Subsequently when the file moved for sanction of the decretal amount, the Addl. Chief Secretary to Govt. Haryana, Forest Department issued directions for filing the RSA.

The aforesaid reasons merely spell out the movement of the file in the Govt. offices. The same cannot be accepted to be a valid justification for the inordinate delay of 605 days that has occurred in filing the instant appeal. Prayer for condonation of delay is, accordingly, declined.

In view of the above, the instant appeal is dismissed on merits as well as on the ground of delay.

Pending applications, if any, shall stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

17.10.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No