

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.82 of 2018 (O&M)
Date of Decision: September 11, 2018

M/s Tulip Service Station

...Appellant

Versus

Usha Bhardwaj and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Shaurya Sharma, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

The defendant has filed this appeal against the order of the learned Lower Appellate Court, whereby, the appeal of the respondents has been accepted and the judgment and decree of the trial court dismissing the suit has been set aside and the case has been remitted to the Trial Court to decide it afresh, as per law.

The plaintiff-respondents had filed civil suit for damages amounting to Rs.10,00,000/- against the defendant-appellant along with an application under Order XXXIII of the Code of Civil Procedure for permission to file the suit as 'indigent person'. It was their case that Rajinder Bhardwaj, husband of plaintiff No.1, father of plaintiff Nos.2 and 3 and son of plaintiff No.5 was working as a Manager in the Petrol Pump of the defendant. He had joined the service in the month of August, 1997 on an initial salary of Rs.5500/- per month. He died on 5.5.2008 during the course of his employment. He was shot at by unknown persons when he was going

to deposit the cash of the defendant's service station and of another petrol pump, namely Taj Midway located at Hodel, District Palwal, of which Ajay Sharma was Associate-cum-Manager. At that time he was carrying an amount of Rs.18,20,000/-, of which Rs.9,20,000/- was from M/s Taj Midway, Hodel. Alleging that the unfortunate incident had occurred as the defendants had not made proper security arrangements for deposit of the cash with the Bank, the suit was filed.

The case of the defendant was that the incident took place due to carelessness, negligence and inaction of the deceased Rajinder Bhardwaj. The defendant had appointed the deceased as Manager to deal with the day-to-day affairs. He was free to call the police personnel for security whenever he felt such necessity. As he carried a large amount of cash from the Petrol Pump to the Bank without calling the police personnel for security, the defendants could not be held liable. Moreover, Ajay Sharma, the real brother of Kishore Sharma who was operating the Petrol Pump of the defendant was also killed in the incident. Hence, there was no question of any willful default or negligence on the part of the defendant.

In order to prove their case, the plaintiffs examined Usha Bhardwaj, widow of the deceased as PW1, who tendered her affidavit reiterating the contents of the plaint. The defendants examined Kishore Sharma as DW1.

The learned Trial Court held that on the basis of the evidence, it could not be concluded that there was any negligence on the part of the defendants. It was held that the deceased could have called the police for accompanying him to deposit the cash, but the same has not been done. He

had been regularly depositing the amount in the Bank. If on a particular day, the unfortunate incident of shooting had taken place, the defendants could not be held liable. Moreover, the brother of the defendant had also died in the incident. Hence, the defendants could not be held to be guilty of a negligent act. It was held that the case was not covered under any of the principles which would require the grant of damages. The issue of indigence of the plaintiffs was decided against them. The suit was dismissed.

The Ld. lower Appellate Court held that as the plaintiffs had filed an application under Order XXXIII CPC along with the suit the Trial Court was required to decide this application before framing of issues and putting the parties for trial. After the decision on this application, order with respect to the court fee was required to be passed. The Trial Court had not done so. Further, only the service station M/s Tulip Service Station had been impleaded as defendant in the suit. The written statement had been filed by Smt.Veermati, proprietor of the Petrol Pump pleading that financial and marketing affairs of the Pump were being looked after by one Kishore Sharma under a private contract. The learned Appellate Court felt that the Trial Court, at its own motion, ought to have arrayed/impleaded the Bharat Petroleum Company Ltd.(for short “BPCL”) and Kishore Sharma as defendants for effective decision of the case. As the dealership of the petrol pump had been allotted by BPCL only it could disclose to the Court the terms and conditions that the dealer was required to comply with in respect of security to be maintained at the petrol pump. The decision of the suit in the absence of BPCL was not justified. As the Trial Court was remiss on the aforesaid counts, the judgment and decree of the Trial Court was set aside

and the case was remitted to the Trial Court to first decide the application of the plaintiff to sue as 'indigent person', to implead Kishore Sharma, Veermati and BPCL as defendants and then decide the matter as per law.

Learned counsel for the appellant has contended that the Ld. Lower Appellate Court has failed to notice that the Trial Court has already decided that the plaintiff was not covered under the definition of 'indigent person'. Further, Kishore Sharma and BPCL could at best be considered as proper parties and the Trial Court judgment could not be set aside on the ground of their non-impleadment. He argued that once the Bharat Petroleum Corporation Ltd. had given the retail outlet to the dealer/proprietors, they were to independently run it and the BPCL had no role in that regard.

The aforesaid contentions of the Ld. Counsel for the appellant do not in any way nullify the reasoning of the Ld. Lower Appellate Court which cannot be faulted.

As per the provisions of Order XXXIII of CPC the application for permission to sue as an indigent person was required to be decided first and in the event of its being refused, time for payment of court fee was to be granted. This procedure has not been followed. Further it was not disputed that the unfortunate incident had occurred while the deceased was carrying cash for depositing the same in the bank. The issue to be decided was of the negligence of the respondent. To decide the issue it was necessary to know of the terms and conditions, if any, that a dealer was required to comply with in respect of security to be maintained at the petrol pump. This could only be disclosed by the BPCL. The Trial Court did not consider this aspect

at all and cursorily disposed of the suit.

Hon'ble Supreme Court in *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, (2012) 6 SCC 430, has explained in detail that the duty of a judge is to discern the truth and that there adequate provisions in the Code of Civil Procedure which can be used for that end. It was observed:

“Entire journey of a Judge is to discern the truth

24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. This Court in Dalip Singh v. State of U.P. observed that: (SCC p. 116, para 1)

“1. ... Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell the truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system.”

25. This Court in Maria Margarida Sequeria Fernandes had an occasion to deal with the same aspect. According to us, observations in paras 32 to 52 are absolutely germane as these paragraphs deal with relevant cases which have enormous bearing on the facts of this case, so these paragraphs are reproduced hereunder: (SCC pp. 383-88)

“32. In this unfortunate litigation, the Court’s serious endeavour has to be to find out where in fact the truth lies.

33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In Mohanlal Shamji Soni v. Union of India, this Court observed that in such a situation a question that arises for consideration is whether the Presiding Officer of a court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding out the truth and administering justice? It is a well-accepted and settled principle that a court must discharge its statutory functions—whether discretionary or obligatory—according to law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In Ritesh Tewari v. State of U.P. this Court reproduced often quoted quotation which reads as under: (SCC p. 687, para 37)

‘37. ... “Every trial is voyage of discovery in which truth is the quest”.’

(emphasis in original)

This Court observed that the

‘power is to be exercised with an object to subserve the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth’.

37. Lord Denning in Jones v. National Coal Board has observed that: (QB p. 63)

‘... In the system of trial [that we] evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of [the] society at large, as happens, we believe, in some foreign countries.’

38. Certainly, the above, is not true of the Indian judicial system. A Judge in the Indian system has to be regarded as failing to exercise his jurisdiction and thereby discharging his judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that ‘every trial is a voyage of discovery in which truth is the quest’. In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

39. Lord Denning further observed in Jones that: (QB p. 64)

‘... It’s all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth....’

40. World over, modern procedural codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimised.

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43. **‘Satyameva Jayate’** (literally ‘truth stands invincible’) is a mantra from the ancient scripture Mundaka Upanishad. Upon Independence of India, it was adopted as the national motto^{*} of India. It is inscribed in Devnagri script at the base of the national emblem. The meaning of full mantra is as follows:

‘Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of truth resides.’

The Appellate Court order only facilitates this objective. There is no infirmity in the impugned order.

Dismissed.

September 11, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No