

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

CM-984-85-LPA-2020 in/and
LPA No.384-2020
Date of Decision: 24.02.2021

JOGINDER BAI AND OTHERS

....APPELLANTS..

Versus

STATE OF HARYANA AND OTHERS

....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present : Mr. Narender Singh Kamboj, Advocate,
for the appellants.

Ms. Shruti Jain Goyal, DAG, Haryana.

SANT PARKASH, J.

CM-984-LPA-2020

For the reasons mentioned in the application, delay of 59 days in
filing the appeal is condoned.

CM stands disposed of.

CM-985-LPA-2020

Application for exemption from filing certified copies of writ
petition, written statement and annexures is allowed as prayed for.

CM stands disposed of.

Main case

The appellants have filed the present appeal, being aggrieved against

the judgment dated 24.02.2020 passed by learned Single Judge, who has disposed of the writ petition with liberty to the writ petitioners to avail the remedy/remedies as may be available to them in accordance with law.

Brief facts of the case are that on 31.05.2016 Gurnam Singh had gone to a barber shop at his village Hijrawan Khurd and when he was coming out of the said shop, a branch of an aged kikkar tree fell upon him. As a result of which, he sustained injuries and ultimately, succumbed on the same day. Copy of the DDR No.36 dated 31.05.2016 and the postmortem report dated 31.05.2016 are annexed with the file. On account of death of Gurnam Singh, appellants-petitioners sought compensation and served legal notice dated 08.09.2016 upon the respondents, which was illegally denied. Resultantly, appellants-petitioners approached this Court by way of CWP No.10977 of 2018, inter alia, seeking a writ in the nature of mandamus to direct the respondents to pay compensation to the tune of Rs.25 lakhs.

The afore-mentioned writ petition was disposed of by the learned Single Judge vide impugned judgment dated 24.02.2020 with liberty to the petitioners to avail the remedy/remedies as may be available to them in accordance with law. Feeling aggrieved against the above-said order dated 24.02.2020, the appellants-petitioners preferred the instant appeal.

Learned counsel for the appellants has contended that the impugned judgment has been passed by the learned Single Judge without appreciating the pleadings and material placed on record and as such, the impugned judgment is liable to be set aside. The findings of the ld. Single Judge regarding no evidence of the old aged kikkar tree are totally erroneous as the application dated 30.03.2016 (P-9) would reveal that the kikkar trees standing on the

public place were in dry condition. This fact has been verified by Gram Panchayat of village Hijrawan Khurd that the kikkar tree was in dry condition and it was dangerous for the general public at large. Further elaborating his arguments, he has submitted that the husband of appellant No.1 died due to the injuries sustained on account of falling of time-worn branch of kikker tree. Since, the said kikker tree belonged to the respondents and had the respondents authority taken an appropriate care and maintained the said kikker tree and would have removed the time-worn branches, the aforesaid accident could have been avoided. The negligence on the part of the respondents in maintaining the said kikker tree is well apparent on the face of it and respondents are liable to pay the compensation as claimed.

Learned State counsel refuting the arguments as raised by learned counsel for the appellants has prayed for dismissal of the instant appeal submitting that the judgment rendered by the learned Single is in consonance with the settled cannons of law. She further submits that the tree in question was a healthy one and is still existing on the spot.

We have heard learned counsel for the parties and perused the record.

Before advertng to the matter in hand, it is noted that Letters Patent Appeal (LPA) is an appeal by the petitioners against the decision of a Single Judge to another Bench of the same Court. It is an *intra-court* appeal in High Court. The scope of the LPA is limited to the extent whether the judgment under appeal is permissible in law and is in consonance with the settled canons of law. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in **Management of Narendra and Company Vs**

Workmen: 216(3) SCC 340, wherein it has been held that unless the Appellate Bench reaches to a conclusion that the finding of the learned Single Bench is perverse, it shall not disturb the same and there should be no interference with the order passed by the learned Single Judge merely because another view or a better view is possible.

While relegating the appellants-petitioners to avail the remedy/remedies as may be available to them in accordance with law, learned Single Judge has done the complete justice. The allegations of the appellants are that Gurnam Singh died due to the injuries sustained on account of the falling of a time-worn branch of the kikker tree. Though, the appellants-petitioners have placed on file the documents in the form of Daily Diary Report No.36 dated 31.05.2016 and postmortem report dated 31.05.2016 (Annexures P-1 and P-2) but both these documents, by any stretch of imagination, cannot be said to be the conclusive pieces of evidence to ascertain the amount of compensation on account of the alleged incident. As rightly observed by learned Single Judge, the controversy involves the disputed questions of fact, which cannot be decided while exercising the writ jurisdiction. There are certain facts which are to be proved and opportunity has to be given to the respondents to rebut the same and only thereafter, it can be ascertained as to what was the cause of death and what was the age of kikker tree including as to whether the falling of such time-worn branch of kikker tree resulted into the fatal incident.

Consequent upon our aforesaid discussion, we concur with the findings recorded by the learned Single Judge that controversy revolves around the dispute questions of fact and the appellants are at liberty to avail the

appropriate remedy available to them in accordance with law.

In view of the aforesaid discussion, we do not find any infirmity or illegality in the impugned judgment dated 24.02.2020, and the same is hereby affirmed.

Dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

24.02.2021

sonika

whether speaking/reasoned: Yes/No

whether reportable: Yes/No