

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

RSA-349-2022 (O&M)
Date of decision: 07.02.2022

MARKET COMMITTEE FATEHABAD AND ANR ...Appellant

V/S

KULWINDER KAUR AND ANR ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Padam Kant Dwivedi, Advocate,
for the appellants.
(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the defendants are in second appeal before this Court assailing the trial Court judgment and decree dated 28.07.2017, as upheld by the learned First Appellate Court vide its judgment and decree dated 4.10.2021.

3. Briefly stated, facts as noticed by Courts below are that the plaintiff is resident of village Aherawn, Tehsil Ratia, District Fatehabad. The husband of the plaintiff, namely, Baljinder Singh was an agriculturist and farmer looking after the agriculture pursuits. On 30.09.2015, when Baljinder Singh was collecting the fodder for his milching animals, then all of sudden due to slip of the foot, he fell down and Manka/neck joint was fractured/broken and as a result of which he was immediately taken to CHC, Ratia. After giving first aid there, he was referred to higher medical institution. As such, he was admitted in Sarvodaya Multispecialty Hospital, Hisar, where he died on 02.10.2015 during the treatment in the hospital.

Plaintiff filed suit for declaration that she is entitled to compensation. It was resisted by the defendants.

4. Based on the rival pleadings, following issues were framed by trial Court:-

1. *Whether the plaintiff is entitled for a decree of declaration as prayed for? OPP*
2. *Whether the civil Court has no jurisdiction to try and decide the present suit? OPD*
3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
4. *Whether the plaintiff has no cause of action or locus-standi to file the present suit? OPD*
5. *Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD*
6. *Whether the plaintiff has not come to the Court with clean hand and has suppressed true and material facts? If so, its effect? OPD*
7. *Whether the plaintiff has not affixed the ad valorem Court fee on the plaint, as required under Court fees Act? OPD*
8. *Relief.*

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, issue No.1 was decided in favour of the plaintiff. Issues No.2 to 4 were decided against the defendants. Issue No.5 and 6 were not pressed by the learned counsel for the parties. Issue No.7 was decided in favour of the defendants. Suit was decreed by the trial Court.

7. First Appellate Court dismissed the appeal. Hence Regular Second Appeal before this Court.

8. I have heard the learned counsel and perused the judgments of both the Courts below. Relevant part of First Appellate Court judgment is as below:

“21. *In this case, plaintiff has claimed that Baljinder Singh was an agriculturist. On the other hand, defendants have*

not led any evidence contrary to this claim of plaintiff in this case. Hence, in view of oral and documentary evidence led by plaintiff, it stands proved that Baljinder Singh was carrying fodder and due to heavy weight he fell down with a jerk and sustained injuries and during treatment he expired in hospital. Collecting or carrying fodder for cattle is a part of agricultural pursuits. Hence, death of victim Baljinder Singh is fully covered in the Scheme Ex. D1.

22. *Perusal of Clause 8(a) and (b) of Scheme Ex. D1 reflects that the proforma required for making an application is given in Annexure to the scheme and in the event of death of the victim, the application must be signed by the next of the kin besides the legal representative of the deceased. The claim petition must be attested by the Sarpanch or two Members of the Panchayat. Though in the present case, application was not moved on the proforma given in Annexure to the scheme, but as per clause 10 of the Scheme Ex. D1, the application for the assistance under this scheme shall be made within two months from causing of such death or disability. In the present case application Ex. P3 for assistance under this scheme was moved before Deputy Commissioner, Fatehabad along with resolution Mark-A of Panchayat on 08.10.2015 and said application was further forwarded to Secretary, Market Committee, Fatehabad for necessary action and assistance. In the absence of application on proforma given in Annexure to the scheme and mere on the technicalities, claim of plaintiff for assistance under this scheme, which has been launched in the public interest and is a beneficial social scheme with a view to provide special assistance to the victims of accidents occurred during agricultural operations, cannot be denied. Hence, learned Lower Court has rightly held that plaintiff being widow of Baljinder Singh is entitled for compensation amount of Rs.5,00,000/- from the defendants on account of death of Baljinder Singh on 02.10.2015 while doing agricultural work as a farmer.*

23. *The contention of learned counsel for appellant-defendants No.2 and 3 that in this case, daily diary report and post mortem report were not produced which are mandatory as per the Scheme Ex. D1 and as per report dated 02.10.2015 of doctor of Sarvodaya Hospital, Hisar, cause of death of Baljinder Singh was cardiac arrest and hence, claim of plaintiff is not covered under scheme Ex. D1, cannot be considered and are devoid of merit as it is observed that PW3 Jaswant, clerk of Deputy Commissioner, Fatehabad has proved application Ex.P3 and resolution of Panchayat Mark-A and perusal of application Ex.P3 and resolution Mark A reflects that it is mentioned therein that on 30.09.2015 Baljinder Singh after cutting fodder for cattle and carrying bundle of fodder was coming out of his fields and he slipped down and sustained injuries on his body. It is specifically mentioned that since the family members of victim Baljinder Singh were illiterate and were having no proper knowledge, they could not get the post mortem examination conducted and could not get the matter*

lodged with the police. Moreover, PW4 Dr. Umesh Kalra has specifically deposed that when Baljinder Singh was brought to his hospital, then he was having injury in his neck and backbone. As per medical record, there was history of fall with jerk after carrying heavy weight and suffering of injuries on person of Baljinder Singh. In these circumstances, claim of plaintiff seeking assistance under this scheme cannot be denied to her.

24. *So far as argument raised by learned counsel for appellants defendants No.2 and 3 that jurisdiction of civil court in the present matter is barred, is concerned, same cannot be considered being devoid of merit and it is observed that a perusal of Scheme Ex. D1 shows that there is no specific provision in the abovesaid scheme debarring the jurisdiction of the civil courts with regard to the matters covered under this scheme. Further, it is settled law that a civil court has plenary jurisdiction to adjudicate upon all disputes of a civil nature except where cognizance thereof is barred either expressly or by necessary implication. In this view, I place reliance upon case laws cited as Megh Raj and others Vs. Manphool and others 2008(3) RCR (Civil) 241 (P&H) and Haryana State Agricultural Marketing Board Vs. Umed Singh and others 2006 (2) RCR (civil) 707.*

25. *So far contention of learned counsel for appellant-plaintiff Smt. Kulwinder Kaur that plaintiff is entitled to get interest at the rate of 18% per annum on the claim amount of Rs.5,00,000/- from the date of death of husband of plaintiff or from the date of filing the present suit till realization is concerned, the same cannot be considered beign without merit because the claimants covered under the Scheme Ex. D1 shall be paid financial assistance of Rs.5,00,000/- on account of death of victim of accident during agricultural operations/pursuits and it is a fixed amount of financial assistance and hence, no interest on the said amount can be granted to the claimants covered under the said scheme.”*

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27. *As regards the case laws relied upon by learned counsel for the appellants-defendants No.2 and 3, this court has gone through the same and utmost respect for the same, but keeping in view the facts and circumstances of the present case and the evidence brought on record, the same are not helpful to appellant-defendants. Further, it is settled proposition of law that each case is having its own facts and same should be decided on the basis of evidence brought in that particular case.”*

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out. To my mind, judgments under

challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties. I am in agreement with the findings rendered therein.

10. Furthermore, no question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending application/s, if any, shall also stand disposed of.

13. No order as to costs.

(ARUN MONGA)
JUDGE

February 07, 2022
vandana

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No