

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

135

RSA-639-1993 (O&M).
Date of Decision: 18.03.2024.

SMT. NARAINI DEVI AND OTHERS

... Appellants

Versus

HISSAR AVIATION CLUB, HISSAR AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Deepak Suri, Advocate,
for the petitioners.

None for the respondents.

VINOD S. BHARDWAJ, J (ORAL).

Appellants-plaintiffs have preferred the present Regular Second Appeal against the judgment and decree dated 20.05.1988 passed by the Court of Sub Judge First Class, Hisar, in Civil Suit No.10-3 instituted on 25.11.1982 as well as the subsequent dismissal of Civil Appeal No.23 of 1988 vide judgment and decree dated 01.10.1992.

2 Briefly summarized, the facts of the present case are that one Inderjeet Singh, the son of the appellant-plaintiff No.1 had died in an Aircraft accident on 26.11.1981. The appellants-plaintiffs filed a suit for grant of compensation under the Fatal Accidents Act, 1855. It was stated that Inderjeet Singh (since deceased) was Pilot in Pushpak Aircraft-VT-

DYC of Hisar Flying Club, Hisar. He was authorized by Pilot Instructor Incharge to do cross country flight (He was to overfly Rewari-Bhiwani-Hisar). The Flying Club Hisar had to provide the arrangement for swinging the propeller of the aircraft at Bhiwani to start the same. The Pilot Instructor Incharge sent one Anurag Jain in the aircraft to swing the propeller at Bhiwani for starting the same. The aircraft took off from Hisar at 11:30 hours IST and flew over to Charkhi Dadri town enroute Rewari from Hisar at about 13:00 hours. The said aircraft VT-DYC went out of order due to technical defects in the machinery. The aircraft was also very old and its date of expiry was also approaching near. Further, the aircraft was not having fitness certificate/air worthiness certificate. The aircraft hit the kacha ground close to Janta College Area. The occupants i.e. Inderjeet Singh and Anurag Jain were taken out from the aircraft by the persons of the locality and were got admitted in Civil Hospital, Charkhi Dadri. Both were given first-aid and thereafter they were taken to Rohtak Medical College on the recommendation of the attending doctor. Anurag Jain succumbed to the injuries on the way to the Rohtak Medical College while Inderjeet Singh passed away after reaching the Medical College, Rohtak, for want of proper medical aid and negligence of the doctors. It was further averred that the Post-mortem of the deceased Inderjeet Singh was conducted showing that the death occurred due to fatal injuries received on account of accident of aircraft for technical and mechanical defect in the said aircraft including its engine being old and the certificate of registration not being valid. It was further averred that the aircraft was also not having flight release certificate on 26.11.1981. The authorities i.e. the respondent Hisar Aviation Club, Hisar was hence negligent. It was also pointed out that the aircraft had

logged flights to its maximum hours since last overhauling of the aircraft and that the auxiliary tank of the fuel was also out of order. There was defect in the wall of the carburetor. Both the blades of propeller had been broken and the engine was not developing power prior to the accident. Various other technical defects were pointed out along with an averment that Anurag Jain, the flying instructor was not authorized to fly on flight right seat. Further, it was averred that the deceased Inderjeet Singh was maintaining good health and would have been alive for another 70 years. The appellants-plaintiffs were entirely dependent on the earnings and prospective earning of deceased Inderjeet Singh and that they have suffered a huge pecuniary loss on account of untimely death of Inderjeet Singh.

3 Written statement was filed on behalf of respondents-defendants. The factual aspects as regards the flight aircraft and the occupants thereof were not disputed. However, it was denied that there was any defect in the maintenance and/or the status of the aircraft. It was also denied that Flying Club Hisar had to make an arrangement for swinging the propeller of the aircraft at Bhiwani and that deceased Inderjeet Singh had made his own arrangement for swinging the propeller. Further, the pilot instructor incharge had not sent Anurag Jain in the aircraft Pushpak-VT-DYC for swinging the same. Deceased Inderjeet Singh and Anurag Jain were course-mates and that he was taken as a passenger on the flight and after seeking permission of the pilot instructor, which was granted since Anurag Jain was an experienced trainee and also in the knowhow as to how to start the propeller. It was also denied that the aircraft was old and was not having the fitness certificate. It was also averred that after the accident, the

engine of the aircraft was removed from the aircraft by the Investigating Inspector of the Director General of Civil Aviation (hereinafter referred to as 'DGCA') and was examined by the technical department. The same was found in a normal condition and that the accident in question took place on account of an intentional low flying and negligence of the pilot himself as per the report of the DGCA. Further, the registration certificate of the aircraft was issued on 26.11.1981 by the license engineer and that the aircraft was also issued the flight release certificate as per law as established from the report of the DGCA. The fuel tank of the aircraft was also found to be in a perfect condition and had in fact broken on account of the accident. As the aircraft did not catch any fire at the time of accident, hence, the possibility of malfunctioning of the fuel line was entirely ruled out. It was also averred that Inderjeet Singh was authorized by a pilot incharge to fly at 2000' above the ground level. However, deceased Inderjeet Singh flew the plane below the passed flight plan, before obtaining clearance from New Delhi for this flight. An entry was also made in register of the institute in own handwriting which was an essential and required duty on the part of the deceased Inderjeet Singh to stick to his flight plan and to maintain safe flight operations at all costs. Hence, there was an actual knowledge of the flight plan. It was alleged that the breach was solely attributable to Inderjeet Singh for which respondents-defendants Aviation Club Hisar cannot be faulted with. It is claimed that there is no occasion for the grant of compensation rather, the Hisar Aviation Club, Hisar is entitled to seek recovery of the loss caused to the aircraft on account of the negligence of Inderjeet Singh himself.

4 On completion of pleadings, the following issues were framed:-

“1. Whether the plaintiffs are entitled to claim compensation on account of death of Inderjit under the provision of Fatal Accident Act, 1855? If so to what amount ?OPP

2. Whether the claim is maintainable in the present form? OPD.

3. Whether the suit is bad for mis-joinder of parties? OPD

4. Whether the suit is not within time? OPD.

5. Whether no valid and legal notice under Section 80 CPC has been served by the plaintiff? If so its effect?OPD

6. Whether accident took place due to technical defect n the Aircraft? OPD

7. Relief.

5 Evidence was led by the respective parties to establish their case. Upon consideration of the pleadings, evidence and the rival arguments advanced by the parties, the Sub Judge recorded a specific finding that even though the plaintiffs have claimed that there was lapse on the part of the respondent Hisar Aviation Club, however, the sole attribution made by the appellants-plaintiffs against respondents-defendants is that they were to make arrangement for swinging of the propeller at Bhiwani. It was noticed that the said occasion did not even arise in the present case since the accident took place prior to the landing of the aircraft at Bhiwani. It was also noticed that there was no evidence brought on the basis whereof negligence on the part of the respondents-defendants could be claimed to have been established, rather, the evidence established that the negligence was entirely attributable to deceased himself. The investigation into the aircraft accident was carried out by the Investigating Inspector V.K.

Chandana from the office of DGCA, New Delhi and his report has been proved on file as Ex.PW.4/1 which clearly shows that there was no technical or mechanical defect in the aircraft which could have led to the accident and that the same was on account of mishandling of the aircraft by the pilot himself due to low flying. The statement of V.K. Mittal-PW-5, further established that the aircraft was inspected before it took off and that it was in order before flying. It was noticed by the Sub Judge First Class that compensation under Section 1 (1) of the Fatal Accidents Act, 1855, can only be awarded when death is caused by wrongful act, negligence or default on the part of the defendants and since the said aspect could not be established, the liability could not be fastened on the respondents-defendants,.

6 Aggrieved thereof, an appeal had been preferred by the appellants-plaintiffs before the District Judge, Hisar. On consideration of the arguments advanced by the appellants-plaintiffs, the said appeal was also dismissed by the Additional District Judge, Hisar, vide judgment and decree date 01.10.1992 leading to filing of the present Regular Second Appeal.

7 Learned counsel appearing for the appellants-plaintiffs has reiterated the arguments that had been noticed by both the Courts. He asserts that the deceased was having dual flying experience of 37.20 hours and a solo flying experience of 77.55 hours and had flown 23.20 hours in the last 30 days. It is contended that he was an experienced pilot and was duly authorized to do cross country flight and was also authorized by the pilot Instructor Incharge A.S. Bhati of Hisar Flying Club. The flight was cleared at a height of 2000' AGL. The weather was clear. The co-passenger

Anurag Jain was also having a private pilot's license No.2956 which was valid upto 10.11.1981 and he had total flying experience of 148.35 hours and dual flying experience of 36 hours and solo flying experience was of 112.35 hours. He submits that the trial Court as well as the Appellate Court failed to consider the technical and latent defects in the aircraft and its machinery and that the said aircraft was very old. Even the date of expiry and the airworthiness of the aircraft was also approaching near and that the falling of the aircraft itself suggests that it was not being maintained properly. He further submits that the respondent Aviation Club should not have allowed the cross country flights taking into consideration the airworthiness of the said aircraft and that the report submitted by the Officer in the Department of DGCA was based on conjectures and hypothesis and is required to be disregarded.

8 No other argument has been raised.

9 I have heard learned counsel appearing for the appellants and have gone through the documents available on the record.

10 While the emphasis of the counsel for the appellants-plaintiffs is that the aircraft was not fit for flying and that the report submitted by the Officer designated to investigate into aviation accident is required to be discarded being based on hypothesis, however, he has not been able to refer to any evidence on the basis whereof the hypothesis and the conclusions drawn by the Investigators can be said to be misconceived or misplaced. It is not out of place to mention that in relation to aviation accidents, investigations are required to be conducted by the DGCA. Once an officer, who is duly competent to inquire into the matter, has concluded the investigation as regards the airworthiness and the fitness of the aircraft, the

same cannot be disbelieved merely on the basis of a self serving statement of the plaintiff-appellant. It was also concluded by the Investigator that the accident in question took place on account of a lapse by the pilot himself since he was flying at a low altitude and did not stick to the site plan of 2000' required to be maintained. No evidence has also been led by the appellants-plaintiffs to controvert the said finding to establish that deceased Inderjeet Singh had struck to the site plan as approved by the competent authority. The submission of the appellants-plaintiffs cannot be accepted ignoring the investigation conducted by the competent authority. In the absence of any material or evidence to suggest that the conclusions drawn by the Investigator deputed by the DGCA were not correct or that the Investigator was not competent and did not hold the requisite certificate for carrying out the investigation into the aviation accident, the said report would go a long way to establish as to whether the respondents had been negligent or there was deficiency in maintaining the aircraft.

11 Even though the accident in question can be said to be an unfortunate incident in which two persons lost their lives, however, the mandate of Fatal Accidents Act, 1855, is to provide for compensation in the event where an accident has resulted in fatal consequences due to lapse on the part of the respondent. Hence, the aspect of negligence and defect by the respondents-defendants has to be established before any liability can be fastened on them. As civil consequences are to flow, causing huge financial liability on the respondents, the same cannot be fastened merely out of sympathy. An objective consideration of the evidence is required to be undertaken before any person is burdened with financial obligations.

12 In the absence of any evidence brought before the Court to disregard the report submitted by the officer deputed by the DGCA which such report had been duly exhibited on record and has stood the test of cross-examination, I fail to find myself in agreement with the appellants-plaintiffs.

13 Both the Courts below have also recorded a concurrent finding of fact after appreciation of the evidence and it cannot be said that the findings suffered from any illegality; impropriety; perversity or based on misreading of evidence. Consequently, the present appeal is dismissed. The judgments and decrees passed by the Courts below are affirmed.

March 18, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No