

In the High Court of Punjab and Haryana at Chandigarh

**Regular Second Appeal No. 3454 of 2009(O&M)
Date of Decision: September 30, 2010**

Uttar Haryana Bijli Vitran Nigam Limited and others

---Appellants

versus

Rasida and others

---Respondents

Coram: HONBLE MR. JUSTICE GURDEV SINGH

Present: Mr. Monish Sharma, Advocate,
for Mr. Narender Hooda, Advocate
for the appellants

Mr. R.K. Agnihotri, Advocate,
for Mr. Karan Singh Malik, Advocate,
for respondent No. 1

GURDEV SINGH, J.

The appellants -defendants, having lost in the first appeal preferred against the judgment and decree dated 10.10.2008 passed by Additional Civil Judge(Senior Division), Panipat, awarding the compensation of ₹ 8,64,000/-, along with future interest at the rate of 6% per annum, have come up with the present second appeal against the judgment and decree of both those Courts.

The plaintiffs-respondents filed suit against the defendants for

the recovery of ₹10,08,000/- as compensation on account of death of Mohmad Anis, on account of the negligence of the defendants, under the Indian Fatal Accidents Act, 1855. They pleaded in their plaint that plaintiff No. 1 is the widow whereas plaintiffs No. 2 to 6 are the sons and daughters of Mohmad Anis, deceased. The defendants had installed two electric transformers of 200 KVA each in the area of Pathana Mohalla near Shiv Chowk, Sanoli Road, New Sabji Mandi, Panipat, for the supply of electricity in the area of that mohalla and other localities, which burnt down on 18.7.2003 at 8/8.15 p.m. for want of proper maintenance. On account of the burning and bursting of those transformers, 12 persons, including the deceased, lost their lives. Initially, he received burn injuries and was removed to Civil Hospital, Panipat, from where he was referred to PGI, Rohtak, and died at that place. Autopsy on his dead body was conducted on 20.7.2003. At the time of his death, he was healthy person and was only 27 years old. He was doing the work of Craftsman and was earning ₹ 6000/- per month. All of them were dependent upon him. Legal Notice dated 24.10.2003 was served upon the defendants to pay the compensation of ₹ 10.08,000/-, who inspite of service of the notice and expiry of the statutory period of 60 days, failed to pay any such compensation.

The suit was contested by the defendants. In their written statement they admitted the bursting of the transformers and the causalities, which took place on account of the fire resulting therefrom. However, they pleaded that the damage to the transformers was due to over loading which is a common phenomena, but the bursting of the transformer accompanied by spraying of burning oil is very rare. There was hot transformer oil

inside at a high temperature and high pressure was caused by entrapped gases as a result of which the oil rushed out and that spread up to the distance due to very high pressure. After that oil came into contact with the air, the temperature arose beyond the flash point i.e. 140 degree Celsius causing the bursting of oil into flames. The combustion could also be due to sparking, which fell on the people in the busy street, thereby causing the casualties. The officials of the Sub Division were suspended on account of dereliction of their duties regarding the maintenance and service standard. The District Administration granted ₹ 25,000/- each and ₹ 1,00,000/- was granted to each of the legal heirs of the deceased from the Chief Minister's Relief Fund. There was no negligence on their part and they are not liable to pay any such compensation.

On the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the fatal accident as alleged by the plaintiffs occurred on account of negligence of the defendants and its officials by not properly maintaining its equipments?OPP
2. Whether the plaintiffs are entitled to compensation of the amount of Rs. 10,08,000/- for loss of life of Anis husband of plaintiff no. 1 and father of plaintiffs No. 2 to 6?OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form?OPD
4. Whether the plaintiffs have no cause of action to file the present suit?OPD
5. Whether the plaintiffs have no locus standi to file the present suit?OPD

6. Whether the plaintiffs have not come to the Court with clean hands?OPD

7. Whether the plaintiffs are estopped by their own act and conduct to file the present suit?OPD

8. Relief.

To succeed in the suit, plaintiffs examined Satyawar Singh, Sub Fire Officer, PW-1, Bhupender Singh, Store Keeper PW-2, Umardin PW-4, Mohmand Nizamudin PW-5 and Mohar Singh, PW-6. Rasida plaintiff No. 1 examined herself as PW-3. The defendants, to rebut the evidence of the plaintiffs, examined Ajmer Singh Gill, SE, DW-1.

After going through that evidence and hearing learned Counsel for both the sides, learned trial court decided all the issues in favour of the plaintiffs and resultantly, decreed their suit for the recovery of the aforesaid compensation. The appeal preferred by the defendants before the First Appellate Court was dismissed, as aforesaid.

I have heard counsel for both the sides.

Notice of motion in this case was issued only in respect of the quantum of compensation.

It has been submitted by learned Counsel for the defendants that the compensation so awarded to the plaintiffs is on the higher side. There is no evidence on the record to support the finding of the trial court, affirmed by the First Appellate Court that the deceased had the income of ₹ 6000/- per month. At the most, he can be said to be a casual labourer and in the year 2003, the daily wages were less than ₹ 100/- and as such, income of the deceased could not have been taken to be more than ₹ 3000/- per month. He prayed that the compensation is to be calculated by keeping in

view the income of the deceased to be ₹ 3000/- per month.

On the other hand, it has been contended by the counsel for the plaintiffs that the fact that deceased was a Craftsman having income of ₹ 6000/- per month, was never denied by the defendants and as such no evidence was required to be produced in view of that admission. A correct finding was recorded and the compensation was correctly awarded.

It was specifically pleaded by the plaintiffs in the plaint that the deceased was a Craftsman and was having a monthly income of ₹ 6000/-. In the written statement, defendants denied the contents of that para for want of knowledge. When there is no specific denial nor any such denial by implication, the defendants are deemed to have admitted that fact. Therefore, even if no such evidence was produced, the trial court and the First Appellate Court did not commit any illegality while calculating the income of the deceased to be ₹ 6000/- per month. The compensation was correctly awarded after deducting $1/3^{\text{rd}}$ of the amount from the total income of the deceased. The multiplier also cannot be said to be on the higher side, as it was proved on the record that the deceased, at the time of his death was 27 years old. The average span of life in this country is 75 years and thus, the multiplier was not on the higher side. Thus, no such substantial question of law arises in this appeal.

There is no merit in this appeal and the same is dismissed accordingly.

(GURDEV SINGH)
JUDGE

September 30, 2010
PARAMJIT