
(2015) 08 P&H CK 0217
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 1892 of 2012 (OandM)

Jagjit Singh and Others

APPELLANT

Vs

Manjit Kaur and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Fatal Accidents Act, 1855 — Section 1-A, 2
Penal Code, 1860 (IPC) — Section 148, 149, 201, 302, 323

Citation : (2015) 180 PLR 435

Hon'ble Judges : Kuldip Singh, J.

Bench : Single Bench

Advocate : Harpreet Kaur Dhillon, for the Appellant

Final Decision : Allowed

Judgement

Kuldip Singh, J.—Impugned in the present regular second appeal is the order dated 16.02.2009 passed by learned Civil Judge (Jr. Divn.), Phul, vide which in a suit filed under Section 1-A and 2 of Fatal Accidents Act, 1855, was decreed partly for recovery of compensation/damages to the tune of Rs. 2,96,528/- along with interest @ 6% per annum from the date of decree till realization was allowed. The plaintiffs were held entitled to the amount of compensation in equal shares. The plaintiffs as well as defendants filed appeals before the learned Addl. District Judge, Fast Track Court, Bathinda, which were disposed of by a common judgment vide order dated 09.12.2011, whereby in the appeal filed by the plaintiff the compensation/damages was enhanced to Rs. 4,88,528/- alongwith interest @ 6% per annum from the date of impugned judgment till actual realization of the decretal amount and other appeal filed by the defendants was dismissed.

2. The defendants are not satisfied with the Appeal Judgments of both the courts below and have filed the present regular second appeal.

3. Short facts, which are necessary for the purpose of disposal of the present

regular second appeal are that Gurdip Singh had retired as a Teacher from the government school. As per allegations levelled in the appeal, he was murdered by the defendants on 22.05.2000. In this regard, FIR No. 40, dated 22.05.2000, under Sections 302, 201, 323, 148 and 149 IPC was registered at Police Station Phul.

4. Learned Civil Judge (Jr. Divn.), Phul came to the conclusion that the deceased was drawing monthly pension of Rs. 3,852/-. He was 59 years of the age and therefore, would have lived for 11 years more. 1/3rd was deducted as personal expenses and dependency of the plaintiffs was calculated as Rs. 2,568/- per month and by applying the multiplier of 8, the compensation was calculated to the tune of Rs. 2,46,528/-.

5. However, learned Addl. District Judge, Fast Track Court, Bathinda, was of the view that in addition to the pension, the deceased being a able bodied person could also do labour work and could earn Rs. 100/- per day more. Therefore, Rs. 3,000/- more were added towards income.

6. At the motion stage, this Court issued notice of motion only regarding quantum of compensation and it was found that there is no ground to interfere in the concurrent facts regarding the liability of defendants about the payment of the compensation.

7. None has appeared for the respondents today. Even on earlier dates also, none appeared to contest the present appeal.

8. I have learned counsel for the appellant and have also carefully gone through the case file.

9. The only question surviving for consideration before this Court is as to whether the addition of Rs. 3,000/- per month in the income of the deceased by appellate court holding that he could do the labour work, is justified?

10. I am of the view that the deceased was a retired teacher. His children were married. It was observed by both the courts below that it could not be proved that the deceased was having any agriculture land, from which he could have extra income.

11. Now the question would arise whether a retired government teacher can do the labour work?

12. Keeping in view our social set up in this part of country, the reply is in negative.

13. The deceased, who was getting pension and whose children were married, will not bring disgrace to his family by doing the work of a casual labourer or by doing manual work. The learned Addl. District Judge, Fast Track Court, Bathinda enhanced the compensation by making an increase in the income of the deceased on the basis of assumption, which was not supported by the facts of the case or reasoning.

14. A civil case cannot be decided merely on the basis of presumption unless there is some positive proof. Therefore, the addition in the income by learned Addl. District Judge, Fast Track Court, Bathinda on the assumption that the deceased could also do the labour work, is not justified.

15. Consequently, the present regular second appeal is allowed to the extent that judgment and decree dated 09.12.2011, whereby the appeal for the enhancement of compensation was allowed by learned Addl. District Judge, Fast Track Court, Bathinda, is set aside and the compensation awarded by the learned Civil Judge (Jr. Divn.), Phul vide judgment and decree dated 16.02.2009 is maintained. Accordingly, the present appeal is allowed to the aforesaid extent.