

(1963) 12 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition No. 15 of 1963

Jai Singh

APPELLANT

Vs

Mansa Ram and Others

RESPONDENT

Date of Decision : 31-12-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 133(1)

Citation : AIR 1964 HP 17

Hon'ble Judges : Om Parkash, J.C.

Bench : Single Bench

Advocate : Dina Nath, Hira Lal, for the Appellant; Kirti Ram, for the Respondent

Final Decision : Dismissed

Judgement

Om Parkash, J.C.

1. This petition, under Article 133 of the constitution of India, and Sections 109 and 110 C.P.C., for the grant of a certificate, that the case is fit one for appeal to the Hon'ble Supreme Court, is directed against the judgment and decree of this Court, dated 10-11-1962. The facts, in brief, giving rise to the petition, are as follows:

2. There is a suspension bridge, on river Sutlej, near village Dehar, Tehsil Sundernagar, District Mandi. The bridge was suspended on two galvanised iron, ropes, on each side. It was to be widened, and, on each side, one additional galvanised iron rope was to be added. The contract for this work was given to the petitioner, by the Himachal Pradesh Public Works Department. The work was in progress in August, 1955. On 29-8-1955, Mehanga Ram, son of respondents Nos. 1 and 2, was passing over the bridge. All of a sudden, the bridge tilted and Mehanga Ram fell down into the river. Despite efforts, his body was not traceable and it was alleged that he had died as a result of falling down. Respondents Nos. 1 and 2, along with their two daughters, brought a suit, in forma pauperis,

against the petitioner, and respondent No. 3, for recovery of Rs. 20,000/-, as damages, alleging that death of Mehanga Ram was due to the neglect of duty, on the part of the petitioner and respondent No. 3, a notice, u/s 80, C.P.C., had been served on respondent No. 3, before the institution of the suit.

3. The suit was contested by the petitioner and respondent No. 3. It was denied that death of Mehanga Ram was the result of any neglect of duty on the part of the petitioner or any of his labourers. It was, further, denied that Mehanga Ram was the son of respondents Nos. 1 and 2, it was pleaded that respondent No. 2 had been married to one Panchhi Ram and that Mehanga Ram was born of that union. It was, further, pleaded that the suit was barred by limitation, as the notice, served on respondent No. 3, was not in accordance with law and the period of notice could not be excluded in computing the period of limitation. Respondent No. 3 had taken up an additional plea that it could not be made vicariously liable for any neglect of duty on the part of the petitioner as he was an independent contractor.

4. The findings of the trial Court were that Mehanga Ram was the son of respondents Nos. 1 and 2, that he had died on 29-8-1955, as a result of falling down from the bridge, which had tilted due to the neglect of duty on the part of the petitioner, that respondents Nos. 1 and 2 were entitled to get damages and that the pecuniary benefit which they would have received from the deceased Mehanga Ram, if he had not died, could be assessed at Rs. 7,680/-, that the appellant was an independent contractor and respondent No. 3 was not, therefore, vicariously liable for the neglect of duty on his part and that the notice, served on respondent No. 3, was valid in law and after excluding the period of the notice, the suit was within time against respondent No. 3 and the petitioner, as well. On the basis of its findings, the trial court passed a decree for the recovery of Rs. 7,680/- against the petitioner, and in favour of respondents Nos. 1 and 2.

5. Aggrieved by the decree, the petitioner filed an appeal in this Court. Respondents Nos. 1 and 2 filed cross-objections, in forma pauperis, claiming an additional sum of Rs. 12,320/-. On an objection, on behalf of the petitioner, that the respondents were not paupers, they were directed to pay court-fees on cross-objections, which they failed to do. This Court, by its judgment, dated 10-11-1962, substantially affirmed the findings and the decree of the trial Court and dismissed the appeal.

6. The petitioner has put in the present petition, for the grant of a certificate, for leave to appeal, to the Hon'ble Supreme Court from the judgment and decree of this Court, dismissing his appeal. The certificate is sought under Clauses (a) and (c) of Article 133 (1) of the constitution. It is obvious that the petitioner is not entitled to appeal under Clause (a) as the amount or value of the subject-matter in dispute, on appeal to the Hon'ble Supreme Court, is much less than twenty thousand rupees, the decree, passed by the trial Court, in favour of respondents Nos. 1 and 2, and affirmed by this Court, is for Rs. 7,680/- only. The appeal to

the Hon"ble Supreme court is directed against that decree. The amount or value of the subject-matter in dispute, on appeal, to the Hon"ble Supreme Court is, therefore, Rs. 7,680/- only, much less than twenty thousand rupees, the minimum valuation required for the grant of a certificate under Clause (a).

7. So far as the grant of a certificate, under Clause (c) of Article 133 (1) of the Constitution is concerned, it is well-settled that a certificate under that clause can be granted only if the case involves any substantial question of law of great public or private importance. The contention, on behalf of the petitioner, was that the present case involves such questions. Reliance, in this connection, was placed on three grounds, given in the petition. Before examining these grounds, it will be useful to refer to two authorities as to the interpretation to be put on the phrase, "substantial question of law". In Rimmalapudi Subba Rao Vs. Noony Veeraju and Others, it was observed:--

"When a question of law is fairly arguable, when there is room for difference of opinion on it, then such a question would be a substantial question of law. If this Court thought it necessary to deal with a question of law at some length, and discuss alternative views which can be taken on the point, then, I think such a question would be a substantial question. When a point of law is practically covered by a decision of the highest authority Court, like the Privy Council or the Supreme Court, then it would not be a substantial question. If the general principles to be applied in determining a question are well settled a were application of such principles would not involve a substantial question of law" p. 973.

8. The test for determining whether a question of law is substantial was laid down by their Lordships of the Supreme Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd., Their Lordships observed:

"The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

9. The three grounds, urged, on behalf of the petitioner, for showing that the present case involves substantial questions of law, are to be scrutinized and tested in the light of the principles, enunciated in the authorities, cited above. The first ground, urged, was that the question whether the period of notice, u/s 80 C.P.C., served on respondent No. 3, could be excluded, u/s 15(2), Limitation Act, against the petitioner as well, was a substantial question of law, as there was a conflict of judicial opinion on the point whether the period of notice u/s 80

C. P. C. served on a defendant, to whom such a notice was necessary, can be excluded against a co-defendant, as well, to whom such a notice was not necessary.

The learned counsel for the petitioner cited rulings of various High Courts in support of the contention that there was a conflict of opinion on the question of exclusion of the period of notice, in computing limitation. These very rulings were cited by him, at the time of arguments in the appeal and were carefully examined by this Court in its judgment dated 10-11-1962. It is unnecessary to examine them again in this order. Suffice it to say, that on examination of these rulings and the authorities, cited on behalf of the respondents Nos. 1 and 2, the principle, deduced by this Court, in its judgment dated 10-11-1962, with respect to the exclusion of the period of notice, was that if a plaintiff prima facie had cause of action against the defendant to whom notice was necessary and had been given, the period of notice should be excluded against the defendants, in computing the period of limitation. On a consideration of the facts of the present case, this Court was of the view that respondents Nos. 1 and 2 had a prima facie cause of action against respondent No. 3. It has not been shown, on behalf of the petitioner, that there is any difference of judicial opinion, regarding the principle, laid down and acted upon, by this Court. The authorities, relied upon, on his behalf, do not lay down any contrary principle, though they are distinguishable on facts from the present case. The application of the aforesaid settled principle, to the facts of the present case, does not raise any substantial question of law.

10. The second ground, urged, was that the question whether Mehanga Ram was guilty of contributory negligence was a substantial question of law. A finding, as to contributory negligence, depends upon the facts and circumstances of a particular case and is a question of fact only, vide *Krishna Murari Lal Vs. Dixit Chaturbhuj* Such a finding does not involve the determination of any substantial question of law.

11. The third ground, urged, was that this Court followed erroneous principles in assessing damages and that the question what were the correct principles to be adopted was a substantial question of law. The principles, governing the assessment of damages, in a case, under the Fatal Accidents Act, have been laid down by their Lordships of the Supreme Court, in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, and by various High Courts in the decisions, referred to in this Court's judgment dated 10-11-1962. As pointed out, in that judgment, the ruling *Secy of State v. Gopal Singh*, 112 Pun Re 1913, cited on behalf of the petitioner, does not lay down good law. It has not been followed even by the Punjab High Court and has been expressly dissented from in *Hira Lal v. State of Punjab* AIR 1951 P&H236 at p. 244. It is, thus, clear that the principles, governing the assessment of damages, in a case, like the present one, are well-settled and the question about the principles to be followed is neither open nor arguable. The application of these well-settled principles to the

present case for the determination of the quantum of damages does not raise any question of law.

12. It is clear from the above discussion that the petitioner has failed to make out any case for the grant of a certificate either under Clause (a) or Clause (c) of Article 133 (1) of the Constitution. The petition fails and is dismissed with costs.