

(2017) 10 RAJ CK 0044
In the Rajasthan High Court
Case No : 337 of 2003

Karni Singh & anr.

APPELLANT

Vs

Chief Engineer & ors.

RESPONDENT

Date of Decision : 09-10-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 96](#) - Appeal from original decree
[Code of Criminal Procedure, 1973](#), [Section 174](#) - Police to enquire and report on suicide, etc
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Citation : (2017) 10 RAJ CK 0044

Hon'ble Judges : Virendra Kumar Mathur

Bench : SINGLE BENCH

Advocate : S.P. Sharma, Kaushal Sharma, N.K. Mehta

Judgement

1. This S.B. Civil Regular First Appeal under Section 96 of the Code of Civil Procedure has been filed against the judgment and decree dated 29.04.2003 passed by the learned Additional District Judge, Churu in Civil Original Suit No.16/2002, Karni Singh & Anr. Vs. Chief Engineer, P.H.E.D. Jaipur & Ors.

2. Briefly stated, the appellants-plaintiffs filed a civil original suit against the respondents-defendants for claim of damages alleging that the appellants-plaintiffs' son Vijendra Singh, aged about 15 years (now deceased), went to see the Ramleela in the nearby village Bukalsar on 09.01.2002. Near the Ramleela Maidan, an overhead water tank was built by the respondent Public Health Engineer Department (for short "the PHED"), sitting upon which, many people were watching the Ramleela including the deceased Vijendra Singh. But since the mouth of the water tank was not closed by its lid, due to which unfortunately the deceased Vijendra Singh slipped inside the water tank and instantly died. Subsequent to the above incident, an FIR was filed at the police station Sardarshahar, Churu on the next day, in which the police conducted investigation under Section 174 Cr.P.C. and submitted its report to the S.D.O., Churu on

11.01.2002. It was alleged by the appellants-plaintiffs that the mouth of the water tank was not kept closed for a quite long time by the respondent-department, and due to negligent act of the respondent PHED Office (local), the above referred mishap occurred, due to which the young boy of the appellants-plaintiffs died by drowning in the aforesaid water tank. Subsequent to the incident, the appellants-plaintiffs filed a suit against the respondent department, alleging that the mishap occurred due to negligence of the respondent department, that the mouth of the water tank was not kept closed and it was lying open for a quite long time, that the son of the appellants-plaintiffs was 15 years of age at the time of incident and that he was earning Rs.1800/- per month and he was the only hope of their life and thus for loss suffered by the appellants-plaintiffs, a claim for damages to the tune of Rs.7,25,000/- was prayed against the respondent department.

3. The respondents-defendants, in the written statement, denied all the allegations and it was averred that the deceased boy fell off inside the tank due to his own negligence, that the department is not responsible for the negligence of the deceased, that the overhead water tank was 10 feet high and its lid was closed, that no complaint was ever lodged by any villager about the open mouth of the water tank and despite of this, if someone falls inside the water tank and commits suicide, then the department cannot be held responsible.

4. On the basis of the pleadings of the parties, issues were framed and after trial the suit was dismissed vide impugned judgment and decree dated 29.04.2003. Being aggrieved of the impugned judgment and decree dated 29.04.2003, the appellants-plaintiffs have preferred this appeal.

5. It was contended that the trial court has committed grave error on facts as well as on law, while wrongly appreciating the facts contrary to the material on record, thus committed illegality and caused miscarriage of justice to the appellants-plaintiffs. It was also contended that the trial court committed error in deciding the issue No.1 against the appellants-plaintiffs, contrary to the gist of the Fatal Accidents Act, 1855, which is more or less, a beneficial legislation, enacted by the Parliament, which aims for relief and compensations to the grieved family, who lost their dear ones, due to fatal accidents. It was also submitted that the trial court has erroneously framed the wrong issues not in consonance with the pleadings put-forth by the appellants-plaintiffs. No issue with regard to the loss or damages suffered by the appellants-plaintiffs was framed, which was more important with the objective of the provisions of Section 1A of the Fatal Accidents Act, 1855. The important issue, which was required to be framed was that, whether the plaintiffs suffered any loss on account of death of their son Vijendra aged 15 years, by drowning in the water tank built by the respondent department? Thus, the learned trial court framed no issue with regard to the law applicable to the case. The appellants-plaintiffs have led all the necessary evidence in support of their claim before the learned trial court, which were material part of the case, but the learned trial court has misread the

evidence available on record and also misread the law prepositions applicable to the claim of the appellants-plaintiffs and thereby committed grave error while rejecting the claim of the appellants-plaintiffs and the impugned judgment and decree passed by the trial court is perverse and based on surmises and conjectures, which deserves to be quashed and set aside. On the basis of contentions raised by the appellantsplaintiffs, perused the pleadings and evidence on record.

6. So far as contentions raised in respect of issue No.1 are concerned, this issue was that whether on 09.01.2002, Vijendra Singh, aged 15 years, died due to negligent act of the defendants? On perusal of evidence, it is evident that Karni Singh (PW-1) and Raju Devi (PW-2) are the parents of the deceased Vijendra Singh. They were not at the site where the accident occurred. So, their statements are not creditworthy. Sumer Singh (PW-3), in his statement, stated that before 12 months, he went to see Ramleela and Vijendra Singh was also with him and they were watching Ramleela while sitting on the tank and five persons were also sitting their including Vijendra Singh. In his cross-examination, he has stated that he he was watching Ramleela for 2-3 hours and the lid on the tank was open. He also admitted that there is no ladder for climbing over the tank and it is also true that the height of the tank is 10 feet from the ground. Vikram Singh (PW-4) was the witness who took photographs Ex.22 and 23. Sadul Singh (PW-5), in his examination-in-chief has categorically stated that he has seen the water tank and there was no lid and there are two holes, which were open; out of two holes, one is on the side and one is on the upper side. They always remain open. In his crossexamination, he has also stated that it is wrong to say that he was not present during the Ramleela at the site. He stopped children from climbing over the tank and when the child fell into the tank he did not know. He further stated that presently the tank is covered by a lid but it is not correct to say that it was always covered by lid.

7. It is also important to note that during the inquiry under Section 174 Cr.P.C. by the police, the police prepared naksha mauka (Ex.3A), which was not even looked into by the trial court. On perusal of Ex.3A, it revealed as under:-
"VERNACULAR MATTER OMITTED"

From the aforesaid, it is clear that the naksha mauka (Ex.3A), is in consonance with the photographs Ex.22 and 23. The trial court has completely failed to appreciate the evidence available on record. Therefore, the finding on issue No.1 given by the trial court is not sustainable.

8. From the evidence on record, it is manifestly clear that the accident occurred on account of negligence on the part of the respondents in not covering the holes as depicted in photographs Ex.22 and 23. It is expected from the department to take all such measures in order to save the loss of human life. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any

negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendants did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

9. For the purposes of ascertaining the amount of compensation, no issue was framed by the trial court. Section 1A of the Fatal Accidents Act, 1855 provides for suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong. Section 1A of the Act reads as under:- "1A. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.- Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased; and in every such action, the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the court by its judgment or decree shall direct."

10. Under Section 1A of the Act, compensation awarded for loss of dependency, worked out by applying the principle of multiplier is a part of damages proportioned to the loss resulting from the death, as was held in the case of *Fizabai Vs. Nemichand* [AIR 1993 M.P. 79]. Further, Section 1A of the Act, read with Section 110B of the Motor Vehicles Act, 1939 (now Motor Vehicles Act, 1988), makes it obligatory on the tribunal to award "just compensation" which differs from case to case, as held in the case of *Sardar Ishwar Singh Vs. Himachal Puri* [AIR 1990 MP 282].

11. In the present case, deceased Vijendra Singh was aged about 15 years and was minor. It cannot be said that he was having any independent source of

income. As per the Schedule-II, appended to the Motor Vehicles Act, 1988, under Section 163A, up to the age of 15 years, multiplier of 15 is applicable and notional income for compensation to those who had no income prior to the accident, is Rs.15,000/- per annum.

12. Resultantly, the appeal succeeds and is allowed and the impugned judgment and decree dated 29.04.2003 is quashed and set aside and the suit of the appellants-plaintiffs is decreed. The compensation is calculated in terms of Schedule-II appended to the Motor Vehicles Act, 1988 and while taking the notional income of Rs.15,000/- and applying multiplier of 15, the compensation comes is Rs.2,25,000/- (15,000/- X 15). The compensation be awarded to the appellants-plaintiffs along with interest @ 6% per annum from the date of filing the suit. Decree sheet be prepared accordingly.