

(2019) 09 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 277 Of 2010

National Hydroelectric Power Corporation Limited, Chamera
Project & Another

APPELLANT

Vs

Rukmani Devi & Another

RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2019) 09 SHI CK 0015

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Vijay Arora, Adarsh K. Vashisht, Balram Sharma

Final Decision : Dismissed

Judgement

Vivek Singh Thakur, J

1. Appellants herein were defendants No.1 and 2 in the Civil Suit, filed by the plaintiff (respondent No.1 herein) for recovery of damages amounting to Rs. 10,40,000/- on account of death of her daughter alleged to have been caused for negligence of defendants. Respondent No.2 Union of India was defendant No.3 in the Civil Suit.

2. Instant appeal has been preferred by defendants No.1 and 2 against judgment and decree dated 01.06.2010, passed by learned District Judge, Chamba Division, Chamba, H.P., in Civil Suit No.1/2009/2007, titled as Smt.Rukmani Devi vs. National Hydroelectric Power Corporation Ltd. & others, whereby decree for recovery of Rs. 7,00,000/- on account of damages has been passed in favour of respondent No.1-plaintiff (hereinafter referred to as respondent No.1) and against defendants.

3. Appeal has been filed on the ground that for want of sufficient material on record, learned District Judge has committed a mistake by holding that accident had taken place on account of sheer negligent act on the part of officials of the

defendants as plaintiff has failed to place on record any permission to visit Dam area and deceased daughter of plaintiff was herself negligent for entering in the prohibited area despite warnings published on sign boards affixed on the spot and adequate steps have already been taken by the defendants to warn the intruders from going in the Dam area and area was duly fenced. Further that in case it is found that there was some negligence on the part of the defendants, then, the amount of compensation is liable to be reduced as it has been determined on the higher side without any sufficient material on record and thus it is contended that impugned judgment suffers infirmity, illegality, irregularity and perversity.

4. Learned counsel for respondent No.2 (defendant No.3) has joined his shoulder with the appellants-defendants No.1 and 2 and endorsed arguments advanced on their behalf, whereas, learned counsel for respondent No.1-plaintiff has supported the judgment and award of compensation by way of damages for the reasons enumerated by learned District Judge in the impugned judgment.

5. After giving consideration to submissions of learned counsel for parties and going through record, for discussion hereinafter, I find no merits in the contentions raised on behalf of the appellants.

6. It is the case of respondent No.1 that her 29 years' old daughter was undergoing training for Co-operative Management Course at Mashobra, Shimla during the year 2006 and in the month of September 2006, she alongwith other trainees had gone to Chamba and on 09.09.2006 during their visit to Chamara Project in Chamba District, when these trainees were standing near Bakani tunnel, officials of appellants had opened the gates of water all of a sudden without any warning by blowing siren etc., and on account of which, daughter of respondent No.1 had washed away in the water alongwith another girl and had died. It is case of respondent No.1 that her daughter had died on account of negligent act of officials of appellants as they failed to blow siren or warning of alarm before opening gates and caused to allow students to visit the site which was in danger zone. It is claimed by respondent No.1 that after death of her husband prior to incident, she was totally dependent upon income of her deceased daughter, who was maintaining and looking after her, as she (respondent No.1) was not able to work and earn her livelihood due to ill health and even prior to joining of the course in question, her daughter was doing job of weaving shawl etc. in Bhuti Weavers Cooperative Society Limited, Bhuti Colony, Kullu, H.P, where-from she was earning monthly salary of Rs. 8500/- and her daughter used to provide financial assistance to her @ Rs. 6000/- per month for meeting day-to-day and medical expenses and further that on completion of the training course at Mashobra, her daughter was having a bright future for getting Government job and even private job at increased monthly salary and she would have earned about Rs. 12,000/- per month with special avenues for promotion in her career.

7. By giving details of loss claim of Rs. 10,40,000/- was put forth in the Civil

Suit. Claim of respondent No.1 was refuted by the appellants on the ground that story put forward by respondent No.1 was wrong, false and misleading and it has been further explained that as and when silt is collected in the dam area the same is to be flushed out and gates of flushing tunnels are required to be opened and on 09.09.2006 flushing gates were opened after incorporating entries in the log book by the officials concerned and as per practice as and when gates are required to be opened, Supervising Officer deputed subordinate employees for opening the gates from the control panels after informing Security Guard, who is deputed at the flushing outlet at Bakani around the clock and on receiving information siren is blown thrice by Security Guard and thereafter employees go back to control panels and open the gates. It is further claimed that before going to the spot of accident three girls had approached Security Guard Jagdeep Singh to inquire about tunnels and had expressed desire to see the area but they were advised not to go in that area as it was dangerous to go near the gate for periodical release of water from those flushing tunnels and further that area around the flushing tunnels is fenced and Security Guard is deputed at a place just near the gate and siren is also installed on the red gate, which is blown before opening of the gates and proper boards have also been erected at four different places, warning general public about inherent danger in the area. It is further claimed that for the orders, notified by the District Magistrate, gates can be opened at any time without notice and people have been cautioned not to go in the river even at the time when there is no flow of water and further that girls washed away in incident, who were warned and sent back by the Security Guard, had possibly sneaked into the place and went into the river and despite blowing of siren they did not come out and unfortunately were washed away in the water of flushing tunnels and these girls were trespassers in the area in question. It is canvassed that these girls were grown up and were able to understand the perils involved in their venture and, therefore, death of Sunita daughter of respondent No.1-plaintiff had occurred on account of her own fault, but not for the negligent act on the part of the appellants.

8. In replication filed on behalf of the plaintiff-respondent No.1, claim made in the suit was asserted and plea taken in written statement was refuted.

9. On the basis of pleadings of the parties, trial Court had framed the following issues:-

1. Whether the deceased Ms. Sunita died due to negligence of defendants No.1 and 2? OPP
2. If issue no.1 is proved in affirmative, the quantum of damages to which the plaintiff is entitled? OPP
3. Whether the suit is not maintainable as alleged by the defendant in paras 13 and 14 of the written statement? OPD
4. Whether the suit is not filed through competent person? OPD

5. Relief.

10. Thereafter, on conclusion of the trial considering evidence on record led by parties, trial Court had decided all the issues in favour of the plaintiff-respondent No.1 and decree was passed in favour of respondent No.1-plaintiff and against the defendants for recovery of Rs. 7,00,000/- on account of damage.

11. Accident in question wherein daughter of respondent No.1-plaintiff was washed away and expired on release of water from gates of Project of appellants-defendants No.1 and 2, is not in dispute. Only issues, raised in present appeal are that the finding returned by learned District Judge, that accident is a result of sheer negligence on the part of defendants No.1 and 2, is perverse and thus, is liable to be set aside, and in case this finding is affirmed, then amount of compensation determined by learned District Judge is excessive.

12. Respondent No.1-plaintiff has examined six witnesses to substantiate her claim, whereas, appellants-defendants have examined seven witnesses to establish their plea taken in written statement.

13. In order to support plea taken in the appeal, learned counsel for the appellants has referred statements of PW.2 Gaurav, PW.3 Rukmani, PW.4 Pawan Kumar, PW.5 Vijay Singh, DW.2 Rajesh Kumar, DW.3 Diwakar Prashad and DW.7 S.L. Ukey.

14. PW.2 Gaurav is a Lecturer in H.P. Cooperative Management Training Center Mashobra, Shimla, where deceased was undergoing training. Referring his admission in cross-examination, wherein he has admitted that they were not having any permission to visit the Dam area, it is contended that deceased Sunita alongwith her companion was a trespasser in the area and therefore, plaintiff is not entitled to anything on account of her death which was caused due to own negligence of deceased Sunita and further that this witness has failed to produce any document on record to indicate that the Training Institute was a Government Institution.

15. Referring statement of PW.4 Pawan Kumar, it is contended that in his cross-examination, this witness has admitted that they had not taken permission to visit inside Chamera Project and on the spot wire fencing was existing.

16. Referring photographs (Mark A-1 to Mark A-9), it is claimed that there is wire fencing and warning boards on the spot and this fact has been proved as PW.5 Vijay Singh, in his cross-examination, has admitted that these photographs (A-1 to A-9) are of the spot, and it substantiates plea of the appellants that adequate steps, by fixing wire fence and warning board on the spot, were taken by the appellants to prevent incidents like one involved in present case.

17. Deposition of PW.1 B.S. Mahal, in his cross-examination, has also been referred on behalf of the appellants, wherein he has admitted that where there is road of the Project, barriers have been installed and it has been notified by the Deputy Commissioner directing the public not to visit the dangerous area and

that area concerned where incident had occurred has been declared as a dangerous zone with warning that water can be released there at any time.

18. Learned counsel for the appellants has picked up selective sentences from the statements of the aforesaid witnesses, whereas, rule is that entire evidence is to be read as a whole to infer correct conclusion. PW.1 is a Station Fire Officer of Chamba, who had visited the spot immediately after the occurrence. In his examination-in-chief, he has categorically stated that as per information gathered from the persons present on the spot, at that time, it was revealed that girls were washed away from the place, near to outlet of the Project of defendants No.1 and 2 on account of air pressure created on release of water and on the spot, neither any sign board of dangerous zone warning was there nor place was properly fenced and general public could visit the area easily. In his cross-examination, he has admitted the general suggestions that there are directions by the Deputy Commissioner not to visit the dangerous zone and that area concerned has also been notified as dangerous zone. But no suggestion has been put to him with respect to positive assertions made by him in his examination-in-chief, wherein he has stated that on the spot there was no sign board and on the spot there was no proper fencing. Therefore, this part of his assertion remained unrebutted being not disputed in his cross-examination.

19. PW.2 Gaurav is not the person, who was present on the spot. He has proved the fact on record that deceased Sunita was undergoing training from the Institute at Mashobra. In his cross-examination, he has admitted that they were not having the permission to visit the Dam area, but this fact is of no help to the appellants as it is not case of respondent No.1-plaintiff that her daughter had visited with pass or permission of the defendants in the area, rather case of respondent No.1-plaintiff is that defendants were negligent in notifying warning or fencing the area or prohibiting visit of the public in the dangerous area and also that defendants had not taken precautionary steps before releasing water like blowing siren or issuing any kind of other warning.

20. PW.4 Pawan Kumar was accompanying deceased Sunita and other trainees. In cross-examination, besides portion, which has been referred on behalf of the appellants-defendants wherein he has admitted that wire fencing was there on the spot, he has further stated that at many places there was a space to go to the river area and further that where from they had entered, it was an open place and there were no wires at all and they had not visited the Dam or Power House, but had visited the place near the bridge. He has denied that siren was blown and warning was issued by Security Guard and despite that deceased Sunita had ventured to go to the dangerous zone and was responsible for causing her death on account of her own omissions.

21. PW.5 Vijay Singh has admitted the photographs A-1 to A-9 being photographs of the spot, but has explained that on the day of accident, it was not the position as has been depicted in these photographs. He has further clarified that they had not visited the Dam area, but were taking rest in the

parking area and Sunita had already washed away in the water before blowing of siren.

22. DW.2 Rajesh Kumar is Assistant Manager of the appellants. In his cross-examination he has stated that on 09.09.2006 gates were opened by the orders of Chief Engineer (Civil). He has not only admitted that there are no written orders placed on the record of the case, but has also stated that only verbal orders were there, which were imparted to DW.3 Diwakar Prashad as recorded in the log book. He has admitted that on 15.11.2006, Deputy Commissioner, Chamba, had sent a letter to their Chief Engineer directing them for fencing the dangerous area and to install boards and they had complied with the directions issued by the Deputy Commissioner vide letter dated 15.11.2006. He has admitted that on Chamba-Bharmour road and at Bakani bridge general public keeps on going and from Chamba side towards Bakani space is open. This fact has also been admitted by DW.3 Diwakar Prashad by stating that Chamba-Bharmour road and Bakani bridge are general passages and towards Bakani entire space is open and there is no fencing from the side of Bakani. The same admission has also been made by DW.5 Jagdeep Singh, who is Security Guard of the appellants. It is noticeable that spot of incident is also adjacent to Bakani Bridge.

23. DW.7 S.L. Ukey had snapped photographs (Ex.DW.7/A-1 to A-9) . In his cross-examination, he has admitted that these photographs were taken by him after filing of the suit by respondent No.1-plaintiff. The suit was filed on 24.05.2007 and thereafter notices, returnable on 27.07.2007, were issued to the defendants on 12.06.2007, meaning thereby defendants were served in July 2007 and these photographs were taken in July 2007. Whereas incident had occurred on 09.09.2006.

24. DW.2 Rajesh Kumar has admitted that sign boards were fixed and area was fenced in compliance of direction dated 15.11.2006 issued by the Deputy Commissioner. Therefore, these photographs cannot be said as photographs of the area depicting situation on the spot at the time of accident, rather there is sufficient material on record so as to construe that fencing of the area and installation of warning sign boards was completed after the incident that too in compliance of direction issued by the Deputy Commissioner. No other evidence has been pointed out on behalf of the appellants to rebut the claim of respondent No.1-plaintiff.

25. From the aforesaid discussion, it is evident that there is no force in the contentions raised by the appellants-defendants that there was no negligence on their part. In view of this, findings returned by learned District Judge that accident had taken place on account of sheer negligent act on the part of officials of defendants is affirmed.

26. So far as quantum of compensation is concerned, respondent No.1-plaintiff has claimed a sum of Rs. 10,40,000/- and learned District Judge has awarded

compensation to the tune of Rs. 7,00,000/- only. It is claimed by respondent No.1-plaintiff that after completion of training deceased would have earned Rs. 12,000/-per month, whereas, before training she was earning Rs. 8500/- per month.

27. PW.3 Rukmani has placed on record salary slips of her daughter, which were proved by PW.6 Rakeshwar, who is Secretary of the Weaver's Society, wherein deceased Sunita was working. As per salary slip, salary of the deceased was Rs. 8000/- per month. Age of the deceased at the time of incident was 29 years, whereas, age of respondent No.1-plaintiff (her mother) at that time was 58 years. Learned District Judge has not taken future income of Rs. 12,000/- in consideration, but has considered her income as Rs. 8000/- per month out of which he has deducted Rs. 2000/- towards her personal expenses and accordingly taking loss of Rs. 6000/- per month, he has calculated annual loss to respondent No.1-plaintiff to the tune of Rs. 72,000/-.

28. For assessing damages on account of death in motor vehicle accidents, Courts have evolved a method as pronounced in Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121. Further Second Schedule of Motor Vehicles Act with reference to Section 163(A) of Motor Vehicles Act also provides different multipliers for calculation of compensation on account of accidental death on the basis of age of victim. These methods are time tested and can be taken into consideration for determining damages in present case. According to Second Schedule with reference to Section 163(A) of the Motor Vehicles Act, in case of 29 years of age of the victim, multiplier of 18 is applicable, whereas, as per decision of Apex Court in Sarla Verma's case, multiplier of 17 is applicable and in case age of respondent No.1-plaintiff is taken into consideration i.e. 58 years i.e. multiplier of 9 is applicable. By applying multiplier of 18, amount of compensation becomes Rs. 12,96,000/-, whereas, by applying multiplier of 9, compensation becomes to the tune of Rs. 6,48,000/- and in case multiplier of 17 is applied, compensation amount will be Rs. 12,24,000/-. Whereas, learned District Judge has quantified a compensation of Rs. 6,00,000/- and has further awarded Rs. 1,00,000/- for loss of love and affection. Total compensation determined by learned District Judge is Rs. 7,00,000/-. For discussion herein above, I do not find that amount of compensation determined by learned District Judge is excessive in nature.

29. No other point is urged or raised. In view of aforesaid discussion, I find no infirmity, irregularity, illegality or perversity in the impugned judgment, hence appeal is dismissed, being devoid of merit. No order as to costs. Record be sent back.

Pending application(s), if any, also stand disposed of in the aforesaid terms.