
(2012) 03 P&H CK 0454

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1486 of 2012 (O and M)

State of Haryana and others

APPELLANT

Vs

Mohinder Singh

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Citation : (2012) 167 PLR 81 : (2012) 4 RCR(Civil) 73

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Ashish Kapoor, A.A.G., Haryana, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.

Civil Misc. No. 4012-C of 2012

Prayer made in this application is for condonation of delay of 28 days in re-filing the appeal.

The application is allowed in view of the averments made in the application, which are supported by affidavit. The delay of 28 days in refiling the appeal is condoned.

R.S.A. No. 1486 of 2012

1. The present appeal has been filed by the defendants who are aggrieved against the concurrent findings of the Courts below whereby the suit for damages filed by the plaintiff to the extent of Rs. 30,000/- has been decreed by the Civil Judge (Junior Division), Kaithal vide judgment and decree dated 30.4.2011 and upheld by the Addl. District Judge, Kaithal on 25.10.2011. Case of the plaintiff was that defendant No. 2-Executive Engineer, P.W.D. (PH), Kaithal had dug pits in the street of village Chandana and the mare of the plaintiff fell into the pit and died on 11.9.2008. The death of the mare was on account of

carelessness and negligence on the part of the defendants. The legal notice was also sent but the same was not replied by the defendants.

2. In defence, the defendants took the plea that the supply of water was given by the defendants' department for which two sluice valves had been installed there and for operating these valves two pucca pits with cement and bricks have been constructed which were covered with the RCC slabs. To operate the valves, small holes had been left in these slabs. These covered pits were about 27-29 feet wide and they were away from the road side at a distance of about 18 feet, which was situated in such a place that no injury could be caused to any animal. It was pleaded that there was no negligence in performance of duty and the plaintiff had not suffered any injury.

3. On the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to a decree for damages as alleged in the plaint? OPP

2. Whether the suit of the plaintiff is not maintainable? OPD

3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

4. Relief.

4. The plaintiff examined himself and three other witnesses and placed on record Post Mortem Report Ex.PW1/A, site plan Ex.PW2/A and legal notice Ex.P2 alongwith postal receipt Ex.P1 whereas defendants examined Vinod Kumar as DW-1.

5. The trial Court after taking into consideration the pleadings of the parties and evidence brought on record came to the conclusion that the mare of the plaintiff had been injured on the left posterior shoulder joint and there were perforated wounds in between the ribs, third rib broken, liver intestine punctured, blood clots present under the peritoneum, thick exudates in the peritoneal cavity and the animal had died due to excess bleeding from the intestine and liver as per post mortem report Ex.PW1/A. The site plan Ex. PW2/A was also taken into consideration and finding recorded is that the pits were existing in between the street. Accordingly, it was held that animal had died due to injuries received by falling in the pit which was situated in the street. Accordingly, the trial Court held that defendants had not properly maintained the pits which were situated in the street and the same were kept open without putting any slabs upon them and due to this reason, incident taken place and, therefore, the plaintiff was entitled to damages of Rs. 30,000/- on account of death of his mare. Accordingly, the suit was decreed for Rs. 30,000/- along with pendente-lite and future interest @ 6% per annum from the date of filing of the suit.

6. The defendants preferred an appeal before the Lower Appellate Court which had also been dismissed vide judgment and decree dated 25.10.2011 passed by

the Addl. District Judge, Kaithal. Resultantly, the present Regular Second Appeal has been filed.

7. Counsel for the appellants contends that the judgments and decrees of the Courts below are perverse and against law and evidence. There was no negligence on the part of the defendants-appellants as the department had taken all safety precautions and measures. There was nothing on record to show that animal (mare) had died due to fall in the pit. The said submission cannot be accepted as both the Courts below have recorded concurrent finding after taking into consideration the site plan Ex.PW2/A which has not been rebutted by the defendants by producing any cogent evidence apart from bald statement of DW-1 Vinod Kumar. The Veterinary Surgeon, who was produced as PW-1 had proved post mortem report Ex.PW1/A and the cause of death of mare was due to injuries, which were suffered due to fall in the pit and the iron rod had punctured the liver and intestine and the pit was situated in between the street. The plaintiff had also examined PW-4 Balwan who had helped the plaintiff to take out the animal from the pit. The factual foundation was well laid by the plaintiff and proved by the statement of the witnesses: The cost of mare was held to be Rs. 40,000/- and the said animal was only source of his livelihood and only Rs. 30,000/- was awarded. The defendant had failed to cover the pits with RCC slabs as was the requirement to prevent any mishap and, therefore, were rightly negligent in performing their part of the duty. The findings recorded are findings of fact and no question of law arises from the said fact, which have been enumerated above. Keeping all these factors in mind and in view of the concurrent findings recorded by the Courts below, which cannot be said to be suffering from any infirmity, no fault can be found with the well reasoned findings of the Courts below in the absence of any question of law much less any substantial question of law arising from the records of the present case which would warrant interference in Regular Second Appeal. Accordingly, the present appeal is dismissed in limine and judgments and decrees of the Courts below are upheld.