

(2020) 07 MP CK 0128
In the Madhya Pradesh High Court
Case No : First Appeal No.25 Of 2002

State Of Madhya Pradesh

APPELLANT

Vs

Devilal Dhakad & Ors

RESPONDENT

Date of Decision : 10-07-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96

Citation : (2020) 07 MP CK 0128

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : Shishir Purohit

Final Decision : Dismissed

Judgement

1. Appellant/defendant has preferred this first appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, 'CPC') for assailing the impugned judgment and decree dated 10.10.2001, passed by the learned Additional District Judge, Jawad, District - Mandsaur in Civil Suit No.7-B/2001.

2. The respondents/plaintiffs No.1 and 2 had filed a civil suit against the appellant as well as the respondent No.3 alleging therein that on 28/01/1998 the appellants were undergoing a construction work at Jawad Middle School and they constructed an underground water tank as there was no cover on the said water tank due to which the son of the respondents No.1 and 2 fell down into the said Tank as a result of which he died. According to the respondents Nos.1 and 2 there was clear negligence on the part of the appellants as well as the respondent No.3 and as such the respondent Nos.1 and 2 claimed compensation for the negligence of the appellant and death of their son.

3. The first Additional District Judge, after recording the evidence decreed the suit and ordered to pay the compensation to the tune of Rs.1 Lakh with

9% interest per annum from the date of institution of the suit vide impugned judgment and decree dated 10/10/2001. Being aggrieved by the aforesaid

judgment passed by the Additional District Judge, Jawad, the appellant has preferred this appeal.

4. Learned Govt. Advocate for the appellant/State has submitted that the impugned judgment and decree passed by the learned Lower Court is ex-

facie illegal, improper and contrary to the facts on record. It is submitted that the 'Rajeev Gandhi Shiksha Mission' is a society registered under

M.P. Societies Act, 1973 and being a separate entity, thus, it ought to have been issued a notice before proceeding with the matter, but the learned

trial Court without issuing the notice to the 'MISSION' who was carrying out the work has passed the judgment and decree against the

appellant. He further submits that since the appellant State i.e., defendant No.1 was already exparte, it was incumbent upon the trial Court to issue

first notice after the said amendment. That, the notice to the Collector, Neemuch cannot be said to be a proper notice to the 'Rajeev Gandhi

Shiksha Mission' and as such the impugned judgment has been passed behind the back of the said Society(Mission), therefore, same deserves to be

set-aside. It is further alleged that the Court below should have seen that the construction work was being carried out by the said 'mission' through

respondent No.3 Nagar Panchayat and as such the fastening of the liability on the State is per-se illegal.

5. Learned Government Advocate has further argued that the learned Court below has not thrashed out the matter in its entirety, and appreciation of

evidence by the learned Court below is also not proper, and, therefore, the impugned judgment is liable to be reversed and set aside. Assailing the

impugned judgment, the learned counsel would urge that the entire proceeding of construction in question was carried out in accordance with law, and

therefore, in these circumstances no motive can be attributed to the authorities of the appellant so as to saddle damages on the State. He further urged

that the learned Court below having found that it was a bonafide action of the appellant, it was not desirable for it to award damages to the

respondents. It is further submitted that the impugned judgment and the compensation awarded by it being based on imaginary ground and is also on

much higher side, which deserves to be set-aside.

6. I have heard the learned counsel for the appellant and perused the impugned judgment.

7. A glance at the impugned judgment makes it crystal clear that the learned trial Court has evaluated the evidence and other materials on record and,

thereafter, has examined the matter in all fairness while recording a definite finding that the action of the appellant was bonafide, but at the same time

the learned Court below has thought it proper to award reasonable damages for the loss suffered by them. In totality, the learned trial Court has

awarded a meager sum of damages to the tune of Rs.1,00,000/- only. This Court is quite conscious about this fact that this appeal is under Section 96

CPC and adhering to the normal practice, the record is to be summoned and a notice is required to be given to the learned trial Court.

8. In the considered opinion of this Court, the learned Court below has examined the matter threadbare and after discussing the evidence and other

materials on record has found that respondents-plaintiffs are entitled for damages and the said decision in the backdrop of the facts and circumstances

of the case cannot be faulted. The finding of fact recorded by the learned Court below is based on appreciation of evidence in right perspective and

the same is neither perverse, nor infirm from any stretch of imagination. On examining the matter in its entirety, this Court is satisfied that from the

normal convention some deviation is desirable as there is absolutely no merit in this appeal. The aforesaid analysis clearly reveals that the claim of the

respondents/plaintiffs for award of compensation has duly been established and the trial Court has rightly assessed the compensation of Rs.1,00,000/-.

Hence, no case for any interference in this appeal is made out.

9. The net result of the above discussion is that I find no merit in this appeal and the same is, accordingly, dismissed in limine.