

(2012) 01 P&H CK 0068

High Court Of Punjab And Haryana At Chandigarh
Case No: Regular Second Appeal No. 348 of 2012 (O and M)

Anil		APPELLANT
	Vs	
Monika and another		RESPONDENT

Date of Decision: Jan. 23, 2012

Acts Referred:

- Arms Act, 1959 - Section 25, 27
- Criminal Procedure Code, 1973 (CrPC) - Section 173
- Evidence Act, 1872 - Section 43
- Fatal Accidents Act, 1855 - Section 1A
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2013) ACJ 1918 : (2012) 166 PLR 265

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

Bench: Single Bench

Final Decision: Dismissed

Judgement

G.S. Sandhawalia, J.

The present appeal has been filed by defendant No. 1, who is aggrieved against the judgment and decree of the Lower Appellate Court, which has allowed the appeal of the plaintiffs and decreed the suit for a sum of Rs. 1,66,384/- alongwith interest @ 6% per annum from the date of filing the suit till its realization on account of causing the death of Dinesh-husband of plaintiff No. 1 and father of plaintiff No. 2. The suit was filed by the plaintiffs for recovery against the defendants No. 1 to 3 by way of damages for causing murder of Dinesh for the sum of 10 lacs with interest @ 18% per annum was claimed. The case of the plaintiffs was that they are indigent persons and do not possess sufficient means to pay the Court fee as prescribed by law for the suit and hence the plaintiffs are filing the present suit in form of forma pauperis. Plaintiff No. 2 is a minor aged about 3-1/2 years and is living under the care and custody of his mother Smt. Monika-plaintiff No. 1 and she has no adverse

interest against the interest of the abovesaid minor being his mother and natural guardian. The plaintiff No. 1 aged about 24 years is a widow of deceased-Dinesh s/o Mahender Singh and from the said marriage, a child Satyam-plaintiff No. 2 had been born. Defendant No. 4 is the mother of the deceased and the father of the deceased had expired 17-18 years back and the plaintiffs were fully dependent on the income of the deceased-Dinesh. Dinesh was murdered by defendants No. 1 to 3 in the abadi area of village Kilorad, Tehsit and District Sonapat within the jurisdiction of Police Station Sadar, Sonapat on 14.02.2002 and FIR No. 21 dated 15.02.2002 was lodged under Sections 302/34 IPC and under Sections 25 and 27 of the Arms Act, 1959. Accordingly, it was pleaded that the accused were committed to the Court of Sessions vide order dated 03.05.2002 and on the basis of the allegations made in the report u/s 173 Cr.P.C. and the documents therein, charge u/s 302 IPC read with Section 34 IPC was framed against defendants No. 1 to 3 and in addition to it, charge u/s 27 of the Arms Act, 1959 was also framed against them. That vide order dated 27.03.2003, defendant No. 1-Anil was held guilty of committing the murder of Dinesh on 14.02.2002 by firing shots from his double barreled licensed gun which was recovered from his possession and he was accordingly convicted u/s 302 IPC and Section 27 of the Arms Act. The other defendants i.e. defendants No. 2 and 3 were acquitted whereas defendant No. 1 was sentenced to undergo imprisonment for life and to pay an amount of Rs. 5,000 as fine for committing an offence u/s 302 IPC. The plaintiffs alleged that the deceased was the only bread earning member of the family and they were fully dependent upon him and he used to cultivate land on lease and used to sell milk by keeping buffaloes and monthly income of the said Dinesh was nearly Rs. 6,000 to Rs. 7,000 per month from these two sources and, therefore, the plaintiffs have been deprived of the said income of Dinesh due to wrongful act of the defendants. The defendants took the life of Dinesh by unauthorized act and thus deprived the plaintiffs from the income, services and affection of Dinesh. The said Dinesh was quite hearty and was having very good health and was not addicted to any vices and he would have survived upto the age of 80-85 years. Due to the death of Dinesh, the plaintiffs had to sell away all the animals for their survival and an amount of Rs. 15,000 was spent on his cremation and bhog ceremony and Rs. 20,000 was spent on litigation during the trial of Anil. There is no male member in the family to look after the family of the plaintiffs and that defendant no. 4 is the mother of the deceased and hence she is a necessary party. Accordingly, a sum of Rs. 10,00,000 was claimed.

2. The defendants, in their written statement, took the plea that defendants No. 2 and 3 had been acquitted and the Court has found them innocent while defendant No. 1-Anil had been convicted and appeal had been filed before the High Court, which had been admitted for arguments. The acquittal had been upheld since the appeal of the State had been dismissed vide Crl. Misc. No. 360-MA of 2003 and, therefore, since the conviction had been stayed by the High Court, the plaintiffs cannot say that defendant no. 1 had murdered Dinesh. The lodging of the FIR was

admitted but it was stated that it is a false case and the witnesses were interested and the defendants are not guilty. The judgment of conviction was also wrong and not sustainable. It was pleaded that there was agricultural land of the plaintiffs and the plaintiffs were cultivating that land and that the act of defendant No. 1 was not illegal or unauthorized.

3. The Trial Court framed the following issues:-

1. Whether the plaintiff is entitled to recover the damages alongwith interest as detailed in the plaint? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form?

3. Whether the plaintiff has no locus-standi and cause of action to file the present suit?

4. Relief.

4. The Trial Court, after taking into consideration the pleadings and statements of the witnesses, came to the conclusion that the plaintiffs had only relied upon the judgment in the criminal case and in view of the judgment rendered in *Neena Malhotra v. Ashok Malhotra*, 1 2007(1) R.C.R. (Civil) 613, the judgment could not be made the sole basis of the damages and though it noticed the evidence of PW-2 Raj Pal to prove that Dinesh had been shot at by Anil but his mere statement itself was not sufficient to prove that the said shot had resulted into the death of said Dinesh. The trial Court further held that it was for the plaintiffs to have examined all the witnesses so examined in the criminal case de novo to prove not only the aspect of firing but also the cause of death through medical evidence as well as report of armourer. The testimony of plaintiff No. 1 was also rejected as it did not pertain to the firing incident. On the issue of maintainability and on issues No. 2 and 3, it was held that there was no locus standi to file the present suit against defendants No. 2 and 3 and accordingly, the suit was dismissed on 10.09.2009.

5. That the appeal filed by the plaintiffs before the Lower Appellate Court, which has been allowed, as noticed above and a sum of Rs. 1,66,384 alongwith interest @ 6% per annum from the date of filing of the suit has been awarded. Resultantly, the present Regular Second Appeal has been filed.

6. The counsel for the appellant has contended that under the Fatal Accidents Act, 1855, the suit was not maintainable and an objection was taken and the Lower Appellate Court was in error in allowing the appeal. Reliance has been placed on [Partap Singh Vs. Gurdial Kaur and Another](#), Reliance has also been placed upon [Seth Ramdayal Jat Vs. Laxmi Prasad](#), and [Anil Behari Ghosh Vs. Smt. Latika Bala Dassi and Others](#), . It has also been contended that reliance only upon the judgment of the criminal Court was wrong in view of Section 43 of the Indian Evidence Act and reference has been made to 2007(1) R.C.R. Civil 613, *Neena Malhotra v. Ashok Malhotra*, 1.

7. The submissions made by counsel for the appellant are not acceptable in view of the fact that the trial Court was totally remiss in holding that all the witnesses who have been examined in the criminal proceedings should have been examined and the death of Dinesh had not been proved. It seems that the trial Court has closed its eyes towards the evidence on record and failed to take into account the principle that in civil matters, the standard of proof that is required to be discharged by the parties is on the basis of the preponderance of probabilities. There is no dispute that Ex.P-1, copy of the FIR dated 15.02.2002 is on the record. Similarly, the charge sheet dated 17.05.2002 Ex.P-4 is also on the record. This was sufficient to show that Dinesh had died a homicidal death at the hands of defendants No. 1 to 3 though the conviction was only recorded against the present appellant-defendant No. 1. The Lower Appellate Court has rightly taken into account the statement of Raj Pal PW-2, who was not only an eye witness but had also lodged the FIR, wherein it had been categorically stated that there was a dispute between Dinesh and Anil on account of election in the Panchayat and Anil used to threaten the deceased. That a marriage was fixed in the village and for the said reason, women folk used to sing till late night. Defendants No. 1 and 2 used to object to the singing and on 14.02.2002 at about 08.00 p.m., Raj Pal had met Anil outside his house and accused Anil had asked him to stop the singing of songs.

However, Raj Pal had not paid any heed and had been warned by defendant No. 3 that they will see. That at night at 11.00 p.m., when Raj Pal was returning to his house and had reached near his house, he was caught by Dharampal and Manjeet and respondent-Anil came with a gun and respondents No. 1 to 3 started beating him. Raj Pal had called out for help and when Dinesh opened the door of their house, defendant No. 1 fired upon Dinesh with his gun causing injuries to him. That on account of the said gun shot injuries, Dinesh subsequently died. The Lower Appellate Court has also noticed that in cross-examination, this occurrence has not been challenged and the suggestions put to the witnesses were denied and it was due to his testimony that Anil had been convicted and accordingly went on to hold that the plaintiffs have totally succeeded in proving the death of Dinesh at the hands of Anil and these assertions had gone unchallenged and unrebutted. The judgment now relied upon in Partap Singh's case (supra), was rightly rejected in view of the fact that it was a converse case wherein a su(sic) under general law had been filed and not under the Fatal Accidents Act, 1855. This Court had observed that the period of limitation under the Fatal Accidents Act, 1855 would not be applicable to the suit filed under general law. A perusal of Section 1A of the Fatal Accidents Act, 1855 would go on to show that if anybody by his wrongful act causes the death of the person, then he becomes liable for action. The said provision is reproduced as under:-

[1-A.] 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.

8. This Court in *Ms. Isar Devi v. Hukam Chand and others*, 5 2011(2) R.C.R. (Criminal) 115 has held that a claim for compensation for causing the death would lie under the said provisions of the Act.

9. The other judgments referred to by the counsel for the appellant namely [Seth Ramdayal Jat Vs. Laxmi Prasad](#), [Anil Behari Ghosh Vs. Smt. Latika Bala Dassi and Others](#), and *Neena Malhotra v. Ashok Malhotra*, 1 2007(1) R.C.R. Civil 613 are all on the issue of Section 43 of the Indian Evidence Act and the relevancy of fact in issue, however, in the present case, as noticed above, sufficient evidence on its own has come before the Courts below wherein, it has been proved that Anil was the man who was responsible by his act to cause the death of Dinesh and, therefore, the said judgments have no applicability in the facts and circumstances of the present case. On the basis of preponderance of probabilities, the plaintiff has been successful to prove that the death of the husband was caused by the defendant No. 1.

10. Even otherwise, the Lower Appellate Court has taken into consideration that even if there is no proof of earning capacity of the deceased and if the notional income is taken as a Labourer as Rs. 2,000 and assessed dependency of Rs. 800 and applied a multiplier as per Schedule IV of the Workmen Compensation Act, 1923 and has come to the figure of Rs. 1,66,384, which is a very reasonable amount. Keeping in view the above circumstances, it cannot be held from any angle that the judgment of the Lower Appellate Court is perverse or unreasonable. No substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed in limine.