State of Haryana and Others Vs Ram Bhaj

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 24, 2003

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 100
Limitation Act, 1963 â€" Section 5

Citation: (2005) ACJ 100 : (2003) 135 PLR 335

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: N.K. Joshi, A.A.G, for the Appellant; Rakesh Nehra, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Kumar, J.
State of Haryana-defendant-appellants have filed the instant appeal u/s 100 of the Code of Civil Procedure, 1908 (for

brevity, "the Code") challenging the concurrent findings that the department of PWD (B&R), Rohtak was negligent in performance of its duty to

notify the ditches in the area of village Assam, Sonepat road, Rohtak as no warning, sign board or Red Light was flashed. The negligence of the

department resulted into an accident on 24.3.1996 at 7.30 p.m. in the area of village Assan near a Dharamkanta (weighing scale) of sugar-cane.

As a result, the plaintiff-respondent, who was travelling on a scooter, fell in the ditch and suffered serious head injury and other injuries on various

parts of his body. The accident was witnessed by many witnesses present at the nearby Dharamkanta who removed him to the PGIMR Rohtak

where he remained admitted for treatment from 24.3.1996 to 12.6.1996. On the basis of aforementioned findings that there was a duty imposed

on PWD Department and its officials to maintain the road properly for public use by observing due care and caution, both the Courts awarded a

sum of Rs. 1,50,000/-.

2. Mr. N.K. Joshi, learned State counsel has argued that the claim made by the plaintiff-respondent appears to be fictitious because the statements

made by DW-1 Arvind Kumar, Sub Divisional Engineer, PWD, Department, DW-2 Suresh Kumar and DW-3 Hem Chand, Beldars respectively

show that the road was in a good condition without any ditch and there was no complaint of any accident on the relevant date. Therefore, the

learned counsel argued that the findings recorded by both the Courts below are liable to be set aside. Another submission made by the learned

counsel is concerning quantum of compensation. It has been submitted that the plaintiff-respondent has already been reimbursed Rs.50,000/- or

Rs.60,000/- by the department where he has been working as a pubic servant. Therefore, the amount of Rs.50,000/- awarded as damages is on

the higher side.

3. I have thoughtfully considered the submissions made by the learned counsel and am of the view that both the submissions are completely devoid

of any merit because it has come on record that the plaintiff-respondent remained admitted in the PGIMR Rohtak from 24.3.1996 to 12.6.1996.

PW1 Rajbir Singh has proved DDR No. 11 dated 25.3.1996 Ex.P1 where the statement of one Ram Kishan who had brought the plaintiff-

respondent in a serious injured condition to the hospital, had been recorded. Ram Kishan is an eye witnesses and is in no way related to the

plaintiff-respondent. He saw the scooter on which the plaintiff-respondent was travelling and met with an accident due to pots on the road.

Therefore, no credence could be accorded to the statements made by the witnesses of the defendant-appellants.

4. The statement of PW5 Dr. R.S. Dahiya and PW4 Dr. Gulshan Arora have also come on record showing that the plaintiff-respondent remained

admitted in the hospital from 24.3.1996 to 12.6.1996. It has also been found that because of multiple injuries, the plaintiff-respondent continued

visiting as an Outdoor patient to them for a considerably long time. According to the learned Civil Judge a casual look at the plaintiff-respondent

gave the impression that he is a disabled person. It is thus evident that the findings recorded by both the Courts below are based on evidence with

regard to condition of the road, injuries suffered by the plaintiff-respondent and the period of hospitalization. It has also been found that the

P.W.D. Department is under an obligation to maintain the roads free of pots and in case of necessary repairs, a notice is required to be flashed to

guide the users of the road especially during the night time so that they may avoid falling in the ditches and suffer multiple injuries/fractures.

5. It is well settled principle of law that whenever there is a duty to act in the interest of safety and health of a citizen, the negligence or breach of

duty by that authority would sound in award of damages. The minimum standard of care required for maintaining the safety and welfare of a citizen

has to be provided and in case of failure to do so which may cause pain or sufferings to a citizen, then it would result into damages. In The

Municipal Corporation of Delhi Vs. Smt. Sushila Devi and Others, , where a branch of a road side tree belonging to the Municipal Corporation

suddenly broke down and hit the road user seriously injuring him which resulted into his death, the Supreme Court upheld the award of damages

holding that the Municipal Corporation was under a duty imposed by common law. The observations of their lordships in Sushila Devi''s case

(supra) are based on the well known judgment in the case of Municipal Corporation of Delhi Vs. Subhagwanti and Others, and the same reads as

under:-

By as catena of decisions, the law is well settled that if there is a tree standing on the defendant''s land which is dried or dead and for that reason

may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused

by the fall of the tree (See Brown v. Harrison, Quinn v. Scott and Mackie v. Dumbartonshire Country Council). The duty of the owner/occupier of

the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the

premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot

escape the liability for injury caused by the any dangerous thing existing on the premises by pleading that he had employed a competent person to

keep the premises in safe repairs. In Municipal Corpn. of Delhi v. Subhagwanti a clock tower which was 80 years old collapsed in Chandni

Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he

neither knew nor ought to have known the danger. ""[T] he owner is legally responsible irrespective of whether the damage is caused by a patent or

a latent defect,""- said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the

tree is dangerous in the sense that on account of any disease or bring dead the tree or its branch is likely to fall and thereby injure any passer-by

then such a tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal

Corporation that vis major or an act of God such as a storm, tempest, lighting or extraordinary heavy rain had occurred causing the fall of the

breach of the tree and hence the Corporation was not liable.

Similar view has been taken by the Supreme Court in Madhya Pradesh Electricity Board Vs. Shail Kumari and Others, and Poonam Verma Vs.

Ashwin Patel and others, .

6. When the facts of the present case are examined in light of the principles laid i down by the Supreme Court, it becomes clear that there is a

common law duty imposed on the P.W.D.Department to maintain the road so as to avoid any danger to human life and safety. In cases where

possibility of damage to personal safety is anticipated, there is a duty to flash the information giving adequate notice to the users of the road to take

precaution and avoid accidents. The defendant-appellants have miserably failed in their j duty to give any intimation to the users of the road which

resulted into serious injuries to the plaintiff-respondent. It must be realised by all concerned that the damage caused by an accident to a human

being causes innumerable sufferings. If the victim of an accident is a bread earner of the family, then his problems are multiplied. If the death is

caused by the accident, then the family is plunged into a crisis. There would be questions of making both ends meet, apart from the responsibility of

sending the children to the school and bearing their expenses. Therefore, the findings of facts speak for themselves and do not call for any

interference by this Court.

7. The argument raised by the learned State counsel concerning the quantum of damages has not impressed me. The plaintiff-respondent has

remained admitted in the hospital as indoor patient from 24.3.1996 to 12.6.1996 and has been attending as an outdoor patient for a very long

time. The damages of Rs. 1,50,000/- awarded by no stretch of imagination could be regarded as exorbitant. It is true that in matters of this nature,

no objective criteria has been laid down to assess the damages to be awarded, yet on the relevant consideration, the discretion exercised by both

the Courts below should ordinarily be respected. Some room has to be given for guess work, therefore, the discretion exercised by both the

Courts below in awarding Rs. 1,50,000/- as damages to the plaintiff respondent would also not call for any modification or interference. The

appeal is devoid of merit and is thus liable to be dismissed.

8. For the reasons recorded above, this appeal fails and the same is dismissed. In view of the fact that the appeal has been dismissed on merits, I

do not wish to express any opinion with regard to application filed u/s 5 of the Limitation Act, 1963 seeking condonation of 15 days delay.