

SUPREME COURT OF INDIA

Suba Singh & Anr.

Vs.

Davinder Kaur & Anr.

C.A.No.5197 of 2003

(Aftab Alam and R.M.Lodha,JJ.,)

06.07.2011

JUDGMENT

Aftab Alam,J.,

1. This appeal by special leave arises from a suit for damages filed by the plaintiffs-respondents, the widow and the minor daughter of one Surinder Singh, claiming a sum of rupees three lakhs as damages from the defendants-appellants for causing the death of Surinder Singh by their wrongful act.

2. In an occurrence that took place on July 1, 1991, Surinder Singh died as a result of gun shot injuries. An F.I.R (no.166) was lodged by his father Balbir Singh, under sections 302/307/ 34 of the Penal Code and section 25/27 of the Arms Act in which the two appellants, Suba Singh and Shingara Singh, father and son respectively, were named as accused.

3. On November 16, 1991, respondent no.1 filed a suit on behalf of herself and on behalf of her minor daughter, who was at that time about 4-5 years old, against the defendants-appellants claiming damages for the death of her husband and the father of the young child. In the plaint, it was alleged that Suba Singh and his son Shingara Singh had committed the murder of Surinder Singh. Shingara Singh came to the place of occurrence armed with the licensed gun of his father and urged by him, he fired a shot killing Surinder Singh on the spot. At the time of death, the age of Surinder Singh was about 25 years. He was a peasant and a motor vehicle driver by vocation. As a professional driver, he was in private service of certain persons named in the plaint. He also used to help his father in agricultural operations and his income from all the sources was about Rs.16,000/- per annum. It was stated that after the death of Surinder Singh, the plaintiffs did not have any source of income to maintain themselves. Hence, the claim for compensation by way of damages of rupees three lakhs from the defendants.

4. The defendants contested the suit questioning its maintainability. They denied the allegations made in the plaint and stated that they were in no way responsible for causing the

death of Surinder Singh. It was alleged that Surinder Singh claimed the common wall between their houses and at the time of the occurrence he was throwing brickbats at the defendants causing injuries to them. In that situation Suba Singh fired a shot and a stray pellet hit Surinder Singh who was sitting on the wall, resulting in his death.

5. During the pendency of the suit, the defendants were tried by the Additional Sessions Judge, Sirsa, in Sessions Trial No.46 of 1991, charged variously of offences under sections 302, 307, 302/34, 307/34 IPC and under section 25/27 of the Arms Act. The learned Additional Sessions Judge, by his judgment and order dated March 6, 1992, acquitted Shingara Singh of all the charges leveled against him but found Suba Singh guilty of the offence under section 304 Part-I, holding that he had exceeded his right of private defence. Accordingly, he sentenced Suba Singh to rigorous imprisonment for 10 years and a fine of Rs.50,000/- and in default, to rigorous imprisonment for a further period of 2 years. The matter was taken to the High Court in appeals preferred both by the State and by Suba Singh besides a revision preferred by the informant Balbir Singh, the father of the deceased. The High Court by a common judgment and order allowed the appeal filed by the State and held Shingara Singh guilty of the offence under section 302 and 307 of the Penal Code. Suba Singh was found guilty and convicted under sections 302/34, 307/34 of the Penal Code. Shingara Singh was also found guilty of the offence under section 27 of the Arms Act. Both, Suba Singh and Shingara Singh were sentenced to life imprisonment and to pay fines with default clauses.

6. While the suit was pending before the trial court, the widow of Surinder Singh plaintiff no.1 got married to his younger brother in the year 1998 and from him, she has two children.

7. On November 27, 1999, the learned Civil Judge, Sirsa (Haryana) decreed the suit and awarded compensation of rupees three lakhs to the plaintiffs-respondents along with interest @ 12% per annum from the date of the filing of the suit. The appellants filed an appeal (Civil Appeal No.191/1999) before the District Judge, The District Judge partly allowed the appeal and by judgment dated March 7, 2002 reduced the amount of compensation from rupees three lakhs to rupees two lakhs, thirty two thousand seven hundred, leaving the rate of interest unchanged. The appellants took the matter in second appeal before the High Court but the same was dismissed by the impugned judgment and order, dated October 3, 2002, holding that it did not raise any substantial question of law. The matter is now brought before this Court by grant of special leave.

8. To complete the facts it may be stated that shortly after leave was granted in the present appeal, the appellants' criminal appeals against the judgment and order passed by the Punjab and Haryana High Court (registered as Criminal Appeal Nos.682-683 of 1996 with Criminal Appeal Nos.1345-1347 of 2003) came to be heard by this Court. By the judgment and order dated November 4, 2003, the appeal of Shingara Singh was allowed and he was acquitted of all the charges and the conviction of Suba Singh was converted from one under section 302 to section 304 Part I of the Penal Code. In other words, this Court set aside the judgment of the High Court and restored the judgment passed by the trial court, though giving Suba Singh

a reduced sentence of 5 years rigorous imprisonment and a fine of Rs.10,000/- and in default of payment of fine to further imprisonment for a period of 1 year.

9. Now, coming back to the present appeal, the judgments of the High Court and the courts below were assailed by the counsel for the appellants on the plea of double jeopardy. It was submitted that the appellants were being punished twice over for the same offence. Learned counsel also referred to section 357 of the Code of Criminal Procedure and submitted that there being a specific provision there for payment of compensation, a suit for damages would not be maintainable.

10. The rule against double jeopardy is contained in sub-article (2) of Article 20 of the Constitution of India which mandates that "no person shall be prosecuted and punished for the same offence more than once". Now, it is elementary that an action for civil damages is not prosecution and a decree of damages is not a punishment. The rule of double jeopardy, therefore, has no application to this case.

11. The submission based on section 357 of the Cr.P.C. is equally without substance. Section 357 of the Code reads as under:

"357. Order to pay compensation.- (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion, of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section."

(emphasis supplied)

12. The contention made on behalf of the appellants is fully answered by clauses (b) and (c) of sub-section (1) and sub-section (5) of section 357 of the Code. In those provisions there is a clear and explicit recognition of a civil suit at the instance of the dependents of a person killed, against his/her killers. In sub-section (1)(c) of section 357 there is clear indication that apart from the punishment of fine, the person convicted of any offence of having caused the death of another person or of having abetted the commission of such an offence may also be liable to face a civil action for damages under the Fatal Accidents Act, 1855 in a suit for damages and sub-section (5) of section 357 of the Code makes it all the more clear by stipulating that at the time of awarding compensation in a subsequent civil suit relating to the same matter the court shall take into account any sum paid or recovered as compensation under that section.

13. In the end, counsel for the appellants, rather feebly submitted that the widow of Surinder Singh was not entitled to any compensation because she had remarried during the pendency of the suit. We find no substance in this submission either. It may be noted that the first appellate court has taken the sum of Rs.12,400/- as the annual input by the deceased towards the maintenance of his wife and the minor child. The remarriage of plaintiff no.1 took place after seven years of filing of the suit. The amount of compensation reckoned for 7 years at the rate of Rs.12,400/- per annum would be Rs.86,800/-. The balance being Rs.1,45,900/-, would be a modest and reasonable amount as compensation for defendant no.2, the minor child of the deceased till she attained majority and got married. We, therefore, see no scope for any interference with the amount of compensation awarded by the first appellate court.

14. It is indeed true that the courts below have awarded interest at the rather higher rate of 12% per annum. In the facts of the case, we are satisfied that simple interest at the rate of 6%

per annum from the date of the filing of the suit till payment would meet the ends of justice. We, accordingly, modify and reduce the rate of interest to 6% per annum.

15. Having, thus, considered and disposed of all the contentions raised on behalf of the appellants, we would like to advert to another issue that is a cause of no little concern to us.

16. We are constrained to observe that a suit for damages for murder of a person, like the present one, is filed under the Fatal Accidents Act, 1855. As the year of its enactment shows the Act dates back to the period when the greater part of the country was under the control of the East India Company with the last Mughal "Emperor", Bahadur Shah Zafar as the ineffective, though, titular monarch on the throne of Delhi.

17. The Act is based on the Fatal Accidents Act, 1846 and according to the short title given to it by the Indian Short Titles Act, 1897, it is "An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong". Its Preamble reads as follows:

"Whereas no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often- times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him"

18. It originally consisted of three sections, but, the original section 1 was renumbered as section 1A by the Part B States (Laws) Act (3 of 1951), S. 3 and Schedule, with effect from April 1, 1951. Section 1A of the Act provides as follows:

"1A. 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. Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator, or representative of the person deceased; and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct."

19. Later on the operation of the Act was extended to different parts of the country and as on date it extends to the whole of India except the State of Jammu and Kashmir.

20. It is a matter of grave concern that such sensitive matters like payment of compensation and damages for death resulting from a wrongful or negligent act are governed by a law which is more than one and a half centuries old. Twenty one years ago a Constitution Bench of this Court in Charan Lal Sahu v. Union of India, (1990) 1 SCC 613, a case arising from the Bhopal Gas Tragedy, had taken note of this antiquated law and in paragraph 168 made the following observations:

"168. While it may be a matter for scientists and technicians to find solutions to avoid such large scale disasters, the law must provide an effective and speedy remedy to the victims of such torts. The Fatal Accidents Act, on account of its limited and restrictive application, is hardly suited to meet such a challenge. We are, therefore, of the opinion that the old antiquated Act should be drastically amended or fresh legislation should be enacted which should, inter alia, contain appropriate provisions in regard to the following matters:

(i) The payment of a fixed minimum compensation on a "no- fault liability" basis (as under the Motor Vehicles Act), pending final adjudication of the claims by a prescribed forum;

(ii) The creation of a special forum with specific power to grant interim relief in appropriate cases;

(iii) The evolution of a procedure to be followed by such forum which will be conducive to the expeditious determination of claims and avoid the high degree of formalism that attaches to proceedings in regular courts; and

(iv) A provision requiring industries and concerns engaged in hazardous activities to take out compulsory insurance against third party risks."

(emphasis supplied)

21. It is unfortunate that the observations of the Supreme Court have so far gone completely unheeded. We hope and trust that the Union Government would at least now take note of the urgent need to bring a contemporaneous and comprehensive legislation on the subject and proceed to act in the matter without any further delay.

22. Let a copy of this judgment be brought to the notice of the Attorney General for India. A copy of the judgment may also be sent to the Law Commission of India.

23. In the result, the appeal is dismissed, subject to the modification in the rate of interest. There will be no order as to costs.

