

IN THE COURT OF SENIOR CIVIL JUDGE- 1 AIZAWL DISTRICT :: AIZAWL

MONEYSUIT NO. 83 OF 2011

Plaintiff:

Smt. Saithangpuii
M/o Samuel Lalvenhima
Saichal, Ngopa R.D. Block

By Advocate's : Mr. F. Lalengliana

Versus

Defendants:

1. Mr. Lalrintluanga Sailo
Class 1 Contractor
Luangmual, Aizawl
2. Mr. Moirangthem Jems Singh
S/o M. Tomba Singh
Moirang Village
Khunou Makba Leik
P.O. Moirang, Manipur

By Advocates : _____

Date of Judgment & Order : 11-04-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge-1
Aizawl District: Aizawl

JUDGMENT & ORDER

GERMINATION OF THE CASE

The son of the plaintiff namely Mr. Samuel Lalvenhima (6 years and 10 months) was died on 4/8/2007 @ 4:00 P.M. as he was ran/rolled over by Bulldozer at the place of about one kilometer from Saichal village towards Saitual and he forthwith died on the spot of accident. The defendant no. 1 was the owner of the said Bulldozer and the defendant no. 2 was the operator of the said Bulldozer. The chassis number of the said Bulldozer was 9322 without any registration. The plaintiff simply prayed compensation amounting to Rs. 5 lakhs from the defendants.

The defendants did not contest in the case although substituted service of summons was issued through Vanglaini Daily Newspaper Dt. 25th Nov., 2011 without knowing reasons. Thus, by virtue of O. VIII, R. 10 of the Code of Civil Procedure, 1908, order for ex parte proceeding was made on 7/12/2011 whilst the suit is filed on 4/8/2011. As held in **Ramesh Chand Ardawatiya vs Anil Panjwani** decided on 5 May, 2003 and reported in AIR 2003 SC 2508, 2003 (4) ALD 10 SC and also as observed in **Smt. Sudha Devi vs M.P. Narayanan & Ors** decided on 26 April, 1988 and reported in 1988 AIR 1381, 1988 SCR (3) 756, points for determination and sufficient evidence is drawn and taken in the proceedings.

POINTS FOR DETERMINATION

Although ex parte proceeding, the following points should determine the case-

1. Whether the suit is maintainable or not
2. Whether the plaintiff is entitled to the relief claimed or not. If so, upto what extend and who is liable to pay.

BRIEF ACCOUNT OF EVIDENCE

The plaintiff had produced the following witnesses namely-

1. Smt. Saithangpuii M/o Samuel Lalvenhima, Saichal (Hereinafter referred to as PW-1)
2. Mr. Kiran Kumar, Officer in Charge, Ngopa Police Station (Hereinafter referred to as PW-2)
3. Dr. Michael Zopara, Medical Officer, Kawlkulh PHC (Hereinafter referred to as PW-3)

The **PW-1** deposed that her son namely Mr. Samuel Lalvenhima (6 years and 10 months) was died on 4/8/2007 @ 4:00 P.M. as he was ran/rolled over by Bulldozer at the place of about one kilometer from Saichal village towards Saitual and he forthwith died on the spot of accident. After the incident, the matter was reported to Police Station, Ngopa. Post mortem examination of the death body was not made due to the consent of herself and the village council authority and other NGO leaders as satisfied with the cause of death. Her son being 6 years with 10 months could not be alleged as negligence on his part. At the time of the death of her son, he studied class-II at Saichal Primary School and was a promising student. She further deposed that the defendant no. 1 paid Rs. 10,000/- as condolence.

- Ext. P-1 is Birth Certificate of her deceased son
- Ext. P-2 is the Death Certificate of her deceased son
- Ext. P-3 is educational certificate of her deceased son
- Ext. P-4 is the Medical report signed by the Medical Officer, Kawlkulh PHC
- Ext. P-5 is Police report
- Ext. P-6 is copy of driving license of the defendant no.2

The PW-2 deposed that he is the Officer in Charge, Ngopa Police Station since June 2005. On 6th August, 2007, the relative of the deceased approached the police station. The place of occurrence was also visited by his personnel but did not done post mortem examination as well as inquest of the dead body.

The PW- 3 deposed that during June 2001 to October, 2008, he was posted as Medical Officer, Kawlkulh. Although he knew the facts of the incidents, post mortem examination was not made as there was no requisition from the police. He knew that the dead body was severely damaged. Due to sympathy of local NGOs and village authority, the dead body was buried without post mortem examination.

Ext. P-4 is prepared by him

Ext. P-4 (a) is his true signature

FINDINGS

Issue No. 1

Whether the suit is maintainable or not

The plaint is accompanied by affidavit but not proper verification in the para wise which is irregularities as held by the Supreme Court in **State of Bombay v. Purushottam Jog Naik**, AIR 1952 SC 317. Vivian Bose, J. speaking for the Court, held:

"We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order 19, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed."

And also the Constitution Bench of the Supreme Court in **A. K. K. Nambiar v. Union of India and another**, AIR 1970 SC 652, held as follows:

"The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records.

The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."

Thus, no proper verification of the plaint, I find that it is an irregularities as held above and the courts established and constituted under the Mizoram Civil Courts Act, 2005 as no separate procedure is contained in the Act of 2005 although section 21 of the said Act exempted from the rigour of the Code of Civil Procedure, 1908. The relevancy is already settled in **Rasiklal Manickchand Dhariwal & Anr. vs M/S M.S.S. Food Products** decided on 25 November, 2011 in connection with Civil Appeal No. 10112 of 2011 (Arising out of SLP (Civil) No. 27180 of 2008), wherein, the Supreme Court has held that-

"70. The doctrine of proportionality has been expanded in recent times and applied to the areas other than administrative law. However, in our view, its applicability to the adjudicatory process for determination of 'civil disputes' governed by the procedure prescribed in the Code is not at all necessary. The Code is comprehensive and exhaustive in respect of the matters provided therein. The parties must abide by the procedure prescribed in the Code and if they fail to do so, they have to suffer the consequences. As a matter of fact, the procedure provided in the Code for trial of the suits is extremely rational, reasonable and elaborate. Fair procedure is its hallmark. The courts of civil judicature also have to adhere to the procedure prescribed in the Code and where the Code is silent about something, the court acts according to justice, equity and good conscience. The discretion conferred upon the court by the Code has to be exercised in conformity with settled judicial principles and not in a whimsical or arbitrary or capricious manner. If the trial court commits illegality or irregularity in exercise of its judicial discretion that occasions in failure of justice or results in injustice, such order is always amenable to correction by a higher court in appeal or revision or by a High Court in its supervisory jurisdiction."

Meanwhile, the proviso to clause (b) of sub-section (3) of section 1 of the Code of Civil Procedure, 1908 remains unaltered and whilst the well settled law is that procedure is the handmaid of justice Vide, **Shreenath & Another vs Rajesh & Others** decided on 13 April, 1998 reported in 1998 AIR 1827, 1998 (2) SCR 709, 1998 (4) SCC 543, 1998 (2) SCALE 725, 1998 (3) JT 244: **Sushil Kumar Sen v. State of Bihar** (1975) 1 SCC 774: **The State of Punjab and Anr. v. Shamlal Murari and Anr.** (1976) 1 SCC 719. Thus, towards, justice, equity and good conscience, this irregularities may

be exonerated in favour of the plaintiff. The plaintiff also make up deficiency of court fees as directed on today.

Issue No. 2

Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend and who is liable for the same.

Being uncontested suit and as the deceased child being below 7 years of age, no blame can be embarked to the victim innocent child. Although, the defendant no. 2 is the operator of the said Bulldozer, he was an employee of the defendant no. 1. In that arena, the law is already settled in the case of **State Of Rajasthan vs Smt. Shekhu And Ors.** decided on 22 July, 2004 reported in (2005) ACC 156, 2006 ACJ 1644, RLW 2004 (4) Raj 2659, the Rajasthan High Court has held that-

“9. "Vicarious liability" means that one person takes or supplies the place of another so far as liability is concerned. This phrase means the liability of a person for the tort of another in which he had no part. A master is jointly and severally liable for any tort committed by his servant which acting in the course of his employment.

....12. Even when the owner of the motor vehicle is involved in an accident is not 'directly negligent, still he becomes liable to pay the compensation to the claimants if they show that the accident has been caused due to the negligence of the driver or some other servant of the owner. Such liability is called vicarious liability where under common law the master becomes liable for the negligent actions of his servants carried out in the course of their normal duties.

13. Thus, it can be said that:

- i) An owner of a car would be liable in damages for an accident caused by his servant in the course of his employment.
- ii) He would also be liable if the effective cause of the accident' was that the driver in the course of his employment committed a breach of his duty in either not preventing another person from driving the car or neglecting to see that the said person drove it properly.”

And in **Karnataka State Road Transport vs Sayed Rahamulla And Another** decided on 17 September, 1999 reported in ILR 1999 KAR 4541, 2000 (5) KarLJ 578, Hon’ble Karnataka High Court has held that-

“11. As stated supra when the employee discharges his duty in a careless manner he will be liable to indemnify the loss suffered by the employer by reason of his liability in damages to a third party. If the employee does not establish that he was not negligent, then, the employer can recover the damages/compensation he had to pay to the victims of the negligence of the employee, and which the employer had to pay on this account under the principle "respondent superior".”

Also in **National Shipping Co. vs Haripada Saha And Anr.** decided on 2 April, 1958 reported in AIR 1958 Cal 597, Hon'ble Calcutta High Court has observed that-

“16. When A's servant is sent by A, whom we shall, for convenience of reference, Call the general employer, to do a certain work for B, who may for convenience and according to the usual practice, be designated "the hirer", and commits a tort and causes damages to a third party in the course of execution or performance of that work, who, A (the general employer) or B (the hirer), would be liable to the injured third party for the damage done. The answer will obviously depend on the application of the maxim "Respondent Superior" or, in other words, upon the finding as to who, for the relevant purpose, should be considered to be the superior (master) of the servant at the relevant time. Before proceeding further, it is important to remember that law recognises that, in circumstances as above, a man, that is, a servant, may have two masters, one the general master and the other the temporary master, and the real question will be who, in the particular circumstances or facts before the court, should be regarded as the master for the application of the above maxim "respondent superior".

In the plaint and even on estimation of evidences of the plaintiff, there is no specific plea for pecuniary and non-pecuniary damage in the instant cause as classified in **R.D. Hattangadi vs Pest Control (India) Pvt. Ltd** decided on 6 January, 1995 reported in 1995 AIR 755, 1995 SCC (1) 551. However, the Supreme Court observed the entity of non-pecuniary damage in **R.K. Malik & Anr. vs Kiran Pal & Ors.** decided on 15 May, 2009 in connection with Civil Appeal No. 3608 of 2009 (Arising out of SLP(C) No. 17525 of 2006). The plaintiff under paragraph no. 7 of his plaint simply claimed Rs. 5 lakhs being children. For that purpose, learned counsel for the plaintiff relied in the case of **Lata Wadhwa & Ors vs State Of Bihar & Ors** decided on 16 August, 2001 in connection with Writ Petition (civil) 232 of 1991 reported in 2001 AIR 3218, 2001 (1) Suppl. SCR 578, 2001 (8) SCC 197, 2001 (5) SCALE 286, 2001 (6) JT 431, wherein, the Supreme Court has observed that-

“So far as the award of compensation in case of children are concerned, Shri Justice Chandrachud, has divided them into two groups, first group between the age group of 5 to 10 years and the second group between the age group of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform sum of Rs.50,000/- has been held to be payable by way of compensation, to which the conventional figure of Rs. 25,000/- has been added and as such to the heirs of the 14 children, a consolidated sum of Rs.75,000/- each, has been awarded. So far as the children in the age group of 10 to 15 years, there are 10 such children, who died on the fateful day and having found their contribution to the family at

Rs.12,000/- per annum, 11 multiplier has been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs.25,000/- has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs.1,57,000/- each. In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's life- time. But this will not necessarily bar the parents claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.

.... Having regard to the environment from which these children were brought, their parents being reasonably well placed officials of the Tata Iron and Steel Company, and on considering the submission of Mr. Nariman, we would direct that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs, to which the conventional figure of Rs.50,000/- should be added and thus the total amount in each case would be Rs. 2.00 lakhs.”

Thus, the plaintiff will be entitled Rs. 2.00 lakhs from the defendant no. 1. For that realization, evidence of the plaintiff fairly revealed that the defendant no. 1 already paid Rs. 10,000/- (Rupees ten thousand) to the plaintiff as condolence. Thus, the defendant no. 1 is liable to pay Rs. 1.9 lakhs to the plaintiff.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, it is hereby ORDERED and DECREED that the defendant no. 1 shall pay Rs. 1.9 lakhs to the plaintiff within three months from the date of this order with an interest rate @ 9% per annum with effect from today. No order as to costs.

In the above terms, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 11th April, 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 1
Aizawl District: Aizawl

Memo No. MS/83/2011, Sr. CJ (A)/

Dated Aizawl, the 11th April, 2012

Copy to:

1. Smt. Saithangpuii M/o Samuel Lalvenhima, Saichal, Ngopa R.D. Block through Mr. F. Lalenglina, Adv.
2. Mr. Lalrintluanga Sailo, Class 1 Contractor, Luangmual, Aizawl through Mr. F. Lalenglina, Adv.
3. Mr. Moirangthem Jems Singh S/o M. Tomba Singh, Moirang Village, Khunou Makba Leik, P.O. Moirang, Manipur through Mr. F. Lalenglina, Adv.
4. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Case record

PESKAR