

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 6th OF APRIL, 2023

SECOND APPEAL No. 761 of 2022

BETWEEN:-

1. DHAPU BAI W/O GHANSHYAM VISHWAKARMA
AGED ABOUT 52 YEARS, OCCUPATION: HOUSEWIFE
VILLAGE AMLABE, TEHSIL KHILCHIPUR
DISTRICT RAJGARH (MADHYA PRADESH)
2. SMT. SEEMA W/O ARVIND D/O GHANSHYAM VISHWAKARMA
AGED ABOUT 26 YEARS, OCCUPATION: HOUSEWIFE
VILLAGE AMLABE, TEHSIL KHILCHIPUR
DISTRICT RAJGARH (MADHYA PRADESH)
3. RAVI S/O GHANSHYAM VISHWAKARMA
AGED ABOUT 23 YEARS
VILLAGE KODAKYA, TEHSIL JEERAPUR
DISTRICT RAJGARH (MADHYA PRADESH)
4. KU. POOJA D/O GHANSHYAM VISHWAKARMA
AGED ABOUT 20 YEARS
VILLAGE KODAKYA, TEHSIL JEERAPUR
DISTRICT RAJGARH (MADHYA PRADESH)

.....APPELLANTS

(SHRI ATUL CHACHONDIYA, ADVOCATE FOR THE APPELLANTS)

AND

1. M/S KUNDU MG (JOINT VENTURE)
BU-5, SFS FLAT, OUTER RING ROAD
PITHAMPURA, DELHI -110034
2. OFFICER INCHARGE
M.P. ROAD DEVELOPMENT AUTHORITY (MPRDC)
SHYAMLA HILLS
BHOPAL (MADHYA PRADESH)

**3. STATE OF M.P. THROUGH COLLECTOR RAJGARH
DISTRICT RAJGARH (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI VIVEK PATWA, ADVOCATE FOR RESPONDENT NO.2)

(SHRI TARUN PAGARE, PANEL LAWYER FOR RESPONDENT NO.3)

*This appeal coming on for orders this day, Hon'ble Shri Justice
Prakash Chandra Gupta passed the following:*

ORDER

Heard on the question of admission.

2. The present Second Appeal has been filed by the appellants/ plaintiffs u/S 100 of the Code of Civil Procedure, 1908 (in short "CPC") against the judgement and decree dated 21.12.2021, passed by the IInd District Judge, Rajgarh (M.P.) in regular Civil Appeal No.28/2019, affirming the judgement and decree dated 28.06.2019 passed by the Civil Judge Class-I, Khilchipur, District Rajgarh in Civil Suit No.26A/2018 filed by the appellants for compensation of Rs.29,56,345/-, which was dismissed.

3. Facts of the case in brief are that the plaintiffs are residents of village Kokadya Tehsil Jeerapur District Rajgarh. The defendant had dug a 10 feet pit at the joint of road to the village for the construction of bridge. On 12/09.2012, plaintiff No.1 alongwith her husband Ghanshyam Vishwakarma were coming from village Bakani to Kokadya by Purohit bus. They got off the bus at Kokadya bus stand and were going to their village. Husband of plaintiff No.1 went for nature's call and plaintiff No.1 was going alone. Due to dark night, she fell into the aforesaid pit. Consequentially, she had a fracture in her left leg. The plaintiff No.1 was

taken to Balaji Hospital, Jhalawad where she was admitted and treated for 03 days. Thereafter, she went to Jhalawad several times for treatment. She has got 20% disability in her left leg due to fracture of tibia and fibula bone. The defendant No.1 had dug a pit but had neglected the concern for the safety measures. Due to his fault and negligence the incident has occurred and the plaintiff No.1 fell into the pit and got injured. Before the incident the plaintiff used to work as a tailor and used to earn Rs.9,000/- per month. She could have worked upto 70 years of age and would have earned Rs.29,16,000/-. She spent Rs.40,345/- in medical expenditure for the treatment. Accordingly, she had claimed Rs. 29,56,345/- as compensation from the defendant No.1.

4. Respondent Nos.1 and 3/Defendant Nos.1 and 3 were ex-parte and they had not filed written statement in the case.

5. Respondent No.2/ Defendant No.2 had denied the averments of the plaintiff in his written statement and pleaded that the plaintiffs have not pleaded specifically that which defendant had dug the pit. Though work of road construction has been given to the defendant No.1 but at the place of incident, no bridge has been constructed. For occurrence of any accident/damage during construction of road by defendant No.1, the defendant No.2 is not liable for any compensation. The plaintiffs had not filed any documentary evidence to show that the plaintiff used to work as tailor and she was earning Rs.9,000/- per month. The plaintiffs have filed a written complaint after 9 days of the incident to Police Station Machalpur. Therefore, it appears that in order to get compensation, false complaint has

been filed by the plaintiff.

6. Learned Trial Court after recording evidence of both the parties, has dismissed the suit. Being aggrieved by the said judgement and decree, the appellants/plaintiff preferred an appeal before the First Appellate Court and the First Appellate Court by the impugned judgement and decree confirmed the judgement and decree passed by the learned Trial Court against the impugned judgement and decree, the present appeal has been filed.

7. Learned counsel for the appellants submits that the judgement and decree passed by both the Courts below are illegal and are not based on proper appreciation of evidence. Both the Courts below have failed to consider the oral and documentary evidence produced by the appellants. Respondent No.1 was ex-parte before the learned Trial Court and has not filed written statement and also had not produced any evidence. Therefore, the learned Courts below have committed error to disbelieve the evidence of plaintiffs. It is further argued that both the Courts below have erred in dismissing the suit and ignored the pleadings made by the appellants. Therefore, the findings of both the Courts below is perverse and against the evidence available on record. Thus, in the light of the aforesaid, he submits that appeal deserves to be admitted on the substantial question of law proposed by the appellants.

8. I have heard learned counsel for the parties and perused the records.

9. Though, the respondent No.1/defendant No.1 was ex-parte before the

learned Trial Court and he has also not filed the written statement but it is well settled that plaintiff has to prove his own case and cannot take advantage of the weakness of the defence. The failure of defendants to establish their case would not enable the plaintiff to a decree.

10. Learned Trial Court as well as the First Appellate Court have considered the oral and documentary evidence, produced by the parties. Learned Trial Court has not found proved that on 12.09.2012 the plaintiff No.1 had sustained injury due to fault and negligence of defendants. Accordingly, learned Trial Court dismissed the suit which was affirmed by the First Appellate Court.

11. Having given my thoughtful consideration to the contention of the learned counsel, I do not find any merit in the same. It is well settled that the plaintiff has to prove his own case and would have to stand on his own legs. Merely because the defendant No.1 remained ex-parte and not filed any written statement, the claim of the plaintiff could not be decreed straightaway.

12. In the judgement of *Vishwanath Agrawal V Sau Sarla Vishwanath Agrawal [(2012) 7 SCC 288]*, the following was held by the Apex Court:-

“30. In Vidhyadhar v. Manikrao and another[16], it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction

under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decision of this Court in Abdul Raheem v. Karnataka Electricity Board & Ors.”

13. In view of the aforesaid, no fault can be found with the judgement and decree passed by the Courts below by dismissing the suit and appeal filed by the appellants. The concurrent finding recorded by the Courts below are based on proper appreciation and assessment of oral and documentary documents on record and do not suffer from any perversity or material irregularity, warranting interference by this court.

14. In such circumstances, no substantial question of law arises for consideration in the present appeal. The appeal being devoid of merits is accordingly **dismissed**. No order as to costs.

(PRAKASH CHANDRA GUPTA)
JUDGE

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