

CWP No.14829-2017

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.14829-2017

Date of Decision:3.12.2019

Krishna Devi and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Saini, Advocate
for the petitioners

Mr.Saurabh Mohunta, DAG Haryana

Mr.Vishal Garg, Advocate
for respondent No.3

RAJIV NARAIN RAINA, J. (ORAL):

1. The prayer in this petition is for issuance of a writ of mandamus directing the respondents to pay compensation to the petitioners for death of Atma Ram-husband of petitioner No.1 in an accident caused by a stray animal.

2. Atma Ram and his brother Gulab Singh were on their way back to their village Dharnia in the late hours on 3.8.2016 riding on motorcycles. Night had fallen and it was about 10.00 PM that the surviving brother Gulab Singh, the only eye witness to the unfortunate incident, would after the fatal accident the next morning state in the police station that a stray bull came suddenly out of the fields along the village road and hit his brother's motorcycle causing him to fall to his

death. He was shifted to hospital where he was declared dead. The post-mortem report attributes death due to injury to vital organ, i.e. the brain, which was ante mortem in nature and sufficient to cause death in the ordinary course of life. To connect the brain injury with the incident would require unimpeachable evidence not likely to come forth except the lone statement of the brother.

3. Atma Ram's mother and her family members have approached this Court for compensation against the Municipal Corporation, Fatehabad and the State of Haryana. The family of the deceased was offered Rs.1 lakh by the State Government under its policy as compensation for death due to injury caused by a bull. The place of occurrence is a village road, running through farmlands close to Dhani Bharat Lal in their native village Dharnia. The State has discharged its liability by payment of Rs.1 lakh under its policy.

4. The Municipal Corporation, Fatehabad is the contesting respondent. It has filed reply to the writ petition stating in paragraphs 4 and 6 of the preliminary objections and para 15 on merits that the spot where the accident took place does not fall within the limits of the Municipal Committee, Fatehabad. There is no rebuttal to this assertion by replication, which has not been filed.

5. The Deputy Commissioner, Fatehabad, in his separate written statement repeats the reply of the Committee. The contents of the written statements are taken as true and correct to the record. If Atma Ram died as a result of injuries caused by a stray bull crossing

the road, the municipality cannot be held liable to pay compensation for none of their fault being not responsible for the accidental death caused outside the limits of the Municipal Committee as it is not charged with duty to either maintain those roads or the farmland in private ownership. If stray bulls roam the village, then the villagers owe a duty to keep themselves safe against any injuries that may be caused by the stray animals coming in the way of commuters all of a sudden and especially in the dark hours. It owed no duty of care and caution.

6. The State is also not responsible for every fatal accident caused by a stray animal for any amount beyond its policy of fixed compensation unless statutory duties enjoined by law on the State demand such an obligation. There is no reliable evidence available except the version of Gulab Singh in the DDR and even that statement does not make out a dependable story for liability to pay compensation by the municipality or the State of Haryana.

7. Besides, it is not the case that Atma Ram was wearing a helmet while riding a two wheeler at the time of the fatal accident resulting from head injury. It can safely be inferred that the deceased did not exercise reasonable care to protect himself even when the law enjoins motorcyclists to wear protective gear when a vehicle is in motion. This is a contributing factor this Court has taken into consideration on principles of *res ipsa loquitur*, there being no indication in the DDR or in the writ petition to the contrary.

8. The contention of the learned counsel for the petitioner that

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there is an admission of liability by Deputy Commissioner, Fatehabad-respondent No.1 in paragraph 14 of the reply, is misconceived. There is no admission of the accident or the liability. The paragraph only recounts the steps taken by the local administration in the rehabilitation of stray cattle and the steps taken to free Fatehabad City from the menace of stray cattle in urban areas. The officer assures that Fatehabad City is almost free from cattle on roads. Without going into the correctness or otherwise of the claim made, the averments in para 14 have nothing to do with the case of the petitioners, who have to stand on their own legs to get compensation.

9. Accordingly, the judgement of this Court in “*Sushma Rani vs. State of Punjab and others*”, 2016(2) RCR (Civil) 289, is of no assistance to the petitioners as that was a case of death in an accident caused collision with a stray bull on a road falling within the urban area and within the territorial jurisdiction of a municipality.

10. For these reasons, I find this petition devoid of merit and is accordingly dismissed. I would also not relegate the petitioner to civil remedy as it would be an empty formality and a sheer wastage of time for the trial Court to run through the stages of trial only to dismiss it ultimately in case a suit is presented.

3.12.2019

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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable-

Yes/No