

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA 29 of 2007

Smt. Mira Rani Sen

W/o Shri Binoy Bhushan Sen
Resident of Khilpara, P.S. RK Pur,
P.O. Khilpara, District-South Tripura.

..... Plaintiff-Appellant

- Vs -

1. Sri Ramkrishna Shil

2. Sri Sunil Shil

3. Smti. Jayanti Shil

4. Sri Pulin Shil

5. Sri Anil Shil

6. Sri Rajat Shil

-all are sons and daughter
of Late Harimohan Shil.

7. Smti. Hashi Shil,

wife of Late Harimohan Shil

-all are residents of vill & PO Khilpara,
PS RK Pur, Dist. South Tripura.

..... Defendant-Respondents

**BEFORE
THE HON'BLE MR. JUSTICE U. B. SAHA**

For the appellant : Mr. AK Bhomwik, Sr. Advocate
Mr. R Dutta, Advocate

For the respondent : Mr. D Bhattacharji, Advocate.

Date of hearing & delivery
of Judgment & order : 22.07.2015.

Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

The instant appeal under Section 100 of the Code of Civil Procedure (**for short, "CPC"**) is filed by the appellant against the appellate judgment and decree dated 19.02.2007 passed by the learned District Judge, South Tripura, Udaipur whereby the Money Appeal No. 02/2006 was dismissed.

2. Heard Mr. AK Bhowmik, learned senior counsel assisted by Mr. R Dutta, learned counsel for the appellant as well as Mr. D Bhattacharji, learned counsel for the respondents.

3. The instant appeal was admitted on the following substantial question of law:-

“(i) Whether the learned courts below erred in dismissing the claim of the appellant-plaintiff for damage/compensation on the ground that the same is misconceived in law as the offending act being criminal in nature, no remedy in civil action is tenable?”

4. The appellant-plaintiff was assaulted by the defendant-respondent No. 1 at the instigation of the other defendant-respondents on 06.06.1994. She had received grievous injuries by sharp cutting weapon on her right arm and was treated in the Tripura Sundari District Hospital, Udaipur. She had also consulted Dr. SB Dutta regarding her injuries. As she could not recover fully, she had to go to CMC Hospital, Vellore where she had to undergo several operations incurring huge expenditure. Ultimately, the appellant-plaintiff became handicapped due to the said injuries.

5. The appellant-plaintiff stating the incident of her injuries and accusing the defendant-respondent instituted a criminal case and the said case was registered as GR Case No. 113 of 1994 and charge was framed only against the accused Ramkrishna Shil, defendant – respondent No.1.

6. The defendant-respondent No. 1 was convicted and sentenced by judgment dated 19.06.1996 in case No. GR 113/1994 passed by the Judicial Magistrate, 1st Class, Court No. 3, Udaipur, South

Tripura to suffer SI for one month under Section 447 IPC and to suffer SI for two years under Section 326 IPC and to pay a fine of Rs. 5,000/- i.d. to make payment of fine money, to suffer further SI for six months. The defendant-respondent No. 1, unsuccessfully challenged the said conviction and sentence before the higher forum.

7. After the aforesaid conviction and sentence upon finding of guilt of the defendant-respondent No. 1, the plaintiff-appellant instituted Money Suit No. 11/1997 on 31.05.1997 in the court of Civil Judge, (Sr. Div), Udaipur, South Tripura claiming recovery of Rs. 1,05,000/- from the defendant-respondents towards compensation for causing injury and sufferings to the plaintiff-appellant by the aforesaid assault. The defendant-respondents submitted a joint written statement in the said suit on 15.12.1997.

8. The Civil Judge, (Sr. Div) Udaipur, South Tripura tried the suit by framing the following issues:

(1) Is the Suit maintainable?

(2) Is the suit barred by limitation?

(3) Whether the Plaintiff is entitled to get compensation against all the Defendants?

(4) Whether the plaintiff is entitled to get any relief as prayed for?

(5) What other relief or reliefs the parties are entitled to?

9. Finally, after hearing the parties and considering the evidence on record the learned Civil Judge by his judgment and decree dated 20.09.2001 dismissed the suit. Against the said judgment and decree the plaintiff preferred an appeal before this Court being

RFA 44/2001 but subsequently the said appeal was transferred to the Court of the learned District Judge, Udaipur, South Tripura for disposal as, in the meantime, the financial power of the learned District Judge was enhanced covering the pecuniary value of the appeal. Upon transmission of the said appeal, the learned District Judge registered the said appeal as Money Appeal No. 02/2006 and by judgment dated 19.02.2007 dismissed the appeal on the ground that since the criminal court did not indicate in the judgment of the criminal case that the respondent-Ramkrishna Shil was liable to pay compensation for the injuries which he had inflicted upon the Appellant besides the sentence to suffer imprisonment; there was no scope on the part of the Appellant to claim compensation and no suit for tortuous liabilities would lie against the Respondent No. 1.

10. Being aggrieved by the judgment of the learned first appellate court, the plaintiff-appellant preferred the instant second appeal.

11. Mr. Bhowmik, learned senior counsel for the plaintiff-appellant submits that even if the criminal court while convicting and sentencing the defendant-respondent No. 1 did not pass any order of compensation, then also a civil suit could be filed before the Civil Court for compensation in terms of Section 357 of the Code of Criminal Procedure (**for short, "CrPC"**).

12. He also submits that both the trial court as well as the first appellate court committed error dismissing the suit as well as the

appeal on the ground that the offending act being criminal in nature, no remedy in civil action could be possible.

13. He further submits that awarding of compensation under Section 357 CrPC is the discretion of the criminal court. Compensation may or may not be granted by a criminal court but mere non-granting of compensation by the criminal court does not by itself govern the proceedings in a civil suit.

14. Mr. Bhattacharji, learned counsel appearing for the defendant-respondents in his usual fairness submits that in a criminal case, the Court is to decide as to whether penal action should be taken up or not for commission of offence and also whether any compensation should be awarded or not either in the nature of fine or in any other way. In the instant case, only the defendant-respondent No. 1 was convicted by the trial court which was upheld by the High Court and the other defendant-respondents were acquitted. So, no civil suit would lie against the other defendant-respondents for causing damage, as alleged.

15. This Court has gone through the judgment of both the trial court and the appellate court. It appears from the judgment of the trial court, that the trial court decided issue No. 3 in negative as the revision petition filed by the defendant-respondent No. 1 against the order of conviction and sentence passed by the appellate court was pending before the High Court.

16. On the other hand, the first appellate court dismissed the appeal as the defendant-respondent No. 1 had already undergone

imprisonment as per the judgment and sentence of the criminal court and as there was no indication in the judgment of the criminal court that the defendant-respondent No. 1 was liable to pay any compensation for the injuries which he had inflicted upon the plaintiff-appellant, the plaintiff-appellant had no scope to claim any amount from the defendant-respondent No. 1 as compensation in terms of cash amount.

17. This Court is unable to accept the said findings of the trial court as well as the appellate court. Section 357 CrPC (omitting unnecessary portions) reads thus:

"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) ** ** ** ***

(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) ** ** ** ***

(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."

18. Under Section 357 of the Code of Criminal Procedure, the Criminal Court may award compensation to the victim either under Sub-section (1) (b) or under Sub-section (3). When the Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may award compensation to any person for any loss or injury caused by the offence under Clause (b) of Sub-section (1) of Section 357, if in the opinion of the Court compensation is recoverable by such person in a Civil Court. Even when the fine does not form part of the sentence, the Court may award compensation to the victim, payable by the accused person, as per Sub-section (3) of Section 357. It is not provided in Sub-section (3) of Section 357 that the person to whom compensation is to be awarded must be a person who could recover such compensation in a Civil Court, as is the case in Clause (b) of Sub-section (1) of Section 357 of the Code of Criminal Procedure. Sub-section (4) provides that the Appellate Court or the Revisional Court may also pass an order under Section 357.

19. Relying on Sub-section (5) of Section 357, Mr. Bhomwik submits that since the Civil Court shall take into account any sum paid or recovered as compensation under Section 357 of CrPC, at the time of awarding compensation in the civil suit, it cannot be said that civil suit does not lie for claiming monetary compensation for causing damage or injury to the body of the plaintiff-appellant.

20. In **Suba Singh and Anr. Vs. Davinder Kaur and Anr.**, reported in **(2011) 13 SCC 296**, the Apex Court in paragraph 14 and 15 held as under:

“14. 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.

15. 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 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 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.”

21. After going through the provisions of Section 357 CrPC as well as the judgment of the Apex Court in **Suba Singh** (supra) this Court is of the considered opinion that a civil suit is not barred for claiming money as damages from a person who was convicted and sentenced by a criminal court without

awarding any compensation for the injury and the sufferings caused to the victim.

22. In the instant case, admittedly the plaintiff-appellant received grievous injuries on her right arm inflicted by the defendant-respondent No. 1 using sharp cutting weapon and she had consulted the doctors regarding the injuries and also went to CMC Hospital where she had incurred huge expenditure for her treatment and in view of the provisions of Section 357 CrPC, a person like the plaintiff-appellant who sustained bodily injury due to the wrongful act of the defendant-respondent No.1, can claim compensation by way of preferring civil suit. The learned appellate Court dismissed the appeal on the ground that the offending act being criminal in nature, no remedy in civil action is tenable, is contrary to the prescriptions of Section 357 CrPC. Thus, the substantial question of law formulated by this Court is answered accordingly.

23. The judgments of both the trial court as well as the first appellate court are hereby set aside and the matter is remanded back to the trial court to decide the same afresh after providing all opportunities to the parties, in accordance with law.

24. It is open to the respondents, i.e. the defendants in the suit, to raise the question of maintainability of the suit or any other question of law, at the time of hearing of the suit.

25. The trial court is directed to issue notice upon the parties so that they can appear on the date fixed. As the suit was filed in the year 1997, the trial court shall try to dispose of the suit preferable within six months from today.

26. In the result, the appeal is allowed. Send down the LCR forthwith.

JUDGE

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