

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.1219 of 2013 (O&M)
Date of decision : 01.04.2016**

Roshan Singh and others

.....Appellants

Versus

Harpal Singh

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Sarwinder Goyal, Advocate for appellants.

Mr. D.S. Malwai, Advocate for respondent.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-defendants against the judgment and decree dated 18.12.2012 passed by the learned Additional District Judge, Barnala, whereby the appeal filed by them against the judgment and decree dated 11.06.2012 passed by the learned Additional Civil Judge (Senior Division), Barnala has been dismissed.

2. For the sake of convenience, the status of the parties shall

be mentioned as per their status in the original suit.

3. Plaintiff-respondent Harpal Singh filed a suit for recovery of an amount of Rs.2,00,000/- on account of damages on the allegations that on 04.02.2001 at about 01:00 pm, the appellants caused him injuries with their respective weapons. FIR No.32 dated 05.02.2001 under sections 307/324/323/34 IPC was registered against the appellants-defendants and they faced the trial. The plaintiff-respondent was shifted to DMC Hospital, Ludhiana. He incurred the expenses to the tune of Rs.2,00,000/-. He remained confined to bed for about one year and was unable to do his work during that period and suffered the loss of earning to the tune of Rs.20,000/-. He also suffered the pain and agony to the extent of Rs.20,000/-. He also spent Rs.30,000/- on diet etc. Hence the suit for grant of compensation/damages to the tune of Rs.2,00,000/-.

4. The appellants-defendants contested the suit on the grounds *inter alia* that no such occurrence has taken place on 04.02.2001 as alleged by the plaintiff. The defendants were also not armed with any weapon nor they caused any injuries to the plaintiff as alleged by him. The plaintiff and Gurbachan Singh has obtained the medical reports on the basis of self-suffered injuries. False criminal case has been got registered against them. They also denied that plaintiff remained admitted in DMC, Ludhiana. Finally they pleaded that plaintiff is not entitled for any damages and prayed for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 11.06.2004 :-

1. Whether plaintiff is entitled to recover suit amount from

defendant? OPP

2. Whether suit of plaintiff is within limitation? OPP

3. Whether suit is false and frivolous? OPD

4. Relief.

6. On appreciation of evidence and material on record, the learned trial Court held that plaintiff is entitled to recovery of Rs.65,000/- as damages from the appellants-defendants.

7. The appellants-defendants preferred the appeal against the aforesaid judgment and decree which was also dismissed by learned Additional District Judge, Barnala vide impugned judgment and decree dated 18.12.2012. Hence, this regular second appeal.

8. I have heard Mr. Sarwinder Goyal, Advocate, learned counsel for appellants, Mr. D.S. Malwai, Advocate, learned counsel for respondent and have carefully gone through the paper-book and record of the case.

9. Learned counsel for the appellants contended that the suit filed by the plaintiff-respondent was time barred. The alleged occurrence has taken place on 04.02.2001 but the suit was filed on 10.04.2004. He further contended that the plaintiff-respondent has not examined any doctor from whom he had received the treatment. The name of the doctor is also not mentioned on any bill. He further contended that the appeal against the conviction is still pending before this Court. Thus, the conviction of the appellants has not become final. He contended that in fact no such occurrence has taken place nor the appellants have caused any injuries to the plaintiff-respondent. A false case was got registered

against the appellants by the plaintiff by manipulating the false medical reports. Thus, he contended that the impugned judgment and decree are not sustainable.

10. On the other hand, learned counsel for the plaintiff-respondent contended that earlier the plaintiff has filed the application seeking permission to file the suit as indigent person. The said application was filed on 12.10.2001. As per Section 13 of the Limitation Act, 1993 (hereinafter called the 'Act') the period spent for prosecuting the said application is liable to be excluded from the period of limitation. Thus, he contended that the suit is within limitation.

11. He further contended that the civil and criminal remedies are separate. Mere pendency of the appeal against conviction is no ground to decline the damages to the plaintiff. He further contended that from the evidence adduced by the plaintiff it is establish that he has suffered severe injuries at the hands of the appellants. He remained hospitalised at DMC Hospital, Ludhiana and spent huge amount on his treatment. He also suffered pain and agony and loss of income. Thus, he contended that there is no illegality in the findings recorded by the learned Courts below.

12. I have duly considered the aforesaid contentions.

13. The plea raised by learned counsel for the appellants that the suit was time barred is totally devoid of merits. The record of the case shows that the plaintiff-respondent has filed the application under Order 33 Rules 1 & 2 of the Code of Civil Procedure, 1908 for declaring him as indigent person. The said application was dismissed by the learned trial

Court on 15.03.2004 and the plaintiff-respondent was directed to file the *ad valorem* court fees. Thus, the period from 12.10.2001 to 15.3.2004 is liable to be excluded for computing the period of limitation prescribed for the suit as per the provisions of Section 13 of the Act. After excluding that period, the suit is well within time.

14. Plaintiff-respondent Harpal Singh has stepped into the witness box as PW-1 and has deposed in detail about the occurrence which took place on 04.02.2001. He categorically deposed about the injuries caused to him by the police with their respective weapons and the expenses incurred by him on his treatment and other non-pecuniary loss. The version of the plaintiff has been fully supported by PW-2 Gurbachan Singh, the another injured witness. This oral evidence is also supported from the testimony of PW-4 Dr. K.G. Singla, Medical Officer, Civil Hospital, Barnala, who has medico legally examined the plaintiff. He has found five incised wound on the person of the plaintiff. Sixth injury was red abrasion. PW-3 Mangat Ram, Cashier has proved the bills regarding the treatment of the plaintiff. The evidence adduced by the appellants is not sufficient to rebut the cogent and convincing evidence adduced by the plaintiff. The plea raised by learned counsel for the appellants that the doctor who has conducted the treatment of the plaintiff has not been examined, is of no substance as it is established from the evidence on record that the plaintiff-respondent has been caused injuries on his person by the appellants and he has received the treatment from DMC Ludhiana. The expenses incurred by him are also proved from the documents produced by PW3 Mangat Ram, Cashier.

15. This fact has not been disputed at bar by learned counsel for the respondent that the appeal against the conviction filed by the appellants is pending before this Court. This fact is also not disputed that the learned Additional Sessions Judge has convicted only appellants No.1 to 3, whereas appellants No.4 & 5 have been acquitted. There is no dispute with the proposition that if a transaction gives rise to the civil as well as criminal liability, the aggrieved person can avail both the remedies. It is also settled principle of law that the approach to appreciate the evidence in the criminal case is materially different from the civil action. In the criminal case, it is incumbent for the prosecution to prove the guilt of the accused beyond shadow of reasonable doubt *i.e.* to a point of certainty. But in the civil cases, the rights of the parties are to be adjudicated upon on mere preponderance of probabilities. Thus, the acquittal of appellants Inder Kaur and Bala is no ground to non-suit the plaintiff-respondent to claim the damages as in the present suit the liability of the appellants was to be determined independently on the basis of the evidence adduced by the parties in the suit. Consequently, the judgment in the criminal case cannot govern the determination of the matter in controversy when the plaintiff-respondent has led cogent and convincing evidence to prove the plea raised by him in the plaint. DW1 Dr. Narsi Ram, Medical Officer, Civil Hospital Barnala has medico legally examined appellant No.1 Roshan Singh. This evidence rather corroborates the plea of the plaintiff about the occurrence as well as the presence of appellant Roshan Singh. Mere denial of the occurrence in the statement of the witnesses examined by the defendants is not sufficient to

rebut the evidence adduced by the plaintiff-respondent. Thus, I have no reason to differ with the concurrent findings arrived at by the learned courts below that on the strength of the evidence adduced by the plaintiff-respondent, he has been able to prove by preponderance of probabilities that appellants-defendants have caused physical loss to the plaintiff by way of their culpable act, which is also corroborated from the judgment of the criminal court Ex.P95.

16. At the time of the arguments, no serious dispute has been raised with respect to the quantum of damages determined by the learned courts below.

17. Consequently, no case is made out to interfere with the concurrent findings recorded by the learned courts below. Therefore, the present appeal being without any merits is hereby dismissed with no order as to costs.

01.04.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**