

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

R.S.A. No.1560 of 2014 (O&M)

Date of decision: 11.04.2016

Balwinder Singh

..Appellant

Versus

Balbir Singh and others

..Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. A. S. Jattana, Advocate
for the appellant.

Mr. Ashok Bhardwaj, Advocate
for the respondents.

Jitendra Chauhan, J.

CM NO.3720-C of 2014

Heard.

For the reasons contained in the application, which is
duly supported by affidavit, same is allowed and delay of 3034 days
in re-filing the present appeal is condoned.

Main Case

This regular second appeal is directed against the
judgment and decree dated 09.08.2005, passed by learned Additional

District Judge, Sangrur (for short, the 'first Appellate Court') whereby, the appeal filed by the defendant-respondents, against the judgment and decree dated 21.02.2005, passed by learned Additional Civil Judge, (Sr. Divn.), Sangrur, (for short, the 'trial Court') partly decreeing the suit of the plaintiff-appellant, has been allowed.

The brief facts of the case are that the plaintiff-appellant had filed a suit for recovery of ₹2 lacs on account of damages/injuries/compensation for causing injuries on the person of the appellant by defendant-respondents. On the statement of eye-witness, Nirbhai Singh, FIR was registered against the respondents who were convicted in Sessions Case No.71 dated 31.08.2000, RBT No.17 of 16.07.2001 titled as 'State Vs. Balbir Singh and others' decided on 15.10.2001. In the suit, it is averred that due to the injuries the appellant remained under treatment for about five months and incurred huge amount on medical treatment as he was advised to take balanced diet and two attendants were required to look after him. Even at the time of filing the suit, the appellant was still under treatment. The appellant underwent a surgery at Civil Hospital, Sangrur as has come in the statement of Dr. Karamjit Singh and spent ₹12,000/- on account of placement of plate in his thigh. It is further asserted that the appellant had to undergo another operation as plate was not properly affixed in his thigh and incurred expenses of ₹20,000/-. He had to remain admitted for a period of 1 ½ months.

However, surgery not being successful, the appellant was admitted in Dr. Gulzar's Hospital at Malerkotla to get the plate removed, fitted in his thigh, wherein, ₹13,000/- was spent. It is averred that the appellant in this manner spent ₹45,000/- on the operations, and prior thereto he had been earning ₹1,89,000/- per annum from agriculture as he owned 12 bighas of land in his own name and had taken 30 bighas of land from his uncle Jaggar Singh on lease, who was the owner of 70 bighas of land. The appellant had also engaged an attendant to look after him for ₹2,000 per month. The appellant examined Nirbhay Singh, who narrated the injuries inflicted upon the appellant in the same manner as the appellant.

The trial Court after appreciating the evidence on record and the statement of PW3, Dr. Suresh Kumar Singla, who carried out X-ray upon the appellant, granted a decree of ₹60,000/- as damages with interest @ 12% per annum from the date of filing the suit upto realization thereof with proportionate costs.

Feeling aggrieved against the judgment and decree dated 21.02.2005, the respondents preferred an appeal, whereby the damages allowed to the appellant were reduced from Rs.60,000/- to Rs.20,000/-.

Hence, the present appeal by the plaintiff.

It is contended that the injury on the person of the appellant and the expenses incurred during his treatment are duly

proved on the basis of statement of the doctors and the receipt produced by him. The appeal preferred by the respondents against the conviction by the trial Court has also been dismissed. Therefore, it is asserted that the learned Ist Appellate Court was not justified in reducing the damages. From the statement of PW2, Dr. Suresh K. Singla, who carried X-ray on the appellant, it is noticed that there was no bone injury on X-ray skull, nasal bones, PNS and right forearm and elbow. Dr. Suresh K. Singla further stated that the right hand of the appellant had showed fracture of meta-corporal bone and proximal phalynx of little finger of right hand. He has proved that there was fracture of proximal phalynx of ring finger of right hand and X-ray left hand showed fracture of distil phalynx of thumb of left hand and X-ray of left knee showed fracture of femur of left thigh at the lower end of the appellant. However, the learned counsel for the appellant fairly admits that no document was produced on record with regard to expenses incurred by him.

On the other hand, the learned counsel for the respondents contends that except MLR there is no evidence on record to establish that from which doctor the appellant had taken the treatment and no medical bills were brought on record. Therefore, the learned Ist Appellate Court has rightly reduced the amount of compensation and the present appeal deserves to be dismissed. However, he admits the injuries suffered by the appellant, but not at

the hands of the respondents.

I have heard the learned counsel for the parties and carefully gone through the record.

In the present appeal, the issue pertains to the damages/expenses, the appellant had to incur on account of injuries suffered by him. It has been noticed by the learned Ist Appellate Court that though the compensation could be assessed on the basis of some guess-work, however, the same has to be based on certain logic. In the instant case, the appellant has not placed on record any document/bill regarding his treatment, which is an admitted fact. Though, the statement of the doctors prove that there were fractures on the person of the appellant, yet the treating doctor was not examined in the instant case. The learned Ist Appellate Court has decreased the amount of compensation on the ground that no document with regard to expenses incurred was placed on record and the decree was modified to the extent of ₹20,000/- only on the ground that the fracture was noticed.

Keeping in view the fracture on the person of the appellant and in the absence of any other evidence on record with regard to expenses incurred, amount of ₹60,000/- awarded by the trial Court to the appellant was on higher side. Therefore, in view of the admitted position that no document with regard to expenses incurred on the treatment was placed on record, it may very safely be

said that judgment and decree passed by the learned Ist Appellate Court do not suffer from any illegality or perversity.

No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for.

Dismissed.

11.04.2016

ashok

(JITENDRA CHAUHAN)
JUDGE