

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

**RSA 4589/2009(O&M)
Date of decision:10.10.2017**

Shamsher Singh(since deceased)through LRS and another

.....Appellants

v.

Gindo

.....Respondent

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.Paramjit Batta,Advocate for the appellants.

Mr.Ramandeep Kaur,Advocate for
Mr.Vikram Singh,Advocate for the respondent.

Jaswant Singh,J,(Oral).

Appellants/defendants are in appeal against the judgments and decrees passed by the Courts below whereby suit of the respondent/plaintiff-Gindo for damages was decreed by learned Addl. Civil Judge (Senior Division)Moonak, to the extent of Rs.2.50 lacs vide judgment and decree dated 4.12.2008 and the appeal filed by defendants was partly allowed by the Additional District Judge,Sangrur on 5.9.2009 restricting the damages to Rs.1.70 lacs and out of the said damages liability of defendants Bachna Ram and Sansi Singh-defendants 2 and 3 was confined to Rs. 1 lac only.

Facts giving rise to the present second appeal are that Nirmal @ Nikki daughter of plaintiff/respondent-Gindo was married to appellant/defendant no.1-Shamsher Singh on 5.11.2000. Respondent no.2-

Bachna Ram is father of said Shamsher Singh. Tek Singh, brother of

plaintiff-Gindo, on 22.3.2001 at about 7 a.m., received the sad news about death of said Nirmal @ Nikki in her matrimonial home due to administration of some poisonous substance. On the previous day i.e. 21.3.2001 said Tek Singh had visited Nirmal @ Nikki to meet her and at that time he was told by Nirmal @ Nikki that Shamsher Singh defendant used to quarrel with her. Allegations of demand of dowry were also levelled. On the statement of said Tek Singh, FIR No.38 dated 22.3.2001 under Sections 304-B/498-A IPC was registered in PS Khanauri against Shamsher Singh-defendant no.1. Investigations were carried out by the police. In the post mortem report, aluminum phosphate was stated to have been found in the viscera of the deceased Nirmal @ Nikki. On conclusion of trial, Shamsher Singh was convicted and sentenced to undergo RI for 10 years. It was thus alleged that defendants were responsible for the death of Nirmla @ Nikki on account of demand of dowry.

In this backdrop, plaintiff-Gindo filed suit for damages with the averments that she had spent about Rs.1.50 lacs on the marriage of her daughter Nirmal @ Nikki, i.e. expenses incurred on solemnization of marriage and towards istri dhan. Another sum of Rs.1 lac was claimed on account of pain and mental agony suffered by plaintiff-Gindo due to death of Nirmal @ Nikki.

Upon notice, defendants entered appearance and contested the suit. However, later on defendants 2 and 3 i.e. father and grandfather of Shamsher Singh-defendant no.1 were proceeded against ex parte vide order dated 25.4.2005. On the pleading of the parties, issues were framed. Both sides led evidence.

The learned trial court vide impugned judgment and decree

dated 4.12.2008 held that plaintiff was entitled to the claimed damages of Rs.2.50 lacs i.e. Rs.50,000/- on account of expenses incurred on marriage ceremony, Rs.1 lac towards istri dhan and Rs.1 lac towards mental pain and agony suffered by plaintiff-Gindo.

Defendants preferred an appeal against the said judgment and decree dated 4.12.2008. The learned Additional District Judge, Sangrur vide judgment and decree dated 5.9.2009 partly allowed the appeal by reducing the quantum of damages from Rs.2.50 lacs to Rs.1.70 lacs i.e. Rs.1 lac towards dowry articles, Rs.20,000/- towards marriage expenses and Rs.50,000/- towards mental pain and agony. Further, liability of Bachna Ram and Sansi Singh i.e. father and grandfather of Shamsheer Singh, defendant no.1 was restricted to the tune of Rs.1 lac whereas liability of appellant/defendant no.1 was extended to the entire amount awarded to the plaintiff-Gindo. Hence the present second appeal.

Heard learned counsel for the parties.

It is submitted by the learned counsel for the appellants that against his conviction and sentence, appellant no.1-Shamsheer Singh filed an appeal before this Court which is still pending. It is further submitted that the judgments and decrees have been passed by the Courts below without application of judicial mind to issues involved. It is then submitted that there is no evidence qua plea regarding deceased having been treated with cruelty.

During the course of hearing on 25.9.2017 learned counsel for the respondent/plaintiff brought to the notice of this Court that the Criminal Appeal filed by Shamsheer Singh-defendant/appellant no.1, bearing CRA-S-1764-SB/2002 was decided by this Court vide order dated 9.2.2011

whereby while affirming the grounds of conviction the sentence was reduced to RI for 7 years instead of RI for 10 years. Thus, the first argument of the learned counsel for the appellant no longer exists to be adjudicated upon. In response, learned counsel for the appellant has not been able to show anything to the contrary.

As regards the submission regarding absence of evidence qua plea regarding deceased having been treated with cruelty, it may be noticed here that it has come in the evidence and discussed by the Courts below that marriage of deceased Nirmal @ Nikki and defendant no.1 Shamsheer Singh was solemnized on 5.11.2000 while the deceased died of poisoning on 22.3.2001 in her matrimonial home i.e. within six months of her marriage. Tek Singh, maternal uncle of deceased Nikki while appearing in the witness box as PW1 had stated that on 21.3.2001 he had visited the matrimonial home of deceased who told him that defendants used to maltreat her and used to demand more dowry. Even on the day of his visit the husband and wife had a quarrel and defendant/appellant no.1 Shamsheer Singh had declared that either of them will die. Further Dr. Hardeep Sharma, who conducted post mortem examination of Nirmala @ Nikki deposed that as per post mortem report Ex.P1, the cause of death was due to aluminum phosphate, a poisonous substance. Thus it stood proved that deceased Nirmal @ Nikki had died an unnatural death in her matrimonial home within six months of her marriage with defendant no.1. Thus, the claim of the plaintiff-Gendo that her daughter had died due to maltreatment meted out to deceased at the hands of her in-laws has rightly been accepted by the Courts below.

As regards the quantum of damages towards istri dhan,

marriage expenses and damages towards mental pain and agony, this Court finds no illegality or irregularity in the findings arrived at by the Courts below. While assessing the quantum of damages, the learned trial court has relied upon evidence of Tek Singh,PW1 who stated that plaintiff-Gindo had given dowry worth Rs.1 lac while Rs.50,000/- were spent on marriage function. Similarly, Harpal Singh,PW5 deposed that he was working as a Goldsmith and Gindo got prepared jewellery worth Rs.20,000/- from him and entire amount was paid by plaintiff-Gindo. The learned appellate Court while modifying the decree has reduced damages by taking marriage expenses Rs.20,000/-, Rs.50,000/- towards non-pecuniary damages and Rs.1 lac towards istri dhan, totalling Rs.1.70 lacs. The amount of damages determined by the appellate Court, in my opinion, cannot be said to be either based on no evidence or on higher side and is hereby affirmed.

Besides what has been discussed above,no question of law much less substantial question of law arises for determination in this appeal.

Dismissed.

10.10.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No