

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

R.S.A.No.1674 of 2013 (O&M)

Date of Decision: May 07, 2018

Jagan Nath Goyal

...Appellant

Versus

Municipal Council, Sangrur

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr.Ashok Bhardwaj, Advocate,
for the appellant.**

**Mr.Mehardeep Singh, Advocate,
for the respondent.**

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings of fact, whereby the suit filed by him claiming damages to the tune of ₹2,00,000/-, has been dismissed by the trial Court and reiterated by the Lower Appellate Court.

The aforementioned suit was filed on the premise that on 25.1.2003 at about 8.30 PM, the appellant-plaintiff was passing through the street near Mata Rani Gali, Dhuri Gate Sangrur on a bicycle when he fell into the sewerage hole dug by the defendant-Municipal Council, Sangrur. As a result of the aforementioned incident, he suffered a fracture on the right hand and injuries on wrist, arm joint and dislocation. There was also a crack in one bone. One Rakesh Kumar @ Pappu, who was passing from that place, dragged him out from the sewerage ditch and his cycle. On hearing the noise, Rajiv Kumar son of Dr.Gian Chand Kansal came out

from his house and took the appellant-plaintiff to the Civil Hospital, Sangrur. He was attended by Dr.H.S.Bali in the Emergency Wing and suggested to get it X-rayed and certain other necessary tests. The sewerage hole ditch was so much dangerous and in view of the aforementioned fact, he remained confined to bed for 40 days and, thus, claimed damages.

Upon notice, the defendants contested the suit by raising objection that there was no uncovered sewerage hole in the Mata Rani Gali as no such complaint had been received from the inhabitants of the area. The appellant-plaintiff is habitual of filing false suits. Previously also, he filed a suit against the defendant, which is pending.

On the basis of the pleadings of the parties to the lis, the trial Court framed the following issues:-

- “1) Whether the plaintiff is entitled to any damages for injuries caused to him from the defendant? If so to what extent? OPP*
- 2) Whether the plaintiff has got no cause of action to file the present suit? OPD*
- 3) Relief.”*

In support of his case, the appellant-plaintiff examined Veerinder Pal as PW-1, Dr.H.S.Bali PW-2, Rajiv Bansal PW-4, plaintiff himself appeared as PW-5 and Ashok Kumar Mahajan PW-6. On the other hand, the defendant examined Jasbir Singh Sanitary Inspector DW-1 and Jai Singh Clerk DW-2.

On the basis of the evidence on record, the trial Court dismissed the suit and the appeal laid before the Lower Appellate Court also met with the same fate.

Mr.Ashok Bhardwaj, learned counsel for the appellant-plaintiff submitted that the Courts below have not adverted to the statement of PW-2

Dr.H.S.Bali, who examined the appellant-plaintiff. The appellant suffered the injuries on his right wrist and advised X-ray. He was referred to Orthopedic Surgeon. PW-2 stated that he was on emergency duty and the appellant sustained numerous injuries. Photographs Ex.P1 to Ex.P5 proved the sewerage hole, but despite that the evidence aforementioned had not been adverted to, resulting into dismissal of the suit, which is gross illegality and perversity.

Per contra, Mr.Mehardeep Singh, learned counsel representing the respondent-Municipal Council, Sangrur submitted that the appellant-plaintiff miserably failed to discharge the onus, for, no Surgeon, who had allegedly treated him or put the plaster or performed the surgery has been examined, much less the medical evidence. No inhabitant of the area had been examined to prove that there was a ditch. The photographs did not establish per pleaded case of the appellant-plaintiff and rightly so, dismissed the suit and, thus, prayed for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant, for, the appellant has miserably failed to prove the fact that he had actually sustained the injuries on account of the fall in the ditch. The photographs do not depict that there was a ditch. No evidence has been brought on record to establish that some repair work was going on in the street where the appellant allegedly fell. Best piece of evidence, i.e., orthopedic record has been withheld, much less medical evidence. It was a fallacious litigation on behalf of the appellant, which lacked the direct and cogent evidence. The argument of Mr.Bhardwaj is not able to cut ice to bring the case within the realm of

illegality or perversity to enable me to form a different opinion than the one arrived at.

For the reasons stated above, I do not find any illegality or perversity in the concurrent findings, much less no question of law arises for determination. Resultantly, the appeal is dismissed.

May 07, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No