

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3785 of 2016 (O&M)

Date of Decision: May 13th, 2018

Dara Singh

...Appellant

Versus

Jasmail Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Yaseen Sethi, Advocate for
Mr.Harpreet Singh Jakhal, Advocate,
for the appellant.

AMIT RAWAL, J.

CM No.9851-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 57 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.3785 of 2016

Appellant-defendant No.1 is in Regular Second Appeal against the decretal of the suit for recovery of ₹5,00,000/- along with interest @ 9% per annum on account of the injuries suffered by the respondent-plaintiff.

Respondent-plaintiff instituted the aforementioned suit on the premise that on 19.5.2007 at about 10.20 PM, defendants had given fire shot from 12 bore double barrel gun towards the plaintiff and his brothers Gurmail Singh and Ajmer Singh. However, Gurmail Singh died at the spot and respondent-plaintiff received fire arm injuries on his left arm and legs.

He was admitted in Civil Hospital, Fazilka. FIR bearing No.147 dated

20.5.2007 under Sections 302/307/325/34 IPC and 25/27/54/59 of the Arms Act was registered against defendant Nos.1 and 2. Defendant Nos.1 and 2 had been convicted. Owing to the aforementioned injuries, the respondent-plaintiff incurred expenses of ₹5,00,000/- on the treatment, thus, claimed the compensation to the tune of ₹7,50,000/-.

The aforementioned suit was contested by the defendants by raising preliminary objections qua maintainability, estoppel, locus standi and concealment of the fact. Extension of the threat and gun fire was denied.

Since the parties were at variance, the trial Court framed four issues including the issue of relief. The same read thus:-

1. Whether plaintiff is entitled to recover the suit amount as prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
4. Relief.

Respondent-plaintiff, in support of his case, himself appeared as PW-1 and also examined Darshan Singh PW2 and Dr.Sandeep Gilhotra PW-3., whereas defendant No.1 stepped into the witness box as DW-1 and brought on record judgment dated 17.4.2012.

On the basis of the evidence, the trial Court decreed the suit and the appeal preferred before the Lower Appellate Court was dismissed.

Mr.Yaseen Sethi, Advocate for Mr.Harpreet Singh Jakhal, learned counsel appearing on behalf of the appellant-defendant submitted

that the judgments and decrees of the Courts below are not sustainable in the eyes of law as the Courts below ought to have awarded the compensation by applying formula as applicable under the Motor Vehicles Act. The amount of compensation of ₹5,00,000/- along with interest @ 9% is on the higher side. There is a remedy provided under Section 357 Cr.P.C. for awarding compensation, but the criminal court did not exercise the power and, therefore, the civil suit was not maintainable. The plaintiff has miserably failed to prove the fact that he has actually become handicapped and could not perform the agricultural activities and, thus, urged this Court for setting-aside the findings under challenge.

I have heard the learned counsel for the appellant-defendant, 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-defendant, for, the respondent-plaintiff brought on record documents Ex.P1 to Ex.P45, i.e., Ex.P15 to Ex.P45 medical bills, Ex.P2 OPD slip, Ex.P3 and Ex.P13 discharge summary, Ex.P4 to Ex.P11 OPX Card, Ex.P3/A MLR, Ex.P12 prescription slip and Ex.P14 OPD card to establish that he had received injuries on account of the fire arm. The medical bills produced on record were found justified by the Courts below.

It has been brought on record that the respondent-plaintiff was having six members in the family, i.e., wife, three sons aged about 18 years, 14 years and 12 years and one daughter aged 20 years. All were un-married and studying. The Courts below rightly awarded the compensation to the tune of ₹5,00,000/-, i.e., ₹3,00,000/- on account of medical expenses, transportation, special diet etc. and ₹2,00,000/- for the mental suffering and shock. The interest @ 9% cannot be said to be on the higher side.

The evidence brought on record was unclinched, which had not been rebutted by the defendants by placing on record any documents.

For the reasons stated above, I am of the view that the findings arrived at by the Courts below are perfectly legal and justified. The same do not suffer from any illegality or perversity. No ground for interference is made out, much less any substantial question arises for determination by this Court.

Accordingly, the appeal stands dismissed.

May 13th, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No