IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4822 of 2016 (O/M)
Date of decision : 1.5.2018

Rajinder Pal Singh alias Pappu ........ Appellant

Versus

Sukhjeet Kaur and others ....... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikas Bahl, Senior Advocate, with,
Ms. Japneet Kaur, Advocate,
for appellant.

Mr. L.S. Sidhu, Advocate,
for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

Impugned in regular second appeal is judgment dated 8.7.2016, passed by learned Additional Sessions Judge, Patiala, affirming judgment and decree dated 14.8.2013, passed by learned Additional Civil Judge (Senior Division), Patiala, vide which suit of plaintiffs was decreed against defendant Rajinder Pal Singh alias Pappu. Plaintiffs were held entitled to recovery of Rs. 20,00,000/- from defendant Rajinder Pal Singh alias Pappu on account of damages due to murder of Gurjit Singh alongwith interest at the rate of 6 per cent per annum from the date of institution of suit till date of decree. Plaintiffs were also held entitled for future interest at the rate of 6 per cent per annum on the said amount of Rs. 20,00,000/- from Rajinder Pal

Singh alias Pappu (defendant).

Brief facts of the case which are required to be noticed for purpose of disposal of this appeal are that on 5.3.2005, at about 1:30 PM, Gurjit Singh (since deceased) alongwith Teja Singh son of Narata Singh (also deceased) was about to go in Tata Siera bearing registration No. PB-11-H-0416, parked in front of Lamba Bakery and was to go towards Brahm Kumari Ashram, backside of Modi College, Patiala, defendant Rajinder Pal Singh alias Pappu came in a white Maruti car bearing registration No. PB-11-R-5488 from behind. He was armed with 12 bore gun. He stopped his car in front of vehicle of Gurjit Singh and fired two shots upon Gurjit Singh which hit him near the right side of neck and the ear. Teja Singh came out of car and ran towards back side. Defendant then fired a shot on Teja Singh which hit him on his back and he fell down. The occurrence was witnessed by Ranbir Singh, Karamjit Singh and Narinder Singh who raised alarm. Rajinder Pal Singh fled away from the spot. Gurjit Singh was taken to Rajindera Hospital, Patiala, where he was declared brought dead. Teja Singh was also taken to said hospital, but he succumbed to injuries. Plaintiffs claim that deceased Gurjit Singh was husband of plaintiff No. 1 and father of minor plaintiffs No. 2 and 3 and son of defendant No. 2. Gurjit Singh was 35 years of age and was having a flourishing farming as well as business of commission agent under the name and style of M/s Gurjit Singh Chand Singh being partner. He was regular income tax assessee and earning Rs. 45,000/- per month. He was spending Rs. 30,000/- per month on plaintiffs. On account of murder of Gurjit Singh, plaintiffs suffered loss to the tune of Rs. 50,00,000/- for which they claim damages.

In the written statement, defendant denied to have murdered Gurjit Singh and Teja Singh. The income and job of deceased was also denied. Parties went on trial on following issues :-

1. Whether the plaintiffs are entitled to damages on account of the death of Gurjit Singh caused by the defendant, if so, to what amount ? OPP

2. Whether suit in present form is not maintainable ? OPD

3. Whether the suit is bad for mis joinder of cause of action ? OPD

4. Whether the suit is within time ? OPP

5. Relief.

Trial Court held that deceased Gurjit Singh was murdered by Rajinder Pal Singh alias Pappu (defendant). It considered the income tax returns of deceased and awarded compensation to the tune of Rs.20,00,000/-.

In the appeal, lower appellate Court held that deceased was having business income of Rs. 63,910/- per annum and Rs. 80,000/- per annum as agriculture income. Therefore, it was held that deceased must be earning Rs. 10,000/- per month. His annual income was calculated at Rs. 1,20,000/-. Multiplier of 15 was applied keeping in view the age of deceased who is stated to be 35 years. Therefore, while applying the authority of *Sarla Verma and others Versus Delhi Transport Corporation and another*, 2009 ACJ 1298, it was held that wife is entitled to Rs.1,00,000/- on account of loss of consortium and children are entitled to Rs.2,00,000/- on account of loss of love and affection. Accordingly, compensation was calculated at Rs. 20,00,000/-.

I have heard the learned counsels for parties and have also carefully gone through the file.

Before this Court, it has been vehemently argued on behalf of appellant that Courts below have gravely erred in including agriculture income of deceased in total income. Therefore, findings are perverse and can be interfered in regular second appeal. It has been further argued that as held recently in *Pankajakshi (Dead) Through L.Rs. and others Versus Chandrika and others*, 2016 (2) RCR (Civil) 245 that in the matter of regular second appeal, this Court is governed by Section 41 of Punjab Courts Act, 1918, which is more wider than Section 100 CPC, 1908. Therefore, it has been pressed that when there is misreading of evidence, perversity and wrong application of law, then this Court can interfere in regular second appeal. So far as liability of appellant-defendant No. 1 is concerned, it has come out that appellant was convicted by Sessions Court for murder of Gurjit Singh and Teja Singh. His appeal has since been dismissed by this Court. This Court is also informed that appellant has already undergone sentence and has since been released on bail. In this way, judgment of criminal Court has become final. Before this Court, appeal has been pressed on behalf of appellant only on the point of quantum of compensation.

The learned senior counsel for appellant has argued that in this case, income tax returns were relied upon by lower appellate Court whereas only photocopies were placed on file. However, perusal of file shows that plaintiff Sukhjeet Kaur had appeared alongwith original income tax returns and produced photocopies thereof which were exhibited without any objection. Therefore, lower appellate Court was justified in relying upon income tax returns of deceased. The murder was committed on 5.3.2005. Therefore, income tax return (P-20) for the year 2003-2004 is relevant wherein business income of deceased is shown as Rs. 63,910/- and agriculture income is shown as Rs. 80,000/-. The learned senior counsel has argued that agriculture income still persist after death of deceased, therefore, it could not be included in income of deceased. At the most, plaintiffs have suffered the loss of management of agriculture for which salary of employee to manage the land as in the year 2005 could be considered. The multiplier applied by Courts below has not been disputed by parties.

I am of the view that in case of agriculture income, agriculture land and income is still there even after death of deceased. Therefore, the Courts below erred in including the agriculture income of deceased in income of deceased. Therefore, in its place, a sum of Rs. 2,500/- as salary for employing a person to manage the land, as in the year 2005, is to be allowed. Therefore, the loss on account of management of agriculture land comes to Rs. 30,000/- p.a. Therefore, in place of loss of agriculture income at the rate of Rs. 80,000/- per annum, Rs. 30,000/- is to be treated as loss of management of agriculture land. On account of loss of business, Rs. 63,910/- were added by the lower appellate Court. I am of the view that there is a tendency to show lower income in income tax return, the business income amounting to Rs. 63,910/- is observed to be incorrect which as per assessment of this Court should be around Rs. 96,000/- p.a. i.e. Rs. 8,000 p.m. Now, one third of the business income i.e. Rs. 32,000/- is to be deducted as personal expenses for calculating the compensation. The business income for compensation comes to Rs. 64,000/- p.a. in which Rs. 30,000/- on account of loss of management of agriculture land is to be added. Therefore, the loss to plaintiffs comes to Rs. 94,000/- per annum. Applying multiplier of 15, it comes to Rs. 14,10,000/-. Rs. 1,00,000/- on account of loss of consortium to wife and Rs. 1,00,000/- on account of loss of love and affection to children are also to be allowed. Total amount of compensation comes to Rs. 16,10,000/-. In view of findings recorded above, it is held that in place of Rs. 20,00,000/-, plaintiffs are entitled to compensation of Rs. 16,10,000/- alongwith interest as allowed by trial Court.

In view of matter, with abovenoted modification in quantum of compensation, regular second appeal fails and is dismissed. Since regular second appeal is dismissed, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

1.5.2018
sjks

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| Whether speaking / reasoned | : | Yes / No |
| Whether Reportable | : | Yes / No |