

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

RSA No. 3250 of 2014 (O&M)
Date of decision : May 03, 2018

Satnam Chand

..... Appellant

v.

Kharait Lal and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Inderjit Sharma, Advocate
for the appellant.

Mr. SK Aneja, Advocate
for respondent No.1.

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below awarding an amount of ₹ 2,36,860/- to the respondents for injuries caused to respondent No.1 by the appellant.

The case of respondent No.1 was that on the fateful day, the appellant along with 5/6 other persons had caused injuries to him by firing a shot, as a result of which he had to be repeatedly hospitalized and to undergo different surgeries. The case of the appellant was of total denial in so much as he denied that any such incident had taken place at all. Both the Courts having decreed the suit, the appellant is before me.

Counsel for the appellant has argued that no doctor was produced by the respondents to prove that any injury was caused to

respondent No.1. In this connection both the Courts have noticed that to prove the incident respondent No.1 had appeared to give his evidence and an eye witness Milkha Raj had also appeared. As regards injuries, the respondent had examined the official of the CMC Hospital, Ludhiana who had proved the record of the hospitalization and medical treatment undertaken by respondent No.1.

On the other hand, no evidence was led by the appellant except for his own personal testimony wherein, as mentioned above, he had denied the occurrence in toto. In my considered opinion, the non production of the doctor would not necessarily be fatal to the case. Admittedly, the respondents have produced the official of CMC Hospital, Ludhiana who had brought the original treatment record of respondent No.1 and this testimony and the record were not shaken/falsified.

Another issue raised by counsel for the appellant is that the Courts below have also relied upon the FIR and the order of conviction of the appellant, whereas that order is still under challenge in an appeal.

On the other hand, counsel for respondent No.1 has relied upon Swaran Singh v. Devinder Singh and another 2008(4) RCR (Civil) 235, wherein this Court has held as under :-

“6. The contention of the learned counsel for the appellant that the learned Courts below have taken into consideration the judgment and order dated 3.5.2000 (Ex.P.9) against which appeal is pending in this Court is also inconsequential. It is well known that a civil liability can be fastened on the defendants on the basis of preponderance of evidence whereas guilt of an accused in a criminal trial is to be proved beyond shadow of reasonable doubt. Even otherwise independent of the judgment and order dated 3.5.2000 (Ex.P.9) both the Courts below have considered the other evidence on record and the judgment (Ex.P.9) of the learned Additional Sessions Judge is only corroborative in nature. Therefore, the stand of the learned counsel for the

appellant that undue weightage has been given to the judgment dated 3.5.2000 (Ex.P.9) passed by the learned Additional Sessions Judge is devoid of any merit. The contention that in the absence of any issue regarding the alleged occurrence a serious prejudice has been caused to the defendants is also without basis. It may be noticed that both the parties have led evidence on the nature of injuries and also on the quantum of compensation. In [Kunju Kesavan v. M.M. Philip and others](#), AIR 1964 SC 164, it was held that where both the parties understanding what the issue in the case was, absence of issue would not lead to mis-trial sufficient to vitiate the decision. Therefore, both the parties being aware of the issues between the parties and the claim of the plaintiff, the mere fact that specific issue has not been framed with regard to the alleged occurrence is of no significance and has not resulted in any prejudice to the defendant-appellant.”

Viewed from this perspective, I have to consider whether the evidence which was led before the Courts below was sufficient to establish preponderance of probability in favour of the respondent. Having analyzed the evidence, I am of the confirmed opinion that such preponderance of probability was established. Consequently, finding no merit this appeal is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

May 03, 2018
'kk'

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