

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1450 of 2017 (O&M)

Date of Decision: October 30, 2018

Pawan Kumar & another

...Appellants

Versus

Dinesh Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. P.K.S.Phoolka, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-defendants has assailed the judgment and decree of the Lower Appellate Court in partly modifying the decree of the trial Court to the extent of ₹ 5.00 lacs by determining the disability of the respondent-plaintiff to the extent of 20%.

Plaintiff-respondent instituted the suit claiming damages to the tune of ₹ 10.00 lacs on account of the injuries sustained by him at the hands of the appellant-defendants, for which they were charge sheeted in case FIR No.70 dated 10.09.2010, under Sections 451/379/323/34 IPC registered at Police Station Canal Colony, Bathinda, wherein they have been convicted and appeal before the Sessions Court is stated to be pending. As per medical evidence brought on record, respondent-plaintiff lost one eye and suffered other injuries.

The trial Court, on the preponderance of the evidence, by determining the disability to the extent of 30% decreed the suit to the extent

of ₹ 7.00 lacs along with interest @ 6% per annum, but the Lower Appellate Court, as noticed above, modified the same.

Mr.P.K.S.Phoolka, learned counsel representing the appellant-defendants submitted that the respondent-plaintiff failed to discharge the onus with regard to the extent of disability as the alleged disability certificate is a marked document. Mere exhibition by marking of the document would not dispense with its proof. Loss of one eye though may result into loss of vision, but the extent of disability could only be determined by board of doctors, therefore, there is falsity and perversity.

I am afraid, the aforementioned argument is not able to cut ice, particularly when apprised during hearing that appellant No.2 was a Constable in the Punjab Police. They are protectors of law and order and cannot be permitted to indulge into arson, robbery and trespass. As a matter of fact, the respondent-plaintiff has lost one eye which itself is enormous disability and a curse. In such circumstances, mere technicalities should not come in the way for determining the extent of disability, which, in the opinion of this Court, has rightly been assessed to the extent of 20% and modified from ₹ 7.00 lacs to ₹ 5.00 lacs. No fault can be found with the judgment in confining the damages to ₹ 5.00 lacs with interest @ 6% per annum.

In view of what has been stated above, I do not find any illegality or perversity. No substantial question of law arises for determination. Resultantly, the appeal is dismissed.

October 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No