

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

**RSA-4137-2018 (O&M)
Date of Decision: 12.07.2018**

Bikramjit Singh @ Babbi & another

... Appellants

Versus

Balwant Kaur & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Bhanu Pratap Singh, Advocate for the appellants.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Defendants are in second appeal before this Court.

2. Plaintiffs (respondents herein) filed a suit for recovery of Rs.30 lakhs as damages against the defendants on account of loss suffered by them due to deprivation of love and affection, loss of estate and medical expenses incurred on account of murder of Albel Singh. Plaintiffs were the widow, son and daughters of Albel Singh (since deceased). It was averred that on 25.11.2006 at about 8:00 A.M., the defendants, namely, Bikramjit Singh @ Babbi, Pritpal Singh @ Titi armed with 'sword' and 'kirch' launched attack upon Albel Singh and who finally succumbed to the injuries suffered. Plaintiffs had stated that Albel Singh was the sole bread earner and was having 50 killas of land. He was also engaged in other activities like running of a dairy farm and property dealing business. Plaintiffs stated that Albel Singh was earning approximately Rs.35,000/- per acre. After his murder, plaintiffs were unable to cultivate the land in question as they had no

experience and aptitude and as such, the land was then given on *chakota* at the rate of Rs.18/19,000/- per killa and as such, a loss of Rs.15,000/- per killa was incurred. It was stated that Albel Singh at the time of his death was 57 years old and if normal life expectancy was to be seen, the plaintiffs have been put to a great financial loss. Furthermore, Albel Singh had to be admitted in various hospitals including DMC, Ludhiana and as such, a heavy amount was incurred upon his medical expenses and treatment. In all a sum of Rs.30 lakhs was claimed towards damages.

3. Upon notice having been issued, defendants contested the suit and filed written statement. A case of denial was set up. The incident of 25.11.2006 was also denied. It was also stated that plaintiffs No.3 to 5 are daughters of Albel Singh, who are married and were not in any manner dependant on the deceased. Plaintiff No.2 was the son and was able bodied and used to cultivate the land along with his father i.e. Albel Singh and as such, there was no question of having suffered any loss of agriculture income.

4. Upon the pleadings of the parties, the following issues were framed by the trial Court:

- “1. Whether plaintiffs are entitled for recovery of the suit amount alongwith interest as prayer for? OPP*
- 2. Whether suit is not maintainable? OPD*
- 3. Whether suit is liable to be stayed? OPD*
- 4. Relief.”*

5. Trial Court having examined the evidence adduced on record and after hearing counsel for the parties, returned a finding that the plaintiffs have successfully established that death of Albel Singh was caused due to intentional acts of the defendants. Plaintiffs No.3 to 5 were held to be not

dependant upon Albel Singh as they were already married at the time of his death and were staying at their respective matrimonial home. Damages in favour of plaintiffs No.1 and 2 i.e. widow and son were quantified at Rs.20 lakhs on account of loss of agriculture income. Rs.2.50 lakhs was assessed as damages on account of medical expenditure incurred on the treatment of Albel Singh and Rs.2.50 lakhs was assessed towards damages suffered by the plaintiffs on account of loss of love and affection. Suit, as such, was decreed and plaintiffs No.1 and 2 were held entitled to a sum of Rs.25 lakhs from the defendants jointly and severally on account of death of Albel Singh.

6. Civil Appeal having been preferred by the defendants, the same stands partly allowed vide judgment dated 27.02.2018 passed by the learned Additional District Judge, Ludhiana and the compensation/damages awarded stand reduced from Rs.25 lakhs to Rs.5 lakhs. Resultantly, the present second appeal at the hands of the defendants.

7. Counsel representing the appellants has argued that against the conviction of the appellants by the trial Court under Section 302 IPC, criminal appeal had been preferred and vide judgment dated 10.03.2017 passed by a Division Bench of this Court, the conviction of the appellants has been modified from Section 302 IPC to Section 304-I IPC. Counsel submits that the High Court further directed the defendants to pay a sum of Rs.1 lakh each as fine to the legal heirs of deceased Albel Singh. It is argued that such aspect has been completely overlooked by the lower Appellate Court. Further argued that against the judgment and decree dated 13.07.2015 passed by the trial Court, an appeal had also been preferred by the plaintiffs seeking enhancement but the same was declined vide judgment dated

27.02.2018 by the lower Appellate Court by observing that deceased Albel Singh was suffering from acute kidney failure and he would have survived at best for another 3-4 years. Counsel argues that the lower Appellate Court has also returned findings that plaintiffs had failed to prove that they have suffered a loss on account of agriculture income and nothing was adduced on record to prove that Albel Singh was doing dairy business and against the backdrop of such finding the damages/compensation to the extent of Rs.5 lakhs cannot sustain.

8. Having heard counsel for the appellants at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal.

9. Admittedly, deceased Albel Singh had been brutally attacked by the appellants herein and who were armed with a 'sword' and 'kirch'. Albel Singh suffered more than 13 injuries on his body including 8 fractures. A Division Bench of this Court in its judgement dated 10.03.2017 (**CRA-D-1084-DB-2009 titled as Pritpal Singh @ Titi and another Vs. State of Punjab**) while modifying the conviction of the appellants herein from Section 302 to Section 304-I IPC had observed that none of the injuries suffered by Albel Singh were individually or collectively sufficient to cause death in the ordinary course of nature. The cause of death of Albel Singh was held to be the supervening factors and it was held that he had not died as a direct result of the injuries. It was also observed in the following terms:

“But, at the same time we have no doubt that by causing so much injuries with the weapons like 'Kirch' and 'Sword', the assailants must have been intended to cause such bodily injuries to Albel Singh as were likely to cause his death. The offence committed by the appellants thus attracts the mischief

of part I of Section 304 IPC.”

10. In the considered view of this Court, conviction of the appellants having been modified from Section 302 IPC to Section 304-I IPC by this Court, would not obliterate the claim of the respondents herein to claim damages towards compensation. A criminal trial has established that the appellants herein had caused numerous injuries upon the person of Albel Singh. The acts of the appellants would have to be termed as reckless, malicious and irresponsible. Apart from the medical expenses that were incurred upon the treatment of Albel Singh, the respondents being the widow, son and daughters of deceased had to undergo mental tension, pain, torture and harassment. The damages awarded to the extent of Rs.25 lakhs by the trial Court already stands whittled down by the lower Appellate Court to Rs.5 lakhs by observing that conclusive evidence has not been adduced to show loss of agriculture income.

11. The judgment passed by the lower Appellate Court awarding compensation/damages to the extent of Rs.5 lakhs against the appellants herein does not warrant any interference.

12. The instant second appeal does not raise any question of law much less substantial question of law.

13. Appeal is dismissed.

14. Since the main appeal already stands disposed of, pending applications, if any, shall also stand disposed of.

12.07.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No