

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

RSA-2440-2015(O&M)

Date of decision:-14.2.2019

Mehla Singh and others

...Appellants

Versus

Harwinder Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.J.S. Bedi, Advocate
for the appellants.

Mr.Siddharth Gupta, Advocate
for respondents No.1 to 4.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Smt.Harwinder Kaur – wife, Manjit Kaur – minor daughter, Harprit Singh – minor son and Smt.Bhagwan Kaur, aged about 72 years – mother of Sh.Gurjant Singh had brought a suit for recovery of Rs.8 lacs as compensation/damages against Mehla Singh, Sardul Singh, Ranjit Singh, Harbans Singh, Kuldeep Kaur, Chhinder Kaur, Labh Singh and Dalour Singh for pecuniary loss occasioned to the plaintiffs for the reason of defendants committing murder of Sh.Gurjant Singh.

Inter alia, in the plaint, the plaintiffs contended that

Sh.Gurjant Singh deceased had two more brothers, namely, Gamdur Singh and Hakam Singh; that Hakam Singh had pre deceased Gurjant Singh; that Gurjant Singh and Gamdur Singh were residing in the house built in their fields; that defendants Sardul Singh and Harbans Singh are cousin brothers of Gurjant Singh having their house adjoining to house of plaintiffs; that there was a motor connection in the name of father of Gurjant Singh, however, defendant Sardul Singh claimed that he had a half share in the motor connection, whereas that claim was not acceptable to Gurjant Singh; that Sardul Singh had submitted application to the police, however, the dispute was resolved by the Panchayat and 12.5.2008 was fixed as date for settling the matter, however, Sardul Singh and others violated the decision of the Gram Panchayat and rather assaulted the Panchayat members; that on 12.5.2008 at about 5:30 p.m. when Gamdur Singh and Gurjant Singh were present at home, then Sardul Singh armed with a *gandasa*, defendant Ranjit Singh armed with a *ghop*, defendant Harbans Singh armed with a *khapra*, defendants Kuldip Kaur and Chhinder Kaur armed with iron rods, defendant Labh Singh armed with 12 bore SBBL licensed gun, defendant Mehla Singh empty handed; defendant Dalour Singh armed with a *gandasa* all of them hurling abuses came in front of gate of house of the plaintiffs; that Gurjant Singh and Gamdur Singh also went there and objected to the filthy language used by the defendants – assailants; then

defendant Labh Singh raised a *lalkara* that they be taught a lesson for not giving share in the motor and saying that he opened the attack firing three shots in the air, whereas remaining defendants abused Gurjant Singh and his brother Gamdur Singh and raised *lalkara* of catch hold of them; that defendant No.1 Mehla Singh took the gun from Labh Singh and fired a shot at Gurjant Singh hitting him on left side of his chest, resultantly Gurjant Singh fell on the ground; that Gurjant Singh raised an alarm of “*MARTA MARTA*”, then Baldev Singh, resident of village Kamalu, a relative of Gurjant Singh came at the spot; that defendant Mehla Singh fired from the gun Baldev Singh hitting him on left side of stomach; that Baldev Singh entered in Gurjant Singh's house; then Mehla Singh again fired at Gamdur Singh when he was attending to his injured brother; that Gamdur Singh escaped by taking shelter behind the toilet; that Mehla Singh again fired a shot; thereafter the defendants left the spot along with their respective weapons proceeding towards the fields while raising *lalkaras*; that while Gamdur Singh and others were taking the injured Gurjant Singh and Baldev Singh to hospital after making arrangement of vehicle and on way to Adesh Hospital, Gurjant Singh succumbed to the injuries suffered by him; that formal FIR No.23 dated 13.5.2008 for the offences under Sections 302/307/148/149 IPC and 25 and 27 of Arms Act was registered with Police Station Balianwali against the defendants on the basis of statement made by

Gamdur Singh; that the post mortem examination on the dead body of Gurjant Singh was conducted on 13.5.2008 at Civil Hospital, Bathinda; the defendants were arrested in this case, however names of Dalour Singh, Ranjit Singh, Kuldip Kaur and Baldev Singh were placed in column No.2 of final report under Section 173 Cr.P.C., whereas other accused were challaned. According to the plaintiffs, Gurjant Singh deceased was aged about 35-36 years and he was enjoying good health; he belonged to a family having long life expectancy i.e. 80/85 years and he was expected to live for another 40/45 years; that he was cultivating land measuring 10-12 acres earning Rs.3-4 lacs per annum and he was also running a dairy farm by keeping 5-6 cattle, earning Rs.1 lac per annum; that the plaintiffs were fully dependent upon earnings of the deceased; that the plaintiffs No.2 and 3 are minor and are studying in a school; that the plaintiffs had spent a considerable amount on funeral and *bhog* ceremony of the deceased; that the plaintiff No.4 is 72 years old and suffering from many ailments; that though the plaintiffs are entitled to recover more than Rs.35 lacs as compensation but they claimed a sum of Rs.8 lacs only with interest @ 18% per annum. According to the plaintiffs when the defendants refused to admit their claim, then they knocked at the door of the Court by filing the suit in question.

On notice, the defendants appeared and filed a joint written statement contesting the suit taking preliminary objections

that the suit was not maintainable; that no cause of action arose to the plaintiffs to bring the suit; that the suit was bad for misjoinder and non-joinder of the necessary parties; that the plaintiffs were estopped from filing the suit due to their act and conduct; that the suit was not properly valued for the purpose of Court fee and jurisdiction; that the suit was not within limitation; that the plaintiffs had not come to the Court with clean hands and concealed the material facts. On merits, the defendants admitted the relationship of plaintiffs with the deceased Gurjant Singh, though denied that the plaintiffs were dependent upon earnings of the deceased, rather contending that the deceased was dependent upon the plaintiffs as he was not doing any work and was addicted to all types of vices; the defendants denied having responsible for the death of Gurjant Singh stating that the allegations in that regard levelled by the plaintiffs in the plaint were false and baseless since no such incident had taken place and the defendants had been falsely involved in the criminal case; that age of the deceased Gurjant Singh was more than 50 years and he was suffering from various ailments; that the plaintiffs had inherited the agricultural land of the deceased and they have got source of livelihood. Refuting the remaining allegations, they prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments

in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled to damages/compensation of Rs.8,00,000/- from the defendants? OPP.
2. Whether the present suit of the plaintiffs is maintainable in the present form? OPD.
3. Whether the plaintiffs have no locus-standi to file the present suit? OPD.
4. Relief.

In order to prove their case, plaintiff Harwinder Kaur got her statement recorded as PW2 besides examining C-II Darshan Singh, P.S. Balianwali as PW1, Nachattar Singh as PW3, Rush Singh as PW4, Dr.Manmohan Singh Deol as PW5, Dr.H.S. Hayer as PW6 and Gurcharan Singh as PW7. Thereafter, after tendering some documents, the plaintiffs closed the the evidence.

On the other hand, defendant No.2 Sardul Singh got his statement recorded as DW1. Then after tendering some documents, evidence of the defendants stood closed.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiffs and against the defendants No.1, 2, 4 and 7, issues No.2 and 3 against the defendants and in favour of the plaintiffs. Resultantly, suit of the plaintiffs was

decreed for recovery of Rs.8 lacs as compensation for pecuniary loss caused to the plaintiffs by defendants No.1, 2, 4 and 7. The plaintiffs were found entitled to the compensation amount in equal shares and defendants No.1, 2, 4 and 7 were directed to share the liability equally. This was so done vide judgment and decree dated 5.9.2012.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Bathinda, which was assigned to learned Additional District Judge (Fast Track Court), Bathinda, who after hearing arguments vide judgment and decree dated 17.12.2014 affirmed the judgment and decree passed by the trial Court and dismissed the appeal, which left the defendants aggrieved and they had filed the present regular second appeal before this Court, notice of which was issued and the respondents appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The moot question to be seen in this case is as to whether death of Gurjant Singh was wrongly caused by the defendants. To find answer to this question several facts need to be taken into consideration. First of all, formal FIR was registered against the defendants for committing murder of Gurjant Singh. As a result of investigation, the defendants were challaned and sent up to face trial

and learned Additional Sessions Judge, Bathinda vide judgment dated 3.9.2010 held Sardul Singh, Harbans Singh, Mehla Singh and Labh Singh guilty for committing murder of Gurjant Singh and they were sentenced to undergo imprisonment for life. Copy of the judgment by the said Court has been proved in evidence as Ex.P8.

Learned counsel for the appellants had raised an argument before this Court, which had been submitted before the Courts below also, to the effect that the judgment of the criminal Court is not binding upon the Civil Court and on the basis of such judgment, suit cannot be decided against the defendants. Of course there cannot be any dispute with the proposition of law that judgment of a criminal Court is not binding upon the civil Court, though vice versa is true. But then that judgment is a relevant piece of evidence to show that the defendants were named as persons responsible for committing murder of Gurjant Singh, they were arrested in this case and after completion of investigation they were challaned and sent up to face trial, which ended in their conviction. This judgment is an important piece of evidence and cannot be ignored while deciding the civil suit, though this judgment cannot be the only basis for decision of the civil suit. In the instant case, the plaintiffs had led the oral as well as documentary evidence, which goes to prove their case and the civil suit in question has not been decided on the basis of the judgment of criminal case only. Thus it being proved that the

defendants had caused death of deceased in a wrongful manner, therefore, they are guilty of committing a tort and liable to pay compensation/damages to the plaintiffs, who come out to be dependent upon earnings of the deceased. The plaintiffs by leading enough cogent and convincing evidence have been able to prove their version that Gurjant Singh was a young man of 35-36 years enjoying good health, that he was an agriculturist and in addition to that he was also engaged in dairy farming and that the plaintiffs were dependent upon his earnings. Though the agricultural land of the deceased is still there and so are milch animals but then it has to be taken into mind that the deceased was managing the land and the animals and with his death, the plaintiffs have been deprived of such management.

Using formula for payment of compensation in case of death of a person in a motor vehicular accident, keeping in view the facts and circumstances of the case and evidence on file, it would be proper and appropriate to take monthly income of deceased as Rs.9,000/-, the number of dependents upon him being four. If we deduct $\frac{1}{4}$ th of the amount towards his personal living expenses, then dependency of the deceased comes out to Rs.6,750/-(9,000 – 2,250), annual dependency comes out to Rs.81,000/-(6,750 x 12). Keeping in view the age, multiplier of 15 is to be used. Therefore, total compensation worked out to Rs.12,15,000/-(81,000 x 15). If we add

amount Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses in terms of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,** the amount of compensation worked out to Rs.12,85,000/- (12,15,000 + 70,000), which is much more than amount of Rs.8 lacs granted by the trial Court.

Learned counsel for the appellants had referred to copy of judgment having title **Seth Ramdayal Jat Versus Laxmi Prasad** by Hon'ble Supreme Court in Civil Appeal No.2543 of 2009 in support of his contention that the judgment of criminal Court is not binding upon the Civil Court. As already discussed, there cannot be any dispute with the proposition of law but here the plaintiffs have led other evidence to prove their case and are not solely relied upon the judgment of the criminal Court.

Similarly the other authority referred to by learned counsel for the appellants i.e. **Municipal Committee, Jullundur City Versus Shri Romesh Saggi and others, AIR 1970 Punjab & Haryana 137** does not help the appellants in any manner.

Learned counsel for the respondents had referred to judgment passed by Division Bench of this Court in CRA-D-1068-DB-2010 having title **Sardul Singh and others Versus State of Punjab** in support of his contention that the Courts below were

justified in decreeing the suit of the plaintiffs.

No other point was pressed or put forward on behalf of the appellants.

The judgments and decrees passed by both the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The same are upheld.

No substantial question of law is found to be there in this case.

Finding no merit in the present appeal, the same stands dismissed with costs.

14.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No