

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 1493 of 2018(O&M)
Date of Decision: 30.4.2019**

State of Punjab and another

---Appellants

versus

Paramjit Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rajesh Bhardwaj, Sr. DAG, Punjab

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for recovery of Rs. 15 lakhs alongwith interest as damages on account of death of Bagicha Singh son of Lachhman Singh resident of Pacca Seed Farm, Abohar while he was in custody of the official defendants (appellants herein), was partly decreed by the trial court to the following effect:-

“Suit of the plaintiffs is decreed partly in favour of the plaintiffs and against defendants for recovery of Rs. 10 lakh i.e. Rs. 5 lakh each to both the plaintiffs as compensation amount to be paid within the period of three months from the date of decision of this suit failing which defendants shall be liable to pay the amount of Rs. 10 lakh along with interest at the rate of 12% per month

till its payment. As the plaintiffs were permitted to sue as indigent persons, so the court-fee amount be recovered from defendants which shall be the first charge on subject matter of the suit under Order 33 Rule 10 of the CPC.”

The judgment and decree passed by the trial court became subject matter of Civil Appeal No. 13 of 11.1.2017 filed by the appellants and Civil Appeal RBT No. 6 of 14.7.2017 filed by the respondents-plaintiffs and both the appeals were decided vide common judgment and decree dated 6.9.2017 passed by the Additional District Judge, Ferozepur whereby both the appeals were dismissed, findings and conclusions drawn by the trial court were affirmed without any variance.

The sole submission made by counsel for the appellants is that the courts accepted claim of the respondents-plaintiffs primarily on the ground that Bagicha Singh injured was not given proper medical care/treatment and as such the appellants are liable to compensate the respondents for death of Bagicha Singh due to injuries sustained when he was in custody of State being an inmate in Central Jail, Ferozepur. It is argued that the appellants filed an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (in short 'the CPC') seeking permission to adduce additional evidence qua medical records in respect of treatment of Bagicha Singh from various hospitals but the said application was dismissed by the Appellate Court vide order dated 6.9.2017. It is further argued that order passed by the Appellate Court rejecting application for additional evidence is liable to be set aside and the matter needs remittance to the Appellate Court for decision of the appeal afresh after

permitting the appellants to produce medical records. It is further argued that a serious prejudice shall be caused to the appellants in case their plea for additional evidence is not allowed to produce evidence that Bagicha Singh did not suffer for want of proper medical treatment. In addition, it is argued that issue with regard to violation of human rights of Bagicha Singh was raised before the Punjab State Human Rights Commission but the said authority held that there was no foul play qua the occurrence.

The appellants have filed CM No. 3561-CII of 2019 seeking exemption from filing certified/true typed copies of Annexures and placing on record copies of Annexure P-1 to P-7. Counsel for the applicants-appellants would apprise the court that documents Annexures P-1 to P-4 pertain to medical treatment of Bagicha Singh and Annexure P-6 is the order passed by the Appellate Court dismissing the application for permission to lead additional evidence. The documents sought to be placed on record in respect of medical treatment of Bagicha Singh can be taken into consideration only if order passed by the Appellate Authority dismissing the application for additional evidence is set aside.

The Appellate Court in para 1 (unnumbered) of the order dated 6.9.2017 has noticed that as per averments raised in the application, medical record had to be produced by the plaintiffs but they had not produced the same to prove their case. The applicant is not custodian of the said medical record and wants to produce the same by way of additional evidence. In para No. 4 of the order, it has been noticed that the applicant was granted sufficient opportunities to lead evidence after framing of issues but the applicant had not produced the said medical record, therefore, the court does not find any merit in the application for additional evidence.

Counsel for the appellants has not challenged correctness of factual findings that the appellants availed number of opportunities before the trial court to adduce evidence but failed to produce the same. Counsel for the appellants has failed to make out a case much less to advance meaningful arguments as to how the application filed by the appellants for adducing additional evidence falls within the purview and ambit of Order 41 Rule 27 clauses (a) and (aa) of the CPC. There is not even a whisper that despite exercise of due diligence, evidence sought to be produced by way of additional evidence could not be produced at an appropriate stage of the proceedings before the trial court or the said evidence was not to the knowledge of the defendants. It is difficult to fathom that if functionaries of the State had been sending Bagicha Singh for treatment and incurred expenses for the same, the appellants can express their ignorance qua availability of records in the hospital(s). In this view of the matter, I find myself unable to accept contention of the appellants that the Court in Appeal committed an error much less illegality by rejecting application for adducing additional evidence. In this view of the matter, documents Ex.P-1 to P-4 cannot be taken into consideration for the purpose of deciding the appeal.

The mere fact that Human Rights Commission did not find any foul play with regard to sustaining injuries by Bagicha Singh is not sufficient to escape liability by the appellants to pay compensation as has been assessed by the courts.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs. As the appeal has been decided

on merits, application for condonation of delay in filing the appeal is of
academic relevance.

(Rekha Mittal)
Judge

30.4.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No