

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

RSA No. 5840 of 2018 (O&M)

Date of decision : May 06, 2019

Rajwinder Singh @ MithuAppellant

Versus

Gurjant Singh and othersRespondents

RSA No. 6196 of 2018 (O&M)

Gurjant Singh and othersAppellant

Versus

Gurjant Singh and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Tribhawan Singla, Advocate
for the appellant (in RSA-5840-2018)

Mr. A.S. Barnala, Advocate
for the appellants (in RSA-6196-2018)

LISA GILL, J.

Both Regular Second Appeal Nos. 5840 and 6196 of 2018 are taken up together for hearing and decision as they arise out of a common impugned judgment and decree dated 19.04.2018 passed by the learned Additional District Judge, Barnala.

Separate regular second appeals have been filed by the appellants i.e. defendants before the learned trial Court.

Appellants – defendants are aggrieved of judgment and decree dated 19.04.2018 passed by the learned Additional District Judge, Barnala whereby judgment and decree dated 30.05.2016 passed by the learned Civil Judge (Junior Division), Barnala has been set aside. Consequently, suit for recovery filed by the plaintiffs has been decreed.

Brief facts necessary for adjudication of the case are that on

06.02.2015, plaintiff alongwith his family was present in the house. It is pleaded that defendants entered their house forcibly and illegally. All of them were armed with dangerous weapons. Rajwinder Singh was carrying a kirch, Gurjant Singh an iron spade, Sukhvir Singh an iron rod and Gurvir Singh was carrying a wooden stick. Rajwinder Singh gave a kirch blow on the left arm of Gurjant Singh (plaintiff) while Gurjant Singh son of Karnail Singh (defendant No. 2) gave a spade blow on the left foot of Lakhvir Singh. Sukhvir Singh (defendant No. 3) gave an iron rod blow on the left arm of Gurjant Singh and Gurvir Singh (defendant No. 4) inflicted a blow with the wooden rafter upon Gurjant Singh (plaintiff) which he could ward off. It is further pleaded that plaintiff and his family members raised alarm and people gathered there. The defendants fled from the spot with their respective weapons while threatening the plaintiffs with dire consequences. FIR No. 15 dated 07.02.2015 under Sections 452, 323, 325, 506, 34 IPC was registered at Police Station Dhanaula on the basis of a statement of plaintiff No. 1. Thereafter, the plaintiffs were taken to Civil Hospital, Dhanaula at the first instance and then to Civil Hospital, Barnala where they referred to Rajindra Hospital, Patiala. It is pleaded that injuries received by the plaintiffs were grievous in nature and they were admitted to Sital Orthopaedic Centre and Nursing Home, Barnala, where plaintiff No. 1 remained admitted from 08.02.2015 to 21.02.2015 and plaintiff No. 2 from 08.02.2015 to 19.02.2015. It is further pleaded that various expenses i.e. medical, food, transport and other miscellaneous expenses were incurred by them on the injuries caused by defendants. Repeated requests were made to the defendants for compensation of ₹3,00,000/- but defendants flatly refused. Hence, the suit.

Defendants contested the suit while denying all the averments in the plaint and filed a joint written statement. It is specifically pleaded that they have not caused any injuries to the plaintiffs and the FIR registered against them is false and frivolous. They claimed to have been falsely involved in the criminal case. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiff is entitled to recovery of sum of ₹3,00,000/- from defendant on account of compensation as prayed for? OPP.
- ii) Whether the suit of the plaintiff is not maintainable in the present form? OPD.
- iii) Whether the plaintiff has no locus standi to file the present suit? OPD.
- iv) Whether the plaintiff has not come with clean hands and concealed the material facts from this court? OPD
- v) Relief.

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the plaintiffs – respondents while observing that the plaintiffs had failed to prove their case as even the criminal proceedings emanating from FIR No. 15 dated 07.02.2015 were still pending. Appeal preferred by the plaintiffs – respondents was, however, allowed by the learned Additional District Judge, Barnala vide judgment and decree dated 19.04.2018. A sum of ₹2,57,407/- was awarded with interest pendente lite at the rate of 7% per annum and future interest at the rate of 6% per annum from the date of decree till realisation. Aggrieved therefrom, present appeals have been filed.

Learned counsel for the appellants vehemently argue that the

learned Additional District Judge, Barnala has grossly erred on fact and in law in setting aside the well reasoned judgment dated 30.05.2016 passed by the learned Civil Judge (Junior Division), Barnala whereby the suit filed by the plaintiffs had been rightly dismissed. Learned Additional District Judge has wrongly set aside the said judgment while allowing the appeal filed by the plaintiffs, consequently, decreeing their suit for damages. It is argued that the FIR in question is a false and fabricated FIR. Incident in question took place on 06.02.2015 at about 7.30 p.m. whereas the FIR was registered after an unexplained delay on 07.02.2015. Moreover, the plaintiffs were admitted in the hospital on 08.02.2015 after a delay of two days. This in itself shows that the FIR in question is false and fabricated. Moreover, though the appellants have been convicted by the learned trial Court, appeal against their conviction is still pending and has not attained finality. Therefore, award of compensation is clearly unjustified. In the alternate, it is submitted that the quantum of compensation awarded to the plaintiffs is on the higher side. Injuries allegedly suffered by the said plaintiffs do not entail the award of ₹2,57,407/-. It is, thus prayed that both these appeals be allowed and judgement and decree dated 19.04.2018 passed by the learned Additional District Judge, Barnala be set aside and judgment and decree dated 30.05.2016 passed by the learned Civil Judge (Junior Division), Barnala be upheld.

I have heard learned counsel for the appellants and have gone through the file as well as a photocopy of the record with their able assistance.

The plaintiffs claimed that on 06.02.2015 at about 7.30 p.m. the present appellants – defendants entered their house forcibly and illegally.

All of them were armed with dangerous weapons. Rajwinder Singh was carrying a kirch, Gurjant Singh (defendant No. 2) an iron spade, Sukhvir Singh an iron rod and Gurvir Singh was holding a wooden stick. Rajwinder Singh gave a kirch blow on the left arm of Gurjant Singh (plaintiff) while Gurjant Singh son of Karnail Singh (defendant) gave a spade blow on the left foot of Lakhvir Singh. Sukhvir Singh gave an iron rod blow on the left arm of Gurjant Singh and Gurvir Singh inflicted blows with the wooden rafter upon Gurjant Singh (plaintiff) which he could ward off. It is further borne out from the record that the injured were taken to Civil Hospital, Dhanauala at the first instance on 06.02.2015 from where they were referred to Civil Hospital, Barnala. They were then referred to Rajindra Hospital, Patiala but ultimately were admitted at Sital Orthopaedic Centre and Nursing Home, Barnala on 08.02.2015. In this respect perusal of the FIR itself reveals that the ruka/communication regarding admission of the injured was received at the police station on 06.02.2015 itself. Medico Legal Reports issued at Civil Hospital, Dhanauala in respect to the both the plaintiffs are available on record. It is mentioned in the said Medico Legal Reports that the patients arrived at Civil Hospital, Dhanauala at 8.20 p.m. on 06.02.2015. They came to the hospital with alleged history of assault. Ex.P1 comprises medical record in respect of Lakhvir Singh including the entire indoor file of his treatment at Sital Orthopaedic Centre and Nursing Home. Referral from the Civil Hospital, Dhanauala to Civil Hospital, Barnala on 06.02.2015 at 10.15 p.m. and further referred to Rajindra Hospital on 08.02.2015 is on record. Similarly, Ex.P2 comprises medico legal record and file etc. in respect to the plaintiff – Gurjant Singh. Referral of Gurjant Singh from Civil Hospital, Dhanauala to Barnala is also clearly

mentioned alongwith the date and time in the said hospital on 06.02.2015. PW1 Dr. Sheetal Kumar of Sital Orthopaedic Centre and Nursing Home, Barnala has proved the documents in respect to the treatment and expenses incurred by the plaintiffs at Sital Orthopaedic Centre and Nursing Home, Barnala. He has also proved the medical bills (Ex. P5 to P48) produced by the plaintiffs. Therefore, argument raised by learned counsel for the appellants that there is delay in lodging of the FIR, which reflects the falsity of the case, is clearly devoid of any merit, being completely negated by the evidence on record. Ruka was sent by the hospital authorities to the police on 06.02.2015 itself. FIR in this case was registered on 07.02.2015 on the statement of the plaintiff Lakhvir Singh who was admitted in the hospital at that time. Thus, it cannot be said that there is any delay in the lodging of the FIR.

Furthermore, argument raised by learned counsel for the appellants that the plaintiffs were admitted to the hospital after two days of the occurrence is also falsified by the evidence on record. It is apparent that both the plaintiffs were taken to Civil Hospital, Dhanauala at the first instance and thereafter to Civil Hospital, Barnala on the same day i.e. 06.02.2015 where remained admitted till 08.02.2015 and thereafter referred to Rajindra Hospital. They were, however, admitted at Sital Orthopaedic Centre and Nursing Home, Barnala. Lakhvir Singh remained admitted at Sital Orthopaedic Centre and Nursing Home, Barnala till 19.02.2015 and Gurjant Singh was discharged thereafter on 21.02.2015. The plaintiffs are admittedly residents of District Barnala, therefore, the decision to get treatment at Barnala instead of going to Rajindra Hospital, Patiala as per the referral by Civil Hospital, Barnala is of no avail to the appellant. This fact

does not in any manner detract from the plaintiffs' case.

Thus, plaintiffs have successfully proved the occurrence as alleged on 06.02.2015, whereby the plaintiffs suffered serious injuries at the hands of defendants. It is a settled principle of law that the suit for damages is maintainable even before the culpability of the accused is pronounced upon in criminal proceedings. In this regard reference can gainfully be made to **Raghbinder Singh versus Bant Kaur, 2010 (4) RCR (Criminal) 842 SC**. In the present case, the defendants have admittedly been convicted by the learned trial Court in the interregnum vide judgement dated 11.04.2017 (Ex.P58). Mere pendency of the appeal/revision against the said judgment of conviction is not a ground to non-suit the plaintiffs.

Similarly, I do not find any ground whatsoever to interfere in the quantum of compensation awarded by the learned courts below in the present appeals preferred by the defendants. Plaintiffs remained admitted in hospital for a number of days i.e. Lakhvir Singh from 06.02.2015 to 19.02.2015 and Gurjant Singh from 06.02.2015 to 21.02.2015. Learned Additional District Judge while observing that the plaintiffs could not lead any evidence to prove any functional disability, leading to diminishing of their earning capacity, did not award any compensation under the said head. Loss of income during the period of hospitalisation has been quantified as ₹7,920/-. Compensation qua medical expenses in respect to the plaintiffs was awarded as per the medical bills etc. proved on record to the tune of ₹94,487/-. Apart from awarding a sum of ₹1,00,000/- (₹50,000/- each) towards pain and suffering to the plaintiffs, ₹15,000/- was awarded towards transportation charges and other allied charges and ₹40,000/- towards special diet and attendant charges. I do not find any merit in the arguments

advanced by learned counsel for the appellants that compensation towards medical expenses is excessive as all the medical bills do not stand prove on record. PW1 Dr. Sheetal Kumar of Sital Orthopaedic Centre and Nursing Home, Barnala, and PW2 Anil Kumar, Proprietor of Life Line Medicos have duly proved the expenses incurred by the plaintiffs on the medical treatment. It is borne out from the record that the plaintiffs also underwent surgery. Learned counsel for the appellants are unable to point out any evidence on record to indicate that the compensation awarded to the plaintiffs is excessive in any manner.

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

Learned counsel for the appellants are unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 19.04.2018 passed by the learned Additional District Judge, Barnala, which calls for any interference by this Court in second appeal.

There is a delay of 62 days in filing of RSA No. 6196 of 2018. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

No other argument has been addressed.

Accordingly, these appeals are dismissed with no order as to costs.

May 06, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No