

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

RSA No.180 of 1995

Date of decision: 25th February, 2020

Lakhbir Singh & others

... Appellants

Versus

Malwai Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Munish Gupta, Advocate for the appellants.

Mr. G.S. Bhatia, Advocate for the respondent.

FATEH DEEP SINGH, J.

Malwai Singh present respondent filed against four defendants namely Rachhpal Singh, Lakhbir Singh, Randhir Singh alias Guddu and Bikramjit Singh alias Bikram Singh alias Bikar Singh, a suit for recovery of ₹ 70,000/- as damages and compensation for the injuries caused to the plaintiff by the defendants. The brief facts claimed by the plaintiff are that on 22.10.1985 around 8.00 p.m. the plaintiff along with Chhota Singh was present in the fields of Sher Singh in the area of village Lakhanpur where the defendants too arrived. At that time Rachhpal Singh and Lakhbir Singh defendants were armed with gandasis whereas Randhir Singh and Bikramjit Singh were armed with Sotis and on raising lalkara by Lakhbir Singh the accused assaulted him. The plaintiff claims to have received multiple injuries at the hands of these

accused and was rushed to hospital where he was medico-legally examined. The plaintiff has claimed that on account of these injuries and disfigurement resulting out of these injuries he was entitled to damages by way of compensation. The defendants in their stand taken up in the written statement took a plea that Lakhbir Singh defendant had gone to village to purchase some sugar and when he reached near the village gate he came across Malkiat Singh, Chhota Singh and Kaka Singh, and there being enmity between the two sides, Chhota Singh abused Lakhbir Singh and in the process Chhota Singh, Malkiat Singh and Kaka Singh waylaid Lakhbir Singh giving injuries to the other side and claimed that the allegations of disfigurement are as a result of self-manipulation and fabrication. The trial Court framed the following issues:-

1. Whether the defendants had caused injuries to the plaintiff, as alleged? OPP
2. Whether the plaintiff is entitled to recover ₹ 5,000/- from the defendants on account of expenses incurred on the treatment plaintiff, travelling expenses food etc.? OPP
3. Whether the plaintiff is entitled to recover ₹ 3,000/- on account of loss of work? OPP

4. Whether the plaintiff is entitled to recover ₹ 40,000/- from the defendants due to disfiguration, loss on hearing power, shock etc.? OPP
5. Relief.

The plaintiff examined PW1 Sukhvir Singh, PW2 Dr.Ashok Kumar Khullar, PW3 Chhota Singh and himself testified as PW4, and also examined PW5 Ram Parkash, and thereafter closed the evidence. The defendants on the other hand examined DW1 Bikamjit Singh, DW2 Lakhbir Singh, DW3 Harbhajan Singh and DW4 Darbara Singh and thereafter closed the evidence. Consequent thereupon, through judgment and decree dated 02.11.1989 the Court of learned Sub Judge 1st Class, Samrala decreed the suit of the plaintiff for a sum of ₹ 25,000/- being damages on account of these injuries. The same was challenged by the defendants in appeal and the Court of learned Additional District Judge, Patiala through impugned findings dated 20.09.1994 partly accepted the appeal and reduced the amount to ₹ 12,000/- as compensation. The same is subject matter of challenge in this regular second appeal.

In view of the recent pronouncement in '**Kirodi (since deceased) through his LR vs. Ram Parkash & others**' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab

Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Upon hearing Mr. Munish Gupta, Advocate for the appellants; Mr. G.S. Bhatia, Advocate representing the respondent and perusing the records of the case.

It is the admitted stand of learned counsel for the two sides during the course of their arguments as to the very occurrence that has taken place. The claim of the plaintiff as to who was the initiator of the fight is denied by the defendants in their written statement. It is well settled principle of law, reliance for which is placed on '**Francis & others vs. Jessy & another**' 2005(2) RCR(Criminal) 169, that a judgment of Criminal Court is admissible in terms of Section 43 of the Evidence Act as to the factum of conviction and charge, and that the conclusions of a Criminal Court are not binding on the Civil Court.

In the instant case, though there is a claim by the opposite side, the present appellants, that they too received injuries but they have not laid any counter-claim when it is evident from the cross-examination of the prosecution witnesses Chhota Singh and Malwai Singh to this effect that a cross-version too stands registered against them. The sole rallying point revolves around the extent of injuries and the quantum of compensation and which is based on the testimony of PW2 Dr.Ashok

Kumar Khullar who had examined Malwai Singh and discovered four injuries on his person and two on the person of Chhota Singh, six injuries on the person of Lakhbir Singh and five on the person of Bikramjit Singh. The Court below has rightly concluded that there is no explanation coming from the side of either of the parties as to how these injuries have come about on the other side. Even the judgment Ex.P7 proved on the record though to much extent has been relied upon by the courts below but in view of the proposition of law only factum of charge and the occurrence is to be gone into and not beyond that on the basis of the judgment and order of the Criminal Court. Neither any bill of purchase of medicine has been brought on the records and the Court on its own evaluating that due to the injuries the injured has suffered monetary loss on account of the injuries and which has been computed to be ₹ 2500/- and therefore had aggregated the loss to the tune of ₹ 12,000/-. How or in what manner the same has been assessed is anybody's guess. To the very specific query of the Court, learned counsel for the two sides fairly concede that neither any proof of having been laid off from the work has been proved nor any medical expenses, hospitalization chart, any special diet or similar other steps that might have come about during the course of treatment and subsequent to these injuries. The claim as to the factum of disfigurement of the injured is not at all proved on record by any disability certificate issued by the competent authority. It is more an

assessment by the trial Court and so by the learned first appellate Court based on hypothetical calculations which has led to the award of compensation of ₹ 25,000/- by the learned trial Court which was reduced to ₹ 12,000/- by the learned first appellate Court without their being any sufficient evidence on the record when even PW2 Dr.Ashok Kumar Khullar nowhere states that there was any cause of disfigurement of the plaintiff claimant Malwai Singh nor in the testimony of PW3 Chhota Singh and PW4 Malwai Singh plaintiff himself, and simply states that for seven months he did not go to work and suffered financial loss of ₹ 4000/- and he has been rendered permanently disabled as well as disfigured for which he has spent ₹ 40,000/-, and has totaled the loss to approximately ₹ 1.00 lakh. To the very specific query of the Court, learned counsel for the respondent Mr. G.S. Bhatia, Advocate could not show what documentary proof to this effect has come about since the plaintiff has come to the Court seeking compensation for this and when the onus of the principal issues No.2 and 3 was placed on the plaintiff and in the absence of any cogent and reliable evidence to this effect how the Courts below have arrived at such a conclusion, is anybody's guess. The impugned judgments certainly are absolutely wrong interpretation of the evidence and the law and in the absence of any discernible evidence on the record in favour of the plaintiff, no cause for granting any compensation by way of damages is made out and thus the finding of

both the Courts below on the issues are reversed. The present appeal is allowed thereby setting aside the impugned judgments and decrees of both the courts below and consequently dismissing the suit of the plaintiff.

(FATEH DEEP SINGH)
JUDGE

February 25, 2020
rps

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